

HEARING BEFORE THE CITY COUNCIL, FEBRUARY 11, 2008

Hearing opened at 7:08 P.M. with Councillor Rowlands, Chair of the Legal Affairs Committee presiding.

All members were present except Councillors Nickel and Dombrowski. This is a continuation of the public hearing from January 14, 2008.

Present at the hearing and representing the applicant was Tony Aveni, Metro North Associates.

The following PETITION was the subject of the hearing:

45-08 James L. Xarras, Union Square Realty Trust: Grant a Special Permit to use 70% of a vacant Industrial complex at 453-511 Lancaster Street located in an Industrial Zone and shown on Assessor's Map 443A, Lots 1 and 6 for a Mixed Use Project.

Councillor Rowlands read the recommendations from the January 14, 2008 hearing again.

Introduced and made part of the record were the following:

- A. A letter for the Planning Department stating "The Planning Board voted unanimously to recommend approval of the Special Permit for Mixed Use with the following recommended conditions: that there is a traffic report after one year and that the applicant reconfigure the entrance/exit on to Lancaster Street."
- B. A letter from the Fire Department states "The complex at 453-511 Lancaster Street is protected, to my knowledge, with fire sprinkler systems of aged pipe-schedule design. Some areas may be protected appropriately for a new tenant's business, while other areas may require upgrading to modern standards. As I noted to Mr. Aveni during his presentation before the Technical Review Board, evaluation should be made by an engineer to determine whether correct protection is provided for the new tenants. We have already experienced a situation where a tenant has installed rack storage and an interior office trailer without such an evaluation or approval. I believe in this case, the situation was corrected by Mr. Xarras. Additionally, the Lancaster Street complex includes a number of buildings that utilize old shunt-type fire alarm equipment, which in the least must be changed out by 2010, but most probably will require modernization prior to new tenant occupancy. The entire fire alarm needs of this group of buildings should be addressed by the appropriate design professional."
- C. A letter from the Department of Public Works gives a positive recommendation and said that "hopefully, landscaping will be done along the Lancaster Street frontage to create a buffer to the neighbors across the street."
- D. A letter from the Building Inspector states "I believe the project has merit, but the City Council must ensure that adequate parking will be provided for the total square footage that will be developed. Additionally, traffic flow to and from the site should be channeled in a satisfactory pattern."

Mr. Aveni said since the last meeting with the Council they have been before the Planning Board with the presentation he has brought forth tonight. The name of the project will be called Union Square. Mr. Aveni handed out booklets which showed the layout of the floor plans of the buildings. He said there is a total of 227,209 s.f. of usable area in the complex and most of the property is paved including the access road. Mr. Aveni said the Planning Board discussed an island to break up the curb cut across from Ash Street. He said the intersection at Viscoloid has been updated with a four way traffic light. There is a traffic light facing the property which is not operational at this time as far as timing but is on line. He said the other three sides of the light are active. The lights at the intersection of Willard have been upgraded as well as in front of Lowes, Wal-Mart's and Mr. Mikes and at 190 which are all up and running. They have also reconfigured and upgraded the intersection downtown at Lancaster Street and Central Street. Mr. Aveni said the site has electrical service that is rated industrial 3-phase, new individually metered gas fired heating modine units, six loading bays that have access for truck traffic without interfering with the flow of traffic within the complex. Mr. Aveni spoke on each building regarding size with associated parking and landscaping.

Councillor Tocci asked Mr. Aveni if the green area on the plans was landscaping.

Mr. Aveni said yes, it was landscaping.

Councillor Tocci asked if there was space for parking or just a throughway near building 493.

Mr. Aveni said they are just travel lanes with no parking. This is the entrance they allow Monson Chemical to use.

Councillor Tocci asked where the restaurant would be.

Mr. Aveni said 511A on the first floor.

Councillor Tocci said it doesn't look like there would be enough parking in that area and asked if the spill over would go over to B3.

Mr. Aveni said yes, the parking spaces are determined by seat capacity. We did it as a small restaurant with 40-70 seats.

Councillor Tocci asked if a traffic report was done for Lancaster Street.

