

HEARING BEFORE THE CITY COUNCIL, OCTOBER 11, 2011

Hearing opened at 6:53 P.M. with Councillor Rowlands, Chair of the Legal Affairs Committee, presiding.

All members were present except Councillor Marchand.

Present at the hearing was Phil Lombardo, Paul Wilson and Ken Camille representing Cumberland Farms, MHF Design Project Engineer Chris Tamula, and Environmental Consultant Bruce Ross.

The following PETITION was the subject of the hearing:

8-12 Kathleen A. Sousa for Cumberland Farms, Inc.: Amend the underground storage license for the property located at 1287-1289 Main Street to increase the capacity of the underground tanks from 24,000 gallons to 40,000 gallons.

Mr. Tamula said the property is at North and Main Street consisting of an existing Cumberland Farms, CVS, a canopy and fueling station with underground storage tanks. They are looking to raise the entire site, so everything you see will be removed. The building will be taken down, utilities will be taken out of service, the underground fuel tanks will be removed along with the canopy. He said they are proposing a new 3,633 square foot convenience store along with a new canopy, 5 fuel pumps and 10 fueling stations, 19 parking spaces on site and the underground fuel storage tanks will be pushed back further into the site. He said the plan works well because it removes extensive curb cuts along Main and North Streets, pushes the building back further and cleans up the site. He said they have received positive feedback from both City departments and neighbors from the neighborhood meetings.

Mr. Tamula said there will be a stormwater management system on site that is consistent with Massachusetts DEP Stormwater Policy. There will be new utility connections throughout the site. He said there is an extensive landscaping plan and there will be a colonial building with typical peaks and style. The underground storage tanks will be increases from 24,000 gallon capacity to 40,000 gallon capacity consisting of two 20,000 gallon tanks, double wall fiberglass tanks. He said they feel it will be an improvement to the site.

Councillor Rowlands said this hearing is strictly in regard to a Special Permit for the storage of flammable liquids. He asked if they have been before the ZBA.

Mr. Lombardo said yes.

Councillor Rowlands asked when the neighborhood meetings were held.

Mr. Lombardo said in May probably a month before their Special Permit meeting. He said they sent out notices to all the abutters. He said they had a staff meeting in March or April and at that time the Mayor recommended a neighborhood meeting be held.

Councillor Rowlands said it probably would be worth while to involve the Ward Councillor in the neighborhood meeting.

Mr. Lombardo said he thought they send notices out to the entire City Council.

Councillor Rowlands said he would like to see a notice because he didn't get one.

Councillor Rowlands said they requested recommendations and then a point was raised there was an oil spill in 2009 so they requested an additional recommendation from the Fire Department and Health Department. Councillor Rowlands read the recommendations from the Fire Department, the Health Inspector and the Conservation Agent which are on file in the City Clerk's office.

Bruce Ross said he has been on this job since the summer. He said they submitted a summary on October 7th based on a request they received from the Council summarizing the event of the small release in February 2009 which is on file in the City Clerk's office. He said they are currently in Phase 2 of the MCP and the assessment phase. There's been initial activities that were part of the immediate response actions after the release was detected. He said several monitoring wells have been installed. They have a pretty good idea of the extent of the impact of the soil and ground water which is concentrated in the area of the tanks and dispensers. He said they are looking forward to the opportunity of the construction to speed up a long process that would involve longer assessment remediation. He said the opportunity now to remove those tanks and product lines around them will allow them to excavate soil around them and take out ground water and will hopefully expedite the remediation. He said they will be filing a RAM Plan to the DEP and the main purpose of the RAM Plan is to focus on how they are going to manage the soil they excavate. They do anticipate excavating and removing considerable amount of petroleum impacted soils and ground water which will be handled under the MCP and in accordance with applicable wetlands provisions. He said the soil will be stockpiled on poly-sheeting, covered and surrounded by haybales if necessary to prevent runoff. He said they have done testing to pre-characterize the soil so they can expedite the soil from the site as quickly as possible. The phase 2 assessment is due in February.

Councillor Rowlands asked if a two week continuance would cause them a problem in terms of their schedule.

Mr. Lombardo said if it is not going to delay their construction then they would encourage the Council to do whatever investigation they need to do to be comfortable to issue the permit.

