

HEARING BEFORE THE CITY COUNCIL, SEPTEMBER 14, 2009

Hearing opened at 6:45 P.M. with Councillor Tocci, Clerk of the Legal Affairs Committee, presiding.

All members were present except Councillor Rowlands.

The following PETITION was the subject of the hearing:

2-10 Frank H. Preston, Agent for Fernand Arsenault: Rezone 12.8 acres of land located at the western end of Marcello Avenue and Kinsman Avenue, north of Marshall Street and south of Mooreland Avenue as shown on Assessor's Map 244 as Parcels 1A and 2A, from Industrial, Residence A and Residence B to Residence B.

Frank Preston of Whitman & Bingham Associates handed out a small version of the plan. He said access to the property is gained from the end of Marcello Avenue. He said currently the land is zone industrial although one piece is Residence A and another Business B. He said there are 18 abutters to this property and of those 18, 16 are residential properties, 1 is vacant and 1 industrial. He said the proposal tonight is to rezone this to Residence B because they feel that it is more in keeping with the character of the neighborhood because of all the surrounding residential properties. He said the land owner has been in negotiations with some buyers from time to time for an industrial or commercial use but at this point feels a better use for the land is to build residential because it is the character of the neighborhood. He said there is a fair amount of wetlands that will limit the development of the land. He said this plan was offered to the Planning Board and they had some comments and felt that a comprehensive look at that part of the City might be the way to go. He said the zoning lines go through the property now and several other properties are divided by the property lines but their proposal directly addresses the land owned by his client and has not dragged any other land owners into this proposal. He said they feel that the advice of the City Council and the advice of the people who might speak before this public hearing will be instrumental in how they might clean up the zoning in that area, not to just rezone this property for residential use but also to make sure each property is zoned consistent with the use that is there now. He said it is a simple proposal, it is zone industrial now, it is a residential neighborhood and they would like to zone it residential.

Councillor Dombrowski asked how the property is accessed.

Mr. Preston said the actual physical access is at the end of Marcello Avenue which is paved.

Councillor Dombrowski asked why Residence B, because if you are going to be consistent with the neighborhood it seems to him you would go Residence A. Is there a particular reason the applicant wants Residence B?

Mr. Preston said across the railroad tracks it is zoned Residential B and the landowner feels that duplex housing might fit the character of the land quite well.

Councillor Dombrowski asked Mr. Preston to describe the industrial properties.

Mr. Preston pointed them out on the plan.

Councillor Dombrowski asked if the railroad was in use now.

Mr. Preston said yes.

Councillor Dombrowski asked where the wetlands are identified.

Mr. Preston said they have not been professionally delineated and pointed them out on the plan.

Councillor Dombrowski asked in which area the buildings would go.

Mr. Preston said they would be clustered at the end of Marcello Avenue.

Councillor Dombrowski said so your estimation of developable land is after you go down Marcello to the right of it.

Mr. Preston said that is correct and maybe a ¼ of the land is wetlands and more land behind the wetlands might be inaccessible. He said he is estimating ½ the land is suitable for development.

Councillor Dombrowski asked how far away it was from the existing industrial land.

Mr. Preston showed the distance on the plan.

Councillor Freda asked if they would be blocking off the industrial properties if they change this to Residence B. Mr. Preston said yes, they would be isolated.

Councillor Freda asked if he had a number of duplexes proposed and if there was a plan in place.

Mr. Preston said there is no plan in place. He said the client feels that investment in engineering right now is premature until we get a sense of how the Council feels.

Councillor Freda asked if ½ this lot would be buildable.

Mr. Preston said that it is his guess at this point and he emphasizes it is a guess.

Councillor Freda asked if he knew how many units are in the condominium on Marcello Avenue.

Mr. Preston said he didn't know off the top of his head.

Councillor Freda asked if it was the only multi-family there.

Mr. Preston said he believes there is one other multi-family and everything else is single family.

Councillor Freda asked if there was one access road into Marcello Avenue.

Mr. Preston said that was right. He said any development whether it be industrial, commercial or residential will be subject to Site Plan review with the Planning Board.

Councillor Dombrowski asked how the new proposed zoning will affect his client's property.

Mr. Preston said it is his understanding that the proposed zoning governs chiefly the downtown areas but he has not seen the proposal. He said he does not know directly how it is going to affect it and if someone was looking at the City in its entirety they might come to the same conclusion as they have that this should be made residential. He said he is speculating.

Councillor Tocci read the referrals from the Department of Public Works, the Building Inspector, the Planning Director and the Conservation Commission.