Mr. Aveni said they consulted with their traffic engineer and it was their opinion that Wal-Mart/Lowes traffic study was adequate.

Councillor Rowlands asked if there were twelve spaces for the restaurant.

Mr. Aveni said roughly twelve. There is handicapped parking.

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Councillor Rowlands asked what the percentage of commercial use vs. industrial use was.

Mr. Aveni said 70% is commercial use (159, 046 s.f.) and 30% industrial use (68,163 s.f.).

Councillor Lanciani asked the Chair of the Legal Affairs to read the letter from the Conservation Commission. The letter asked the Council to remind the applicant that any construction within 200 feet of Fall Brook will require filing with the Leominster Conservation Commission, this includes re-paving and demolition.

Robert Szymkowski, 35 Warren Street, spoke in favor.

Councillor Marchand asked if they would be adding additions to the existing inventory and if so how would it impact their parking.

Mr. Aveni said possibly and if additions were added there would be some reconfiguration.

Councillor Marchand asked if they are planning on raising any of the existing inventory to put up new buildings.

Mr. Aveni said it was possible.

Councillor Marchand asked the Chair of Legal Affairs what the formula was for mixed use.

Councillor Rowlands said this project is under 20 acres and there is no formula in terms of percentage but it does state in the regulations that the City Council, as the Special Permitting authority can specify a certain percentage of use if they wants to.

Councillor Marchand asked if the Planning Board has given Site Plan Approval or is it pending?

Mr. Aveni said they have to go back for Site Plan to address the comments they had regarding adding the island and the directional flow off of Lancaster Street.

Councillor Marchand said in the Planning Board recommendation there was a stipulation regarding an assessment of traffic after one year. He asked if his client willing to put up a performance bond to take care of this.

Mr. Aveni said they would put up a bond.

Councillor Marchand asked if it has been identified what the bond would look like.

Mr. Aveni said no.

Councillor Marchand asked if it would be required as a condition of obtaining a permit from the Planning Board.

Mr. Aveni said possibly, they did not delve that far into it.

Councillor Tocci asked if there was any request about lighting on the property.

Mr. Aveni said no request was made but there is active security lighting there now and there have not been any complaints.

Councillor Rowlands asked if there has been any activity there on the property.

Mr. Aveni said they were cleaning up the site.

Councillor Rowlands asked if they were having any problems getting permits.

Mr. Aveni said no.

No one in the audience spoke against the petition.

A site visit was scheduled for February 23, 2008 at 9:00 A.M.

HEARING ADJOURNED AT 7:47 P.M. and continued to March 10, 2008 at 7:00 P.M.

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

HEARING BEFORE THE CITY COUNCIL, FEBRUARY 11, 2008

Hearing opened at 8:13 P.M. with Councillor Rowlands, Chair of the Legal Affairs Committee presiding.

All members were present except Councillor Nickel.

The following PETITION was the subject of the hearing:

47-08 Robert Walters, agent for Harvard Realty Trust and Scott Bigelow, 375 Harvard Realty LLC and B & B Realty Trust: Rezone two parcels of land known as 391 Harvard Street and 375 Harvard Street and a parcel of land located at the intersection of Harvard and White Streets from Industrial to Commercial.

Councillor Rowlands read the following letter that was received on February 11, 2008 from William Hannigan, Hannigan Engineering.

Dear Councilor Marchand,

On behalf of the petitioners: Robert Walters, Agent for Harvard Realty Trust; B & B Realty Trust, Scott Bigelow, Trustee; and 375 Harvard Street Realty, LLC, Scott Bigelow, Member; Hannigan Engineering, Inc. would like to request that the Public Hearing for Petition #47-08 be continued to the City Council meeting of March 24, 2008, or to a later date, as may be required due to scheduling needs of the Council.

It was the understanding of the petitioner that this petition would be reviewed by the Planning Board on March 4, 2008 and *then* brought before the Council for the Public Hearing. As such, Mr. Walters did not make arrangements to be in Leominster this evening. He would like to extend his apologies for this and will make arrangements to be at the continued Public Hearing in March. Additionally, Hannigan Engineering, Inc. would like to have further time to review this proposal with the Planning Department and with the Ward Councilor prior to the Public Hearing.