Councillor Chalifoux Zephir asked what is the planned construction start date?

Mr. Lombardo said they do not have one and they are waiting for the permitting process to go through. He said most likely spring of next year.

Councillor Chalifoux Zephir said she is trying to understand the relationship between the mediation plan and the expansion.

HEARING BEFORE THE CITY COUNCIL, OCTOBER 11, 2011, continued

Mr. Lombardo said the RAM Plan has to be submitted before any excavation takes place. He said remediation occurs during the construction process in the sense you demolish the building, you take the pavement away and you dig up the site and to do that Cumberland Farms would have had their permits to go forward. At that point the engineers and contractors get in and do their remediation.

Mr. Ross said before they break ground and get to the point they excavate any potentially impacted soil or ground water, they will submit the RAM Plan. It needs to be submitted prior to that.

Councillor Chalifoux Zephir asked if DEP has to approve the plan.

Mr. Ross said there is no specific approval.

Councillor Chalifoux Zephir asked how many 24,000 gallon tanks are currently there.

Mr. Lombardo said there are three existing.

Councillor Chalifoux Zephir said the expansion is to go to three tanks but larger capacity?

Mr. Lombardo said the new proposal will have two double walled compartmented tanks of 20,000 gallons each. He said there will be 8,000 gallons and 12,000 gallons compartmented in a single tank. There will be 8,000 gallons of diesel and the premium will be in the other tank so if the customer wants the low you give them the low grade but if they want the premium you give them the premium and if they want the middle you blend them together.

Councillor Chalifoux Zephir said in the Ram Report that you provide for DEP, in terms of future mitigation, you'll be discussing your proposed expansion plan correct?

Mr. Ross said the focus of the RAM Plan is going to specifically be pursuant to the regulations and will focus on the management of petroleum impacted soil and ground water. That is the sole intent of the RAM Plan. It will focus on how they are going to do that, how they will manage the soil, where it will be disposed of along with any ground water that is taken.

Councillor Chalifoux Zephir asked Mr. Ross if DEP ever makes comments that would cause you to change.

Mr. Ross said periodically they get screened and if the DEP sees something that concerns them they might pick up the phone and give a call, but not typically.

Councillor Chalifoux Zephir asked if the tanks currently located toward Main Street.

Mr. Ross said yes and they are being located on the right hand side.

Councillor Chalifoux Zephir said that abuts residential property.

Mr. Ross said that is correct.

Councillor Chalifoux Zephir asked if they got feedback from the neighbors who abut that side of the property.

Mr. Ross said yes and the only concern the neighbor had was any lights trespassing on his property and entering into his house. He said the groundwater is going in the opposite direction away from that house.

Councillor Nickel asked about the elevation of the property in the back.

Mr. Ross said the whole site pitches down towards Main Street. He said right now it mostly pitches to the back property. The back of the property has to be elevated.

Councillor Nickel asked if there was a meter to tell what the contaminant is in the soil.

Mr. Ross said a photo ionization detector which measure vapors.

Councillor Nickel asked about the history of the building and how many times the tanks were replaced.

Mr. Ross said the site has been a gas station for a long time.

Councillor Freda said there is a question of responsibility regarding the notification of spill.

Mr. Ross said the City should have been notified. Under regulation, when they submit their IRA Plan, Phase I, the Chief Municipal Officer is typically copied on the documents or at least notified they are available. There is a notification process to the municipality that, he believes, was followed.

Councillor Freda said her concern is who is telling us whether it is safe to move that soil. We know what the level of involvement is right now and as the LSP the phases are being met but what is the level if there is a disturbance. It could correct the problem or exasperate the problem. Is it DEP that makes that determination with the RAM Report?

Mr. Ross said the system under the DEP is a privatized system and LSP's, like myself, are licensed to make those decisions. This is not an uncommon practice; we remove tanks and replace them all the time at gas stations. He said the best thing you can do is remove the old tanks and old dispensers and take out that material.

HEARING BEFORE THE CITY COUNCIL, OCTOBER 11, 2011, continued

Councillor Rowlands said what he finds concerning is in the referral from the Health Department which states it was not specifically aware of the 2009 release of petroleum product at this location until reading the email earlier today. He said he has a concern that the Health Department was not aware of that.

