

HEARING BEFORE THE CITY COUNCIL, SEPTEMBER 28, 2009

Hearing opened at 7:23 P.M. with Councillor Rowlands, Chairman of the Legal Affairs Committee, presiding.

All members were present except Councillor Freda.

This hearing is continued from September 14, 2009.

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 said he didn't have anything new from the last meeting but wanted to reiterate a few things. He said this piece of land will be put to some use and hopes the Council will agree that a residential use is a better fit for the community than the industrial use. He said there is no particular project on the table right now and have not proposed any specific development for this site but they are just trying to settle the issue of whether or not a residential use would be more appropriate for the neighborhood than the industrial use which they could do now. He said topographic and wetland issues exist on this site and will strictly limit the amount of development that will occur.

Councillor Rowlands said at one point during deliberations at the last hearing you were not against a Residential A zoning of this property. Is that correct?

Mr. Preston said they are not against that and whatever procedure is proper. He said if the sense of the Council indicated Residence A is a better fit for the neighborhood they would be willing to undertake that procedure.

Councillor Rowlands said there would have to be a really strong case for him to vote for anything other than Residential A.

Mr. Preston said he has consulted with this client and he has been quite specific. If the sense of the Council is that Residence A is a better fit for the neighborhood he is on board with that.

Councillor Dombrowski asked if he knew how the new proposed zoning will affect that property.

Mr. Preston said he was not privy to the details.

Councillor Rowlands said he attended the meetings along with Councillor Lanciani and he believes there was no discussion at all with regard to any change here with the new zoning. He said they are mostly branching from the downtown and believes there is no impact on this area.

Councillor Dombrowski said that was his understanding as well.

Mr. Preston said he doesn't know for a fact but it is his belief that is exactly right.

Councillor Tocci said the Planning Board indicated with their recommendation that we look at this during the zoning meetings and I believe it was not. She said she is leaning towards Residence A.

Councillor Rowlands said that is a recommendation that has been echoed by the Building Inspector as well and carries weight.

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

Gloria Stella Lopez Torres of 25 Marcello Avenue said she was representing the condominiums at the end of the street, her neighbors at 22 Marcello Avenue, the Rodriguez's, her neighbors next to her house, Mr. Michaels and his wife, the Dandini's who cannot be here and herself. She said they are opposed to this project and have been opposed to projects for this land for 20 years. She said they wanted to make a truck stop about 10 years ago and she said they wanted to do Residential B and build multi families. That will increase the movement of cars on Route 13 and on Marcello Avenue. She said they already have too much traffic and getting out of Marcello Avenue to go north on Route 13 is basically impossible. You have to wait anywhere from 5 minutes to 15 minutes to be able to turn north. She said if they start building on the wetlands they will be pushing the water table more than it is right now. People have wet basements and we do not have storm sewers so all the water that comes out, comes out into the street. She said Marcello Avenue is basically destroyed. Ms. Torres said in 2007 the condominiums at the end of her street cleared out a spot on the property to make a children's playground. She said it is wet all the time and the children cannot play there. She said this is not a good project; it is a wetland and should be left alone. She said she is sorry for the owner. Marcello Avenue cannot hold anymore traffic. We the people on Marcello Avenue do not want them coming and going, 50 cars, 100 cars, 500 cars, more? Welcome to the neighborhood. She said they will not accept that, they are opposed.

Councillor Rowlands stated this is a zoning issue.

Deborah Swan, 37 Marshall Street, said the people on Marshall Street realized it is a zoning issue but also it has an environmental impact that will affect Marshall Street. She said the three houses on the north side of Marshall Street have gotten increasingly worse with water problems to the point where outside vendors have come in to fix their property. She said sump pumps at the houses on the beginning of the street and on the end of the street have pumps going probably 7-9 months of the year. She said if anymore water is pushed from the Marcello Avenue to Marshall Street it is going to destroy some of the properties that are there. She said the other issue is the traffic. She requests that they do environmental studies and traffic patterns. She said she is not sure if there are any intentions on opening up the ends of the dead end streets but a lot of the people who moved there for that particular reason to avoid the traffic. She asked if there is nothing really planned how do you determine how you zone it if you don't know what you are zoning it for. She asked if the Planning Board sessions were open to the public so they can go to them and if the meetings for Conservation were published so they can be aware of them.