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

Catherine Crain, 48 Mooreland Avenue spoke in opposition to the petition. She said the first thing that should be done, before voting on the zoning, is to correct the line of the zoning where it is now as it goes right through her backyard. She said we are not in an industrial zone and doesn't believe the Cloutier's next door are industrial either. She said they settled that quite a few years ago. She said projects have been turned down 2 and possible 3 times in the past 50 years as a place to build a lot of apartments. Mrs. Crain said the land in back of her fence takes a very steep drop about 40-50 feet. She said they will face a lot of landslides, mudslides and water. She said there is enough water that accumulates there in the winter time to skate. She said their nice quiet area is bothered a great deal with parties 2-3 times a week at the garden apartments. She said the maps are not accurate.

Flavia Rodriguez, 22 Marcello Avenue, said they bought the property because it was quiet and they are very happy where they are living. She said if new homes are built there will be too much movement and it will not be quiet as it is now.

Gloria Stella Lopez Torres, 25 Marcello Avenue, said she has been living there since 1984. She is completely opposed to this project. She said she opposed it 3 or 4 times before. She said at the end of Marcello Avenue there are two buildings that are condominiums. She said they have had enough problems over the years because of the condominiums belong to the people that don't live there and rent them out. She said they have had a high rate of drug dealers, prostitution and raids. She said it takes 10-15 minutes to turn right from Marcello Avenue onto Route 13 to go downtown and sometimes up to a half an hour to get the right of way to go north on Route 13. She said there are wetlands on that property and they have a lot of problems with water. They do not have a storm sewer and the street is basically destroyed. She said according to the map, her house is divided between Residential and Commercial and she did not know that when she bought her house in 1984. She said the houses on Marcello Avenue are single family houses except for the condominiums. She said the people on Marcello Avenue have enough experience with the condominiums because the owners rent to whomever they desire. We have drug dealers and cars chasing each other every five minutes from 6:00 P.M. on and we do not need that. We are the neighbors and we will vote nay, you will not be allowed to go through Marcello Avenue and destroy the neighborhood and the quiet. She said wetlands should be kept as wetlands and should be donated to the City to make a park.

Jan Leduc, 13 Kinsman Avenue, said she has lived there for 45 years. Kinsman Avenue is one of the dead ends that the housing would abut. She said all that area is single family homes and does not know why anyone would think that Residence B is going to fit into that area. She said there are condos on Marcello and apartments on Mooreland and if you talk to the people on Marcello and Mooreland that is where all the problems come from. She said it would be wonderful if the land was taken for conservation land because of the amount of wetlands and if that is not reasonable then at least consider Residence A which would be more in keeping with where these buildings are going to be. There will be no buffer between the houses that are already there and what is going up because if you put in a buffer you end up using all the dry land and in the middle of the wetlands. She said her property value would go down if she had apartments next to her, the congestion on Route 13 is unbelievable and the people who live in apartments don't have a bond to the community, they can come and go.

Richard McKenzie, 98 Mooreland Avenue, said the topography of this area, down to the northern part where the wetlands are is just a giant basin where everything is caught so any construction that will be done on the Marcello side and up toward the part which is being proposed would have an environmental impact. He said it is the lowest part of the property. He said he lives directly across from the apartments on Mooreland Avenue and there are some issues that go on there. He said there are dozens and dozens of people who live in the apartments that don't respect traffic patterns, they speed, they're a little transient and don't respect what we have so if there is to be any zoning change, the only zoning change he can see that would be acceptable is Residence A.

John Gravelle said he is the owner of the industrial property 55 Marshall Street which is currently leased to Mar-Lee Company. He said he knows that land quite well and considered acquiring it many years ago. He said it is a very wet piece of land and has heard it is very wet in the northern section of the land. He said his building is on the southern section of the land and can attest it is wet there as well. He said in the spring his parking lot becomes a sponge. It has been repaired multiple times and there is a very significant problem in that area. He said they shouldn't take action on this without knowing what the drainage and environmental impact is going to be. He said you need to request that they resubmit with the proper engineering so that it can be evaluated correctly or deny.

Deborah Swan, 37 Marshall Street said they would like to second the motion that an environmental study be done. She said her house and the other houses on the Marcello Avenue side of Marshall Street have significant drainage issues and have been getting worse over the years because there is no drainage on Marcello Avenue. She said the traffic on Route 13, since she

HEARING BEFORE THE CITY COUNCIL, SEPTEMBER 14, 2009, continued

moved here 25 years ago, is absolutely atrocious and adding more traffic to this area is a disaster waiting to happen. She said changing the environment is not why they bought their houses on the street and asked the Council to reconsider and not make a judgment until they get an environmental impact study done and evaluate how it will adversely affect the traffic patterns.

