

HEARING BEFORE THE CITY COUNCIL, OCTOBER 5, 2009
(This hearing was held concurrently with the Planning Board Hearing)

Hearing was called to order at 7:05 P.M. with Councillor Rowlands, Chairman of the Legal Affairs Committee, presiding. John Souza, Chairman of the Planning Board, presided over the Planning Board's hearing.

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

Present at the meeting were Planning Board members John Souza, Carol Vittorioso, Jack McLaughlin, Sal Ciccone and Tom Carignan. Betsy Lane of Kopelman and Paige also attended.

The following ORDINANCE was the subject of the hearing:

- 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

Councillor Rowlands said they had a September meeting where they had an overview presented to them by VHB as to exactly what was involved in this change and are required to open a hearing in the City both before the Planning Board and the City Council which they are doing this evening. He said this hearing will not be closed tonight and will be continued.

Councillor Rowlands introduced Betsy Lane of Kopelman & Paige. He said the petition talks about 5 documents which was the original submission. He said since then additional documents have been added which includes maps and revisions to those as well as an illustration document. He said every time a new document or document changes he doesn't want to have to amend this petition. He said this petition, which breaks down to five documents, is really an arbitrary breakdown and ultimately we will produce a document that will replace the current ordinance. He said he would like to work on the petition because right now we will have to amend this to include documents #6, etc. and that is going to get very confusing as we go through this process. He said ultimately, they are going to replace the existing Leominster Zoning Ordinance book with a new book and suggested to the authors of the petition that the petition be modified to say replace the Leominster Zoning Ordinance therefore, if we end up with three documents or ten documents we don't have to keep amending this petition.

Mr. Souza said it has some possibility but the reason they break it out is that they address the overall draft and then the specific zoning districts, the Table of Uses and the new sections. He said we can combine them and as we go through it they can treat it as a whole but when it comes down to the final vote we would take each section. He said as we break it down we can make corrections as we go through the ordinance and vote on them and then vote on the entirety. He said the Planning Board will have its own hearings and general information meetings outside City Hall which everyone can come, including City Councillors, and take that information and make the amendments from that at a general hearing and submit the changes to the City Council. He said at the same time the City Council will have their hearings and hope to coordinate the information they have and what we have and come up with a consensus so when we come to the end we can vote on the segments and get them out of the way and then vote on the entire document.

Councillor Rowlands said he agrees that we have to review in sections because the document is too big to do at once.

Mr. McLaughlin said he would like to see it broken down to one document.

Mr. Souza said from his experience ten years ago when we came down to the final meeting between the Planning Board and the City Council we took each section and voted on the section and the table of contents and definitions so there was no mistake. He said the final vote was to accept the ordinances as amended.

Councillor Salvatelli asked if the Council would continue to look at the document and make decisions while the Planning Board is on the road.

Councillor Rowlands said yes and he would like to get through the petition by either amending it to add the new documents or to be worded a single document but in terms of the procedure we laid out at the last meeting we'll go in subcommittee and we will work on this document. He said he has the electronic form of the document and we will edit the document, create a Table of Uses, make it clear what our recommendations are in modification of that document and we will work on merging their changes.

Councillor Salvatelli asked the Planning Director if we are all on the same page.

Mr. Souza said basically. He said the ultimate vote is to accept this document as amended.

Councillor Marchand said he has concerns with the way the petition will be advertised and asked the City Solicitor at what point does a document become an issue based upon modifications and the process of what is actually part of a hearing.

Ms. Lane said the amendment that is before us is extremely comprehensive and the intent is to be comprehensive and if we become too formalistic we will get ourselves in little boxes we won't be able to get ourselves out of. She said one way she is looking at it is that the first of the items that have been posted and notice of publication is A through Z of the zoning ordinance and any concept that fits within that is open for both bodies to deliberate, otherwise you are going to find yourselves in a situation where we say well this is one of the five listed with VHB then we can't do anything about it and we might reject one of the concepts and come out a different way in the ordinance. You want to be free to do that. She said look at it as a big umbrella which is the entire ordinance and anything that fits within that ordinance is properly before both boards.

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Councillor Marchand asked at what point does it become a legal issue if we have a public hearing on this document and three months from now we need to re-advertise the document to let folks know they are coming in to read this and not the modification.

Ms. Lane said that is a determination that the Boards will have to make as you go along because it is a concept that is hard to understand what that point would be. She said, for example, on an overlay district that is different than the one that was listed or in a different place then you will most likely say to yourself that is different and we have to give public notice of that. So it is hard to say in advance what that is but as you go along you will know it when you see it. Since you do have the entire bylaw she doesn't think there is anything necessary that you can say up front now that you are going to need a new notice.