Councillor Rowlands said they are open to the public and will be advertised. He said there are no project specifics and if you do get into a project specific with rezoning you have to watch out for spot zoning. You cannot zone for a specific project or person, you have to zone for the character of the neighborhood.

Ms. Swan said she understands that and it's the devil you know and the devil you don't know and right now it is zoned Industrial so they can do whatever they that is allowed from the industrial standpoint but all three of the zoning descriptions don't really matter because the impact to the street will still be the same. They are going to put something there that is not there now, whether it is one large building, 5 or 6 houses, 4 or 5 condos, it is still going to affect the people that are there. That is what we are most concerned about.

Jan Leduc, 13 Kinsman Avenue said because of the wetlands the buildable land is adjacent to all single family homes so the character of the neighborhood would be single family homes. She said an apartment complex does not fit in to the character of the neighborhood and would bring the property values down. She said she didn't know if they could do minimum lot size to try to improve a project that went in there before a project was established so there wouldn't be that many buildings in that area to keep the traffic and congestion down and whatever it will do to that piece of land.

Robert Wylie, 8 Kinsman Avenue asked why are we doing this. It doesn't seem to be a necessity that we need more housing. This looks to him it is a business venture for someone trying to make a dollar and doesn't see the need.

Councillor Rowlands said the land owner has the right for a zoning designation. The land has to be zoned something and by right most of it is zoned Industrial and the industrial zone also has a commercial element which is allowed by right. That is the reality what can go there. He asked if this was Residential A, single family homes, how many lots do you estimate you can get in there.

Mr. Preston said a guess would be less than ten and ten might be a stretch.

Councillor Rowlands said what the City Council is doing is entertaining a petition to rezone this property. It is not a petition to build a certain structure. He said that will have to go through the process and go before Conservation. This is strictly whether it will be zoned Industrial, Residential B or Residential A.

Councillor Rowlands asked if any engineering has been done on this site regarding delineation of wetlands.

Mr. Preston said yes, but they are obsolete now and would have to be re-delineated.

Councillor Marchand said the discussion should be Residential B and Residential A would be another petition. He asked Mr. Preston under Residential B and all the delineations and land use, how many lots could go there or what type of projects could you put on that property.

Mr. Preston said they have not done a comprehensive study and the original thought was to put several duplexes in and cannot guess on how many.

Councillor Marchand said so you are just coming in for rezoning without any consideration as to what can happen there?

Mr. Preston said the zoning limits it and with Planning Board approval Residence B is limited to 6 units per acre and City Council approval is 8 units per acre. He said given the fact that at least 1/3 of the site is wetlands and the City Council looked favorable upon a project like that, 96 units by zoning and with all the issues the site has that can be cut in to 30-40 units and it could change, it's a guess.

Councillor Marchand asked if it would have the same potential if they were townhouse or condominiums.

Mr. Preston said yes, he believes the density requirements are the same.

Councillor Marchand asked if the unit numbers would be the same amount.

Mr. Preston said yes.

Councillor Marchand said a comment was made by the public regarding the size of the lots and if we can do anything about it and we cannot, it is what it is. He said a question was raised regarding the potential of not using the entire parcel. He said pork chop lots in the City are frowned upon particularly in the watershed district. He asked if they went Residential A would they consider that to maximize a small area of land and leave the rest as open space.

Mr. Preston said there is a big chunk of land that has to be left for the most part pristine and we are limited to 5,000 s.f. nibbling around the edges for fill which would have to be replaced elsewhere.

Councillor Marchand asked where the road cuts would be.

Mr. Preston said they would come off the end of Marcello Avenue and it would be a single access.