Robert Wiley, 8 Kinsman Avenue, said he believes that Kinsman Avenue and Marcello Avenue are paper streets and doesn't know how that would impact these streets.

Gloria Stella Lopez Torres, 25 Marcello Avenue said the train tracks run behind their properties by Airport Road and Hamilton Street. If they build there they are going to push the water table further than what it is now. She said they have major problems with water in the street and it looks like a river when it rains hard because there is no storm sewer. She said the impact on the train tracks will be very high because the water will be pushed toward the train tracks.

Mr. Preston said the zoning lines that are on his plan came from the current zoning map which came after many of the residents moved in. He said there is no specific proposal on the table at all. He said what they are trying to decide is whether they will develop it in an industrial direction or a residential direction. He said any specific proposal will come later with a Site Plan with the Planning Board where by State law all the wetland issues and drainage issues will have to be addressed at that time with their impacts on the neighborhood. He said the wetlands cannot be touched in any way, even within 100 feet, without approval of the Conservation Commission and reviewed by the State Department of Environmental Protection which applies to drainage also. He said as far as the paper streets go typically a case like this, a paper street has to be upgraded to the status of a City street before the development can proceed and at the cost of the developer.

Councillor Freda confirmed with Mr. Preston there was no proposal for development but only to rezone.

Councillor Freda said so the petition before us is to rezone to Residence B.

Mr. Preston said it would not be out of the question to withdraw and change it to Residence A if it is the sense of the Council.

Catherine Crain said there are paper streets because the land has not been provided for a street wide enough and there is no way you are going to get everybody satisfied on both Kinsman Avenue and Marcello Avenue. If they widened the street they could be taking somebody's front lawn or ½ their living room if you take up to the size that is set by law. She said there is clay a few feet down and water will not go through clay.

Councillor Tocci said because it is a rezoning the Planning Board needs to have a hearing on this.

HEARING ADJOURNED AT 7:35 P.M. AND CONTINUED TO SEPTEMBER 28, 2009 AT 7:00 P.M.

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

HEARING BEFORE THE CITY COUNCIL, SEPTEMBER 14, 2009

Hearing opened at 7:38 P.M. with Councillor Tocci, Clerk of the Legal Affairs Committee, presiding.

All members were present except Councillor Rowlands.

The following PETITION was the subject of the hearing:

3-10 Roger Brooks: Grant a Special Permit to construct a tertiary treatment facility at the Wastewater Treatment Plant, at 230 Commercial Road, shown on Assessor's Map 572 as Lot 1 located within a flood plain.

Introduced and made part of the record were the following:

- A. Petition 3-10 submitted by Roger Brooks, Leominster Department of Public Works, with accompanying Tax Map prepared by Woodard & Curran revised to January 1, 2007 and a Flood Zone & Wetland Map entitled "Leominster Massachusetts Water Pollution Control Facility" revised June 22, 2009.
- B. Notice of public hearing published in the Sentinel & Enterprise on August 17, 2009 and August 31, 2009.
- C. Positive letters of recommendations from the Board of Health, Planning Board, Director of Inspections, Department of Public Works, and the Conservation Commission.

Roger Brooks said they are required by the EPA to put in a phosphorus treatment unit at the water treatment plant. He said the unit will be located at the lower end of the facility. It will be on a gravity basis so it can take the treated secondary flow, process it during the months of April 1st through November 30th through the plant before it is discharged into the river. He said this particular unit is going to be located partially within the flood plain but outside the wetlands and a Special Permit is needed from the City Council.

Councillor Tocci read the recommendations from the Board of Health, the Department of Public Works, the Director of Inspections, the Planning Board and Conservation Commission into the record.

HEARING BEFORE THE CITY COUNCIL, SEPTEMBER 14, 2009, continued

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

No Councillors spoke.

HEARING ADJOURNED AT 7:43 P.M.

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

REGULAR MEETING OF THE CITY COUNCIL, SEPTEMBER 14, 2009

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

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

The Committee on Records reported that the records through August 24, 2009 were examined and found to be in order. The records were accepted.

The Council observed a moment of silence for Ralph Sherwin Drury, Richard Girouard and Edward Kennedy.

A recess was called at 7:38 P.M. to continue the hearings and hold a public forum.

The meeting reconvened at 7:50 P.M.