Councillor Marchand brought up the new healthcare overlay that wasn't reflected in the ordinance.

Councillor Rowlands said it will be discussed in the committee meeting.

Mr. Souza asked the Planning Director if the healthcare overlay district was updated into the ordinance.

Ms. Griffin-Brooks said it was discussed at the September meeting that Legal Affairs had with VHB and is proposed to go into the document.

Mr. Ciccone asked if there were more action items that will take place.

Councillor Rowlands said yes.

Ms. Lane said there are different ways to do this but strongly advises not to get tied up in formalistic details because most people when they read this will realize this is a comprehensive amendment of the ordinance. Just because certain parts were broken out it does not mean that the number one part, which was A through Z of the ordinance, is not what the topic is, so keeping in mind if you wander off the path and get into some new area later on at that point you will always have the judgment to say okay let's treat this like a new petition and because it is so different, we need to restart that and make sure the public knows what we are doing. Otherwise, there is so much in what is listed here already the public has been given and gives fair notice that anything that is in the current bylaw could be changed and there are some suggestions for such things as overlay districts that we have not seen before. She said you would be better off to stay with that right now and go as far as you can until you hit something that doesn't seem to work or fit under that rational because otherwise we can talk about hypothetical's for some time and never get going. She said that is her recommendation but legally it can be done either way.

Councillor Rowlands asked if her recommendation is to amend this now.

Ms. Lane said she does not see a need for an amendment.

Councillor Rosa said he is not comfortable not amending it but if we amend it at the next meeting or the one after, I total agree with that.

Councillor Rowlands said let's leave it as an action item to the petitioners, which is the Planning Board, to send down a recommendation to what they want to do if anything.

Councillor Rowlands said the issue on overlay districts has been an ongoing discussion. He said you can rezone an area and if you rezone an area you will have a lot of existing non-conforming and will create problems for the Zoning Board of Appeals. He said the other side of that discussion was put an overlay district layering another zoning on top of existing zoning and that creates areas of complexity because now you have two zoning areas and sometimes areas of three that are layered on top of one another which makes the understanding of what is available for zoning in that area more complicated. He said it makes things more complicated with an overlay district but the alternative is pretty messy as well.

Mr. Souza said the concept of an overlay district is that you maintain the current zoning. For example if you take an industrial zone and overlay commercial on top of that and if the people make any kind of change they are still under the zoning for industrial so they do not have to go to the ZBA. If it was a major change they would go to the Planning Board for a Site Plan approval. But, if we put the overlay on it to commercial then it is their choice commercial or industrial. He said if you rezoned from industrial to commercial they are automatically in non-conformance. They can still change to commercial but if they want to stay industrial every time they make a change they would have to go to the Building Inspector and get a denial, then go to the ZBA for a variance approval and then the Planning Board for a Site Plan approval. It really becomes cumbersome in the process. Overlay districts is a way of protecting the people who want to be protected including homeowners.

Councillor Rowlands said the person will have to be smart enough to check to see if they are in an overlay district.

Tom Bartlett of 166 West Street and owns property on 174 Pleasant Street said his property on Pleasant Street falls within the downtown district. He said he has been there for 20 years and tried to buy the property next door and couldn't do it because he couldn't move his business there due to it being Residence B. He said he ended up moving out of there and wants to make sure something is done with the lower end of Pleasant Street.

John Harman of 44 Hawley Avenue said he wants to open a law office on Merriam Avenue but it is zoned Residential now and is looking for a time line.

Mr. Souza said it has started and feels it is going to be quite a while, six months at best.

Stephen Mullaney of 66 Helena Street said he has a business on Whitney Street. He said the downtown overlay district includes portions of 5 underlying zoning districts. He said the Mechanic Street area has 3 zoning districts and feels the overlay is the best way to go and to work with clear language.

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Councillor Rowlands asked the Planning Board to rethink the petition so we don't have to make amendments and also review the whole overlay district.

Councillor Freda said the sign regulations need to be tightened up and clarify digital boards and colors.

Councillor Rowlands asked the Planning Director to get updates from VHB of any updates or changes to this document.

Planning Board continued their hearing to October 20, 2009.

HEARING ADJOURNED AT 8:25 P.M.AND CONTINUED TO NOVEMBER 16, 2009 AT 6:30 P.M.

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