Councillor Salvatelli asked if they were taking down the CVS building.

Mr. Ross said yes.

Councillor Lanciani said there are three new catch basins going on site. Are there separators in the basins?

Mr. Ross said they will be equipped with deep sumps and hoods.

Councillor Lanciani asked how often will they be examined and cleaned out.

Mr. Ross said there is an operation maintenance plan, typically twice a year for the storm septors. The catch basins are usually as needed.

Councillor Freda said she thought she saw somewhere in DEP that by practice a notification goes to the Board of Health and the Fire Department by their practice to the local community. She says it is important, she doesn't know if it was lost with DEP or the Health Department and it concerns her.

Councillor Rowlands asked about delivery.

Mr. Ross said the delivery truck would come off of Main Street . Mr. Ross said the delivery truck will not be blocking vehicles or pumps.

Councillor Rowlands asked if the ZBA put conditions on deliveries.

Mr. Ross said no.

Councillor Rowlands asked if it was a 24/7 business.

Mr. Ross said yes.

Councillor Rowlands said if there is a problem who is responsible for this location.

Mr. Ross said it will be owned and operated by Cumberland Farms. The managers are employed by Cumberland Farms.

Councillor Dombrowski asked what caused the leak in 2009.

Mr. Ross said there was a problem with an o-ring (seal) which allowed a leak from the pump system to get into a sump. He said monitoring will continue until they can demonstrate they can meet the requirements of an RAO (Response Action Outcome) and that depends on remains in the soil and groundwater after the work is done.

Councillor Dombrowski asked if he could estimate how long this will go on.

Mr. Ross said it is hard to say. It depends on a lot of factors. It could be as much as a year or two or more depending on the residual in the groundwater and where it is. He said he is not comfortable giving a time frame.

Councillor Dombrowski asked if there was a lower tier as to how long it would go for the testing.

Mr. Ross said probably at least a year.

Councillor Dombrowski asked what other board they have been before.

Mr. Ross said just the Zoning Board of Appeals for a Special Permit for the gas station use and to expand the use.

Councillor Dombrowski asked if the ZBA conditioned the approval on the construction and the excavation being as represented?

Mr. Ross said he would have to check but he believes the permit incorporated the plans.

Councillor Lanciani said an email they received on September 28, 2011 from Deputy Chief Alfred F. Kiourac stating "we did not respond to the release on 2/11/09 but did receive a notification from Mass. DEP concerning the incident. This is a common notification from them. The spill was essentially underground and impacted a containment pump and possibly some soil. A submersible turbine pump malfunctioned and Cumberland Farms notified DEP as they are required to do. DEP gave oral approval to the IRA which is the Initial Response Plan as proposed by Cumberland Farms with DEP conditions. No further communication was received from DEP and generally we do not receive further communication from DEP unless properties do not comply with their obligations under the law. Fire Prevention did receive certification from a third party inspector on March 26, 2009 subsequent to the malfunction and release that the facility was in compliance with all necessary safety features and paperwork as required by the law and pertinent regulations. The Fire Department stands by its original opinion of not being opposed to the increased storage at this facility."

Councillor Lanciani said he thinks they did what they needed to do and thinks being cautious of what is taking place at the present time is better to caution on the part of safety than be sorry afterwards.

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

HEARING BEFORE THE CITY COUNCIL, OCTOBER 11, 2011, continued

Councillor Rowlands asked if it would be a show stopper if they were left with a 24,000 gallon capacity.

Mr. Ross said yes, they need to have the bigger capacity to cut down on the number of deliveries and to economize in terms of the product they deliver. He said he didn't think the neighborhood would want more deliveries.

Councillor Freda asked why the LSP resigned.

Mr. Lombardo said it wasn't because he wanted to. Cumberland Farms made a decision to change their consultant. It happens every few years.

HEARING ADJOURNED AT 7:50 P.M. AND CONTINUED TO NOVEMBER 14, 2011 AT 6:45 P.M.

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

HEARING BEFORE THE CITY COUNCIL, OCTOBER 11, 2011

Hearing opened at 6:50 P.M. with Councillor Rowlands, Chair of the Legal Affairs Committee, presiding.