The following COMMUNICATION was received, referred to the FINANCE COMMITTEE and given REGULAR COURSE. A hearing was set for November 23, 2009 at 6:45 P.M. Vt. 8 "yeas"

C-10 Mayor Dean Mazarella: Request the City Council set a hearing for the Classification of the tax rate on November 23, 2009 for the purpose of setting the Fiscal Year 2010 tax rate.

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

C-11 Dean J. Mazarella, Mayor: Request Greg Chapdelaine 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 taking on a position at the Recreation Department as well for work on the Haunted Trail.

The following COMMUNICATION was received under SUSPENSION OF THE RULES, referred to the PUBLIC SAFETY COMMITTEE and given REGULAR COURSE. Vt. 8/0

C-12 Dean J. Mazarella, Mayor: Request to block off Church Street from West to Merriam during the hours of 9:30 a.m. to 2:00 p.m. on Saturday, October 10, 2009, for the Fire Prevention Week Open House.

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

7-10 Edward M. Cataldo, Building Inspector: Amend Chapter 4, Section 4-2 of the Revised Ordinances entitled "Building" to include the fees for the replacement of Hot Water Heaters \$20.00 per heater, Replacement of Gas Appliance, Boilers, Furnaces, etc. \$20.00 per appliance as they were omitted from the June 2009 Ordinance revision.

The following PETITION was received, referred to the LEGAL AFFAIRS COMMITTEE, given REGULAR COURSE and referred to the Planning Board. A hearing was set for October 13, 2009 at 7:00 P.M. Vt. 8/0

8-10 David Rowlands, Wayne A. Nickel, Robert Salvatelli, James Lanciani Jr., Virginia A Tocci and John Dombrowski: Add the following entry to the table of uses: Dog Kennel: RRA, SPPB.

The following PETITION was received, referred to CITY PROPERTY COMMITTEE, given REGULAR COURSE and referred to the Building Inspector.

9-10 New England Farm Workers' Council: Request permission to use the City Council Chambers on September 25th, October 5th, 15th, 26th, November 2nd, 12th, 16th, December 10th, 14th, 28th 2009, and January 4th, 11th, 25th 2010 to take fuel assistance applications.

REGULAR MEETING OF THE CITY COUNCIL, SEPTEMBER 14, 2009, continued

The following PETITION was received, referred to WAYS & MEANS COMMITTEE and given REGULAR COURSE and referred to the Police Department.

10-10 Mason's Recreation Center: Renew license for 7 pool tables and 24 bowling alleys at Mason's Bowling Center, 640 R. North Main Street

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

License Commission -Kenneth J. Tata – Term to expire April 15, 2015
(to fill the unexpired term of Paul R. LeBlanc)

Election Officers for 2009-2010 –Marta Bahde, Jason David Miller,
Deborah Toivonen

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

Emergency Reserve: \$9,480.00
Stabilization Acct: \$5,668,189.21

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

C-7 Dean J. Mazarella, Mayor: Request that a Disability Commission Donation Account be established as authorized by Chapter 44, Section 53A of the Massachusetts General Laws.

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

C-8 Relative to the appropriation of \$535.00 to the Health Department Expense Account; same to be transferred from the Emergency Reserve Account.

ORDERED: - that the sum of Five Hundred Thirty Five Dollars (\$535.00) be appropriated to the Health Department Expense Account; same to be transferred from the Emergency Reserve Account.

RE: These funds are needed for food safety "Serve-Safe Certifications" for Health Department staff.

C-9 Relative to the appropriation of \$9,500.00 to the Demolition Expense Account; same to be transferred from the Emergency Reserve Account.

ORDERED: -that the sum of Nine Thousand Five Hundred Dollars (\$9,500.00) be appropriated to the Demolition Expense Account; same to be transferred from the Emergency Reserve Account.

RE: These funds are needed to demolish the property at 208 Seventh Street

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

2-10 Frank H. Preston, Agent for Fernand Arsenault: Rezone 12.8 acres of land located at the western end of Marcello Avenue and Kinsman Avenue, north of Marshall Street and south of Mooreland Avenue as shown on Assessor's Map 244 as Parcels 1A and 2A, from Industrial, Residence A and Residence B to Residence B.

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

3-10 Roger Brooks: Grant a Special Permit to construct a tertiary treatment facility at the Wastewater Treatment Plant, at 230 Commercial Road, shown on Assessor's Map 572 as Lot 1 located within a flood plain.