We thank you for your time and consideration regarding this matter.

No one spoke in favor of this petition.

Carol Newell, 39 White Street an abutter to 375 Harvard Street respectfully asked the Council to maintain the property as Industrial land. She emphasized that the owners of 375 Harvard Street conduct themselves with disregard for the neighbors, City Ordinances and some of the conditions set forth in their Special Permit. She said in 2004 the parking lot at 375 Harvard Street was paved without a permit and the asphalt was raised considerably which changed the runoff. She said the wetlands were mowed down. She said even though the Enforcement Officer and the Mayor told the manager to keep the gate closed it was open in the fall of 2007 and said Mr. Richard Perry witnessed trucks passing through the gate and driving down Ridgewood Drive on two occasions. She said some erosion control measures have been done on the piles of soil and fill in the back parking lot but some of it remains.

Mrs. Newell said in March 2005 they were told there was no retail business being conducted at 375 Harvard Street although a bag of fertilizer was purchased retail. She said trees were supposed to be used as a buffer zone as required by the conditions of the Special Permit for the Christian Book Store. She said red cedar trees were suppose to protect the view from Mrs. Ellis' home at 51 White Street. The buffer zone was substantially cut back in 2004 at the time the parking lot was paved without a permit. She said the condition of this permit of January 20, 2006 states "evergreen trees, (eastern red cedar or the equivalent) four feet high at planting will be used as a buffer zone." A few of the wrong kind of trees have been planted in the wrong place and not in front of 51 White Street. Ms. Newell submitted for the record photographs, a letter from Bernard McCaffrey, 100 Ridgewood Drive, Leominster to the Director of Inspections dated June 9, 2004, maps with abutter's names and addresses, sales invoice from Lesco for fertilizer, a letter with photo from Mr. & Mrs. Jerry Furtuna, 77 White Street, Leominster to the Chairman of the Conservation Commission dated March 31, 2005, a letter from Glenn Krevosky, EBT Environment Consultants, 2 Wellington Road, Oxford, MA to the Leominster Conservation Commission dated July 5, 2005, Minutes of the July 12, 2005 Leominster Conservation Commission meeting, a copy of the Special Permit by City Council dated January 20, 2006, a petition by the abutters and neighbors dated March 19, 2005.

Richard Lavers, attorney with Lisciotti Development representing his clients who are abutters to the subject parcel, Derby Farms LLC, Kohls LLC, Orchard Hill Park LLC and 2/190 Trust, which are the controlling entities that control Orchard Hill Park Shopping Center across the street from the subject parcel spoke in opposition. He said it has nothing to do with a commercial use being at this site, their opposition is the process which they are following. Mixed use is in place and should be used for this parcel. He said it is the process that they followed with the shopping center and it should be followed with this parcel. He said parcels that are less than 20 acres entitles a tremendous amount of oversight and accountability to this Council. He said if the Council were to approve a change from Industrial to Commercial he feels they would be surrendering that oversight. It is that oversight that allows the Council to demand detailed architectural renderings, traffic reports, site plans, master plans, all of which his client provided throughout the process for Orchard Hill Park. He said by refusing to follow the process and instead rezone this parcel undermines the existing ordinance.

Attorney Lavers said the other reason we are in opposition of this petition is because this petition runs a-fowl of spot zoning prohibition. We know that it is not the size of the spot that is going to be rezoned that matters, it's the characteristics of the spot. He said he feels if this petition is to be positively acted upon the Council will be creating an island of Commercial being surrounded by Industrial and Residential. He said in closing he urges the Council to vote against this petition as we have a process in place we have the Mixed Use Ordinance.

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Jessica Sousa, 292 Harvard Street said she is opposed to making that a Commercial property. It is clearly surrounded by residential property and feels they operate with disregard for their neighbors and shouldn't be allowed to change it.

HEARING ADJOURNED AT 8:34 P.M. and continued to April 14, 2008 at 7:00 P.M.