Councillor Marchand asked if they were anticipating not using the back side.

Mr. Preston said that is what we anticipate because we would have to fill in all the wetlands to get back there and we cannot do that.

Councillor Marchand asked regardless with what happens to zoning down here what are the current rights regarding any other projects that can go forward if it remains Industrial.

HEARING BEFORE THE CITY COUNCIL, SEPTEMBER 28, 2009, continued

Mr. Preston said it is zoned Industrial right now and there is a series of commercial uses.

Councillor Rowlands said if you want to go Residence A you will have to submit a new petition. He said if you want to go Residence B he has to maintain an open mind because the recommendation is not in from the Planning Board. He said if you want to continue with this petition we will have to continue the hearing. If you do not want to continue this petition as Residence B he won't schedule a continued date and would entertain a leave to withdraw.

Mr. Preston said their position from the start is that they are very anxious to get the City Council's input as to how this should be accomplished. He said you are the Ward Councillor your voice carries a tremendous amount of weight and we are not interested in ramming something through the Council if the Council feels uncomfortable.

Councillor Rowlands said he was involved in an industrial project in the back of Mooreland Avenue and the neighborhood did not want it and did not like the idea of industrial development happening in their backyard either. He said he is not a huge fan of it being Industrial. He said the nature of what is Residence A and what is Residence B is such a major change in terms of advertising and what not that he would want to see a new petition for Residence A if that is their desire.

Mr. Preston said he had a discussion with his client and they accept that course of action. If the Council would give them leave to withdraw they can resubmit a new petition for Residence A.

Mr. Marchand suggested that the petitioner submit something in writing and submit it to the Clerk for the record requesting that the petition be given leave to withdraw tonight.

HEARING ADJOURNED AT 7:53 P.M.

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

REGULAR MEETING OF THE CITY COUNCIL, SEPTEMBER 28, 2009

Meeting was called to order at 7:37 P.M.

Attendance was taken by a roll call vote; all members were present. Councillor Freda arrived late.

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

The meeting reconvened at 8:03 P.M.

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

- C-13 Relative to the appropriation of \$3,250.00 to the Rockwell Pond Expense Account; same to be transferred from the Emergency Reserve Account.
- C-14 Relative to the appropriation of \$4,000.00 to the Cemetery Expense Account; same to be transferred from the Cemetery Sale of Lots Fund.

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

- C-15 Dean J. Mazzarella, Mayor: Request the confirmation of the 75 year time period for an easement between the City of Leominster and the Richmond Company, Inc. for access and parking on property located on Adams Street.

The following COMMUNICATION was received, referred to the CITY PROPERTY COMMITTEE, given REGULAR COURSE and referred to the Department of Public Works and the Police Department.

- 11-10 Richard M. Marchand: Change the approval of street closures and use of City parking lots for the 17th Annual Johnny Appleseed Arts and Cultural Festival from September 11, 2010 to September 25, 2010 and to also include the parking lot adjacent to the City Hall parking lot located off West Street.

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

Leominster Police Department – Permanent Promotion
Ryan Malatos – Sergeant

Recreation Commission – Douglas Cormier – Term to expire
April 15, 2011 (to fill the unexpired term of Jodie Dube)

Election for Officers 2009-2010 – Jeremy Sanborn, Nancy Koski,
Rosalie O'Donnell, Constance Dufour and Janet Brown

REGULAR MEETING OF THE CITY COUNCIL, SEPTEMBER 28, 2009, continued

Upon request of the FINANCE COMMITTEE, the following COMMUNICATION was TABLED. A hearing is scheduled for November 23, 2009 at 6:45 P.M. Vt. 9 “yeas”

C-10 Mayor Dean Mazzearella: 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.

Upon request of the LEGAL AFFAIRS COMMITTEE, the following PETITION was given LEAVE TO WITHDRAW WITHOUT PREJUDICE. Vt. 9 “yeas”

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

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

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.