Upon request of the LEGAL AFFAIRS COMMITTEE, the following PETITION was given FURTHER TIME. Vt. 8/0 A hearing is scheduled on October 5, 2009 at 7:00 P.M.

5-10 John Souza, Chairman, on behalf of the Planning Board: Adopt the following zoning changes proposed by Vanasse, Hangen and Brustlin to include:
1) The Leominster Zoning Ordinance Revised Draft, July 2009
2) The Leominster Zoning Ordinance "Table of Uses," July 2009
3) The Leominster Zoning Ordinance "Proposed New Zoning Districts," July 2009 4) the Leominster Zoning Ordinance "New Sections," January 2009
5) Section 22-19 Residence B Districts which is a correction to the "The Leominster Zoning Ordinance Revised Draft," July 2009

REGULAR MEETING OF THE CITY COUNCIL, SEPTEMBER 14, 2009

Upon a recommendation from the WAYS & MEANS COMMITTEE the following PETITION was DENIED. Vt. 5/3; Councillors Lanciani, Freda and Nickel opposed.

6-10 Russell Kassatly: Grant a Hawkers and Peddlers License to sell balloons and children's toys at special events such as parades.

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

Emergency Management – Rescue Unit, Joseph M. Hattabaugh
Admin Unit, Jean G. Saintelus

Under Old Business, Councillor Marchand, Chair of the President's Drinking Water Oversight Committee, said the November meeting had to be rescheduled due to the tax classification hearing. The meeting dates are September 28, 2009 at 6:30 P.M. and on November 9, 2009 at 6:30 P.M.

Councillor Tocci said the Legal Affairs Committee had a presentation by VHB and the Planning Department relative to the zoning changes. She said Mr. Wilmur, Kate Griffin-Brooks, Andrew Taylor and Attorney Lane from Kopelman & Paige attended. She said Mr. Wilmur stated it was internal inconsistencies that were being revised and they were trying to incorporate different issues to clean up the ordinances. She said the definitions have been updated and clarified and that the old terms needed to be delete and new terms needed to be added. The standards were taken out and put in a separate section. She said the proposed book has red crossed out parts that will be deleted and red underlined sections that are added. The yellow highlighted areas are new definitions or changes and the blue crossed out sections and the blue underlined sections are the same of the red just done on a different day.

She said the changes from the healthcare section the Council adopted will be put in as is. Illustrations will be included in the final document when adopted by the Council. The Board of Appeals will take care of variances, Planning Board will take care of special permits and the Council will only have adult entertainment. Standards for accessory apartments still remains, but they will not allow any paving over the front lawn for parking or massive additions. She said Councillor Rowlands asked for new wording of the petition to not have the five section but only the zoning ordinance for the City because they will be adding to it several times. She said the downtown overlay is making it more explicit and the design standards such as shared parking and things of that nature will be in there. She said they need an amendment for the map of the overlay with boundaries or a separate petition. She said they haven't decided which way they will go. She said the Table of Uses reflects several things totally reorganized and uses have been added.

She said they came up with a way to inform the Council before they have the subcommittee meetings. She said they would announce to the Council such as the first 25 pages of the large book would be discussed at subcommittee and if there were any concerns they could have a Council of the Whole, write in your questions or come to the meeting. She said the next Council meeting after the committee meeting they would have a summary for the full Council at the regular meeting.

Councillor Marchand thanked all of the sponsor for the 16th Annual Johnny Appleseed Arts and Cultural Festival. He said next year's festival will be held on the September 11, 2010.

Councillor Freda said the work on the lights on Central Street is progressing but it was less than pleasant for the first couple of days because the detours were going through Beth Avenue and every third vehicle was an 18 wheeler and nobody could get out of their driveway. She said it was pretty horrendous for a couple of days. She said there was a lot of discussion with P. J. Albert's foreman and Mass. Highway trying to correct the situation. Councillor Freda thanked the neighborhood for their patience.

Upon request of the LEGAL AFFAIRS COMMITTEE, the following ORDINANCE was given FURTHER TIME. Vt. 8 "yeas"

1st Reading Ordinance – Amend Chapter 21 of the City Ordinance entitled "Water and Sewer" to waive the sewer connection fee for those homes that are in an existing residential neighborhood which is at least five years old, without sewer and have contributed \$30,000.00 or more in the sewer infrastructure in the public way. (Legal Affairs Petition #73-09)

Under New Business, Councillor Tocci said the energy meeting has been changed to September 24, 2009 at 6:30 P.M. at the Library on the 3rd floor.

MEETING ADJOURNED AT 8:38 P.M.

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