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

REGULAR MEETING OF THE CITY COUNCIL, FEBRUARY 11, 2008

Meeting called to order at 8:00 P.M.

Attendance was taken by a roll call vote; all members were present except Councillor Nickel

A recess was called at 8:02 P.M to continue the public hearings and hold a public forum.

The meeting reconvened at 9:11 P.M.

The following COMMUNICATIONS were received, referred to the FINANCE COMMITTEE and given REGULAR COURSE.

- C-84 Relative to the appropriation of \$10,000.00 to the Open Space Land Purchase Expense Account; same to be transferred from the Excess and Deficiency Account.
- C-85 Relative to the appropriation of \$100,000.00 to the Fire Department Overtime Account; same to be transferred from the Excess and Deficiency Account.
- C-86 Relative to the appropriation of \$70,000 to the Police Salary and Wages Account; same to be transferred from the Collective Bargaining Expense Account.
- C-87 Relative to the appropriation of \$27,000.00 to the Police Salary and Wages Account; same to be transferred from the Collective Bargaining Prior Year Expense Account.
- C-88 Relative to the appropriation of \$7,000.00 to the Forestry Department Expense Account; same to be transferred from the Excess and Deficiency Account.

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

- C-89 Dean J. Mazzearella, Mayor: Adopt an Ordinance requiring all utility companies to place proper identification, complete with all necessary contact information on any and all junction boxes, switching stations or any device which are located in a public way or on private property; such owner shall be responsible for maintaining all of the above structures or devices and keep them free of all stickers, markings or other foreign objects.

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

- C-90 Dean J. Mazzearella, Mayor: Amend Chapter 16, Section 16-30 of the Revised Ordinance entitled "Police Pay Scale" by deleting it in its entirety and inserting in its place a new Police Pay Scale. (Legal Affairs)

The following COMMUNICATION was received, referred to the SMALL BUSINESS & ECONOMIC DEVELOPMENT, given REGULAR COURSE and referred to the Economic Development Coordinator.

- C-91 Dean J. Mazzearella, Mayor: Approve the Certified Project Application and authorize a Tax Increment Financing Agreement with the Paper Store, Inc., TPS LLC and the Paper Store Business Trust for the redevelopment of 46 Industrial Road.

The following PETITION was received, referred to the FINANCE COMMITTEE given REGULAR COURSE and referred to the Comptroller and the Treasurer.

- 54-08 Rollin C. Lane: Grant a 50% tax abatement to taxpayers who are property owners that are 75 years of age or older, and whose property is their primary residence and who have no rental income from said property.

REGULAR MEETING OF THE CITY COUNCIL, FEBRUARY 11, 2008, continued

The following PETITION was received, referred to the LEGAL AFFAIRS COMMITTEE, given REGULAR COURSE and referred to the Department of Public Works, the Conservation Commission, the Health Director, the Building Inspector and the Planning Board. A hearing was set for March 10, 2008 at 7:15 P.M. Vt. 8/0.

55-08 Elizabeth Kelley, agent for Walton Whitney Investors V, LLC: Grant a Special Permit for emergency repairs of a damaged corrugated metal pipe and repair the surrounding river dike that has eroded at 100 Commercial Road and shown on Assessor's Map 567, as Lot 12 located within a Flood Plain.

The following PETITION was received, referred to the LEGAL AFFAIRS COMMITTEE, given REGULAR COURSE and referred to the Health Director, the City Clerk and the Dog Officer.

56-08 John W. Smith: Amend the licensing fees to include outdoor cats and increase the fees to \$50.00 per animal and \$20.00 for each additional animal and fine those who do not license their animals \$200.00 for the first offense, \$500.00 for the second offense and loss of animals on the third; also create violations for excessive barking, improper disposal of pet defecation, and forbid the ownership of exotic animals.

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

57-08 David Rowlands: Add a street light to pole #24 on Airport Road.