All members were present except Councillor Marchand.

The following ORDINANCE was the subject of the hearing:

Relative to amending Chapter 22 of the Revised Ordinances, entitled "Zoning", Article II, Section 16.6.1.2 to read "No more than four (4) lodgers or boarders except in Residence B and C. All boarding/lodging houses need a Special Permit from the Planning Board. (Legal Affairs)

Councillor Rowlands said Kopelman and Paige put this in ordinance form exactly how the original petition was worded. So basically in 16.6.1.2 it added the single sentence "All boarding/lodging houses need a Special Permit from the Planning Board."

Councillor Rowlands said they received a recommendation from the Planning Board and they are in favor of the ordinance. He said on page 37 of the Leominster Zoning Ordinance, which is the Table of Uses, the second item is Boarding or lodging houses. Under Residence B, C, BA is labeled Y and BB is labeled *. He said Kopelman and Paige did not address the referencing in updating the Table of Uses because the ordinance, as drafted, would require a Special Permit from the Planning Board in all cases. The Y in the Table of Uses for RB, RC, BA and BB should be SPPB. The recommendation received from Kopelman and Paige is incomplete. He said in BB in the Table of Uses you see an asterisks under the column and that asterisks says, at the bottom of the page, see section 21.2.2. If you refer to subsection 21.2.2 that subsection does not refer to BB but to BA. There is an existing error for boarding and lodging houses in the current zoning. Also, a note should be added in the section that we are modifying 16.6.1 says except for residence B and C, you are limited to under four units. That should be starred under BA. BA should be either an asterisks as saying see that subsection or it should at least have a footnote see section 16.6.1 that says you are required to have less than four lodgers.

Wendy Latino of 21 Allen Street is in favor of the ordinance once it is finalized. She feels people that own boarding houses should go through scrutiny before a boarding house is just put into a neighborhood without the neighbors having a say.

Jessica Mercier, 87 Priest Street is in favor and wanted clarity of her property zoning. She feels that the error found is not a good thing for the neighbors due to timing.

Paula Valentine, 89 Allen Street; Michael Thompson, 27 Priest Street; Patricia Campbell, 91 Priest Street spoke in favor of the ordinance.

Ron Cormier, 41 Summer Street spoke in opposition.

Councillor Chalifoux Zephir asked to vote on the second reading with the understanding that it will be forwarded to Kopelman & Paige the changes they want in the Table of Uses.

Councillor Rowlands said if we passed this there would be a discrepancy between the two and that needs to be corrected. The mistake in the Table of Uses has been there for ages. He said the hearing will be given further time so the ordinance can be fixed.

HEARING ADJOURNED AT 8:15 P.M. AND CONTINUED TO OCTOBER 24, 2011 AT 6:15 P.M.

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

REGULAR MEETING OF THE CITY COUNCIL, OCTOBER 11, 2011, continued

Meeting was called to order at 7:30 P.M.

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

The Committee on Records reported that the records through September 26, 2011 were examined and found to be in order. The records were accepted.

A recess was called at 7:31 P.M. to continue the public hearings and to hold a public forum.

The regular meeting reconvened at 8:16 P.M.

The following COMMUNICATION was received, referred to the FINANCE COMMITTEE and given REGULAR COURSE. A hearing was set for November 28, 2011 at 7:00 P.M. Vt. 8 "yeas"

C-11 Mayor Dean J. Mazarella: Request the City Council set a hearing for the classification of the tax rate on November 28, 2011, the purpose of which is to set the FY2012 tax rate.

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

C-12 Relative to the appropriation of \$103,063.47 to the CDBG Housing Rehabilitation Construction Expense Account; same to be transferred from the following CDBG Accounts as listed below:

Administration Salary	\$25,000.00
Summer Youth Salary	\$ 4,263.03
Summer Youth Expense	\$ 775.19
Code Enforcement Salary	\$ 861.00
Code Enforcement Expense	\$ 8,837.00
Rehab Salary	\$16,770.00
Rehab Expense	\$25,416.00
Economic Dev. Salary	\$11,851.00
Economic Dev. Expense	\$ 8,086.00
YWC/Battered Woman's	\$ 1,204.00
Mayor's Energy Assistance	