Upon request of the LEGAL AFFAIRS COMMITTEE, the following PETITION was given FURTHER TIME. Vt. 9/0. A hearing is scheduled for October 13, 2009 at 7:00 P.M.

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.

Upon recommendation of the PUBLIC SAFETY COMMITTEE, the following COMMUNICATION was GRANTED. Vt. 9/0

C-12 Dean J. Mazzearella, Mayor: Request to block off Church Street from West St. to Merriam Avenue 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.

Upon recommendation of the CITY PROPERTY COMMITTEE, the following PETITION was GRANTED. Vt. 9/0

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.

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

C-11 Dean J. Mazzearella, 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.

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

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.

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

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

REGULAR MEETING OF THE CITY COUNCIL, SEPTEMBER 28, 2009, continued

Under Old Business, Councillor Marchand, Chair of the President's Drinking Water Oversight Committee, asked the Clerk to send a letter to Viola Water, Woodward & Curran, Mr. LaPointe and Mr. Brooks thanking them for participating and planning for a presentation for the Council and community. He said the November meeting is to shed information as an update and to bring the entire situation up to snuff. He said there will be a new seat in the Council and it will be a professional courtesy to the new Councillor who gets elected. He said he is very comfortable where they are as a Committee and is not sure if they need that meeting. A date of November 9, 2009 was chosen and Mr. LaPointe and Mr. Brooks can give a quick overview.

Council President asked how he felt about having any newly elected Councillors sit with the Council without participating.

Councillor Marchand said it was an excellent idea.

Councillor Rowlands said he would like to see the September data with regard to TTHM's quarterly results part of the discussion. He said he would leave it up to their discretion to bring down whoever they want to answer the questions regarding the TTHM data. He said it would be nice to have real data with regard to consumption. He said it sounds like consumption being the wet spring and where we are is going to have a major impact on the budget.

Councillor Marchand said there was an allegation as much as \$125,000.00 of an impact and would like to see where those numbers came from.

The following ORDINANCE was read once, ADOPTED as AMENDED. Amendment to delete "have contributed \$30,000.00 or more in the" and replaced with "where the owner of such individual domestic unit shall have invested a minimum of \$5,000.00 for". A hearing was set for October 13, 2009 at 7:10 P.M. Vt. 8 "yeas" and 1 "nay", Councillor Freda was opposed.

1st Reading Ordinance – Amend Chapter 21 of the City Ordinance entitled "Water and Sewer" to waive the sewer connection fee for individual domestic units in an existing residential neighborhood which is at least five years old, without sewer service and where the owner of such individual domestic unit shall have invested a minimum of \$5,000.00 for sewer infrastructure in the public way.

Councillor Nickel thanked the firefighters of Leominster and Fitchburg, especially Engine 1 of Fitchburg whose heroics saved 2 lives and rendered assistance and aid to the victims of a fire on West Street last week. He said the firefighters from Fitchburg did a truly commendable job retrieving the young man and giving CPR along with members of the Leominster Fire Department. He said to all the firefighters on duty, the responding Mutual Aid companies and to the off duty firefighters from Leominster who showed up at the scene and covered the stations; we all owe you a debt of gratitude for the selfless service.

Councillor Salvatelli wanted to commend Mr. Desmarais for making the properties at the corner of Pond Street look beautiful. We are lucky to have citizens like him.

Councillor Freda said she is attending a 2 day conference by FEMA and Leaders In A Crisis, funded by Homeland Security and facilitated by National League of City and County Managers Association. She said we are not alone in trying to get our money back from all this. She said there were people from Georgia who are dealing with the flooding, people from Florida have dealt with tornados and hurricanes and people from Connecticut that had a disaster with the hurricane and tornado not that long ago. She said that is why she was late tonight and apologized.

Councillor Nickel said he will draft a letter and have the Clerk send it to the members of the Fitchburg City Council expressing our thanks for the work their firefighters did the other night.

MEETING ADJOURNED AT 8:45 P.M.

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