Councillor Rosa, Chairman of the Finance Committee, read the Financial Report for the City into the record. Account Balances as follows:

Excess and Deficiency Account (Free Cash)	\$2,113,202.00
Emergency Reserve Account	\$6,450.00
Stabilization Account	\$8,571,029.19
Interest Earned	\$221,348.69

Councillor Rosa said there was a question to the Finance Committee how much debt/interest did we pay for FY 2007 and how much total interest did we earn on all investment accounts for FY 2007. We earned \$1,498,448.30 on all investment accounts. We paid out in debt service interest \$950,282.67. He said the Finance team has done an excellent job investing the money for the City of Leominster and the City of Leominster is in good financial condition.

Upon recommendation of the FINANCE COMMITTEE, the following COMMUNICATION was GRANTED and ORDERED. Vt. 7 "yeas"; Councillor Rosa abstained due to a possible conflict of interest.

C-79 Relative to the appropriation of \$2,350.00 to the Economic Development Expense Account; same to be transferred from the Excess and Deficiency Account.

ORDERED: that the sum of Two Thousand Three Hundred Fifty Dollars (\$2,350.00) be appropriated to the Economic Development Expense Account; same to be transferred from the Excess and Deficiency Account.

RE: City's portion of the appraisal awarded to Petersen/LaChance Realty Advisors for the Twin City Rail Trail Project.

Upon recommendation of the FINANCE COMMITTEE, the following COMMUNICATIONS were GRANTED and ORDERED. Vt. 8 "yeas"

C-80 Relative to the appropriation of \$64,200.00 to the Library Expense Account; same to be transferred from the Library State Aid Reserved for Appropriation Account.

ORDERED: that the sum of Sixty Four Thousand Two Hundred Dollars (\$64,200.00) be appropriated to the Library Expense Account; same to be transferred from the Library State Aid Reserved for Appropriation Account.

RE: Library materials in order to receive state aid for the following fiscal year.

C-81 Relative to the appropriation of \$50,000.00 to the Unemployment Expense Account; same to be transferred from the Excess and Deficiency Account.

ORDERED: that the sum of Fifty Thousand Dollars (\$50,000.00) be appropriated to the Unemployment Expense Account; same to be transferred from the Excess and Deficiency Account.

Upon request of the FINANCE COMMITTEE, the following COMMUNICATION was TABLED FOR STUDY. Vt. 8 "yeas"

C-82 Relative to the appropriation of \$54,000.00 to the Recreation Capital Outlay Expense Account; same to be transferred from the Excess and Deficiency Account.

REGULAR MEETING OF THE CITY COUNCIL, FEBRUARY 11, 2008, continued

Upon recommendation of the FINANCE COMMITTEE, the following COMMUNICATION was GRANTED and ORDERED. Vt. 8 "yeas"

C-83 Relative to the appropriation of \$7,500.00 to the Wire Department Overtime Account; same to be transferred from the Excess and Deficiency Account.

ORDERED: that the sum of Seven Thousand Five Hundred Dollars (7,500.00) be appropriated to the Wire Department Overtime Account; same to be transferred from the Excess and Deficiency Account.

Upon request of the PUBLIC SERVICE COMMITTEE, the following PETITIONS were TABLED FOR STUDY. Vt. 8/0

50-08 Peter A. Campobasso for Southgate Business Park, LLC: Accept an Easement Deed for installation of sewer and water services relative to the Massachusetts Opportunity Relocation and Expansion (MORE) Jobs Program Grant recently awarded to the City of Leominster

51-08 Peter A. Campobasso for Southgate Business Park, LLC: Acquire land for the layout of Research Drive by accepting Release/Quitclaim Deeds in lieu of taking by eminent domain and acquiring by Easement Deeds any and all utilities necessary in lieu of taking for the purposes of completing the layout of Research Drive as a public way.

Upon request of the LEGAL AFFAIRS COMMITTEE, the following PETITION was given FURTHER TIME. Vt. 6/0; Councillor Dombrowski abstained due to a possible conflict of interest, Councillor Salvatelli abstained due to absence at the hearing. (A hearing is set for March 10, 2008 at 7 P.M. and a Site Visit is scheduled for February 23, 2008 at 9A.M.)

45-08 James L. Xarras, Union Square Realty Trust: Grant a Special Permit to use 70% of a vacant Industrial complex at 453-511 Lancaster Street located in an Industrial Zone and shown on Assessor's Map 443A, Lots 1 and 6 for a Mixed Use Project.

Upon request of the LEGAL AFFAIRS COMMITTEE, the following PETITION was TABLED. Vt. 8/0. (A hearing is set for April 14, 2008 at 7 P.M.)

47-08 Robert Walters, Agent for Harvard Realty Trust and Scott Bigelow, 375 Harvard Realty LLC and B& B Realty Trust: Rezone two parcels of land known as 391 Harvard Street and 375 Harvard Street and a parcel of land located at the intersection of Harvard and White Streets from Industrial to Commercial.

Upon request of the LEGAL AFFAIRS COMMITTEE, the following PETITION was given FURTHER TIME. Vt. 8/0

48-08 Richard M. Marchand: Request the City Solicitor draft legislation to prohibit BYOB (Bring Your Own Booze) concept to be enforced throughout the City of Leominster and targeted for food establishments authorized by the local Board of Health.

Upon recommendation of the LEGAL AFFAIRS COMMITTEE, the following PETITION was given GRANTED Vt. 8 "yeas"

52-08 Greg Chapdelaine, Purchasing Agent: Allow the City Purchasing Agent to enter into a five year contract for school bus transportation services for the Leominster School System, for the time period July 1, 2008 through June 30, 2013.

Upon request of the WAYS & MEANS COMMITTEE, the following PETITION was given FURTHER TIME. Vt. 8/0

53-08 Lynn Bouchard and Robert Salvatelli: Add to the City Council's Rules and Procedures a rule allowing for the destruction of DVD's, Audio and Video Tapes of the City Council Meeting after two years.

Upon recommendation of the WAYS & MEANS COMMITTEE, the following APPOINTMENTS were CONFIRMED. Vt. 8 "yeas"

Doyle Field Commission – Gilbert C. Donatelly, Sr. - Term to expire April 15, 2009 (To fill the unexpired term of Ellio Torcoletti)

Election Officers - Linda Largey and Cecile Chartrand

Under "Old Business" Councillor Dombrowski, Chairman of the President's Drinking Water Oversight Committee requested the City Clerk contact Pat LaPointe and Roger Brooks to see when they can come down with Woodward & Curran to give an update on how things are going with the coagulant and the filtration plan.

Councillor Marchand asked if Route 2 improvements could be added to that and said the first week in April would be the best time for an Informational Meeting at 6:30 P.M.

Councillor Rowlands said since he reported that there was a problem collecting the deposit for the temporary Library he wanted to report that on February 1, 2008 the Library received a \$5,000.00 check from Mr. Zichelle and the check has been deposited.

REGULAR MEETING OF THE CITY COUNCIL, FEBRUARY 11, 2008, continued

Councillor Lanciani said he has been to the Veteran's Office a few times. He said we have a Veteran that has no insurance, no disability income and is in a nursing home. He said the Veteran's agent had monies that would carry him over to the end of the year. Councillor Lanciani said it is costing the Veteran's office approximately \$9,000.00 per month in Veteran's benefits to the Veterans. They are inundated with more Veterans coming in due to oil, heat and insurance. Councillor Lanciani said the Veteran's agent might have to come to the Council to ask for more money but the Veteran's agent said the Veterans are being taken care of.

Councillor Freda said she went to the Veteran's Hall and the Blue Star Mothers packed over 300 backpacks with essentials to ship out to the field hospitals. There were approximately 60 people there packing. They will be shipped out in March through Hanscom Air Force Base in Bedford.

Councillor Salvatelli said he would like to send recommendations out of Petition 54-08 to the Comptroller and the Treasurer and also to see if any other community is giving abatements to the elderly.

Councillor Rosa agreed.

Subcommittee meetings have been established as follows:

Small Business & Economic Development Committee, February 20, 2008 at 6:15 P.M.

Finance Committee, February 20, 2008 at 6:30 P.M.

Legal Affairs Committee, February 20, 2008 at 7 P.M.

MEETING ADJOURNED AT 10:05 P.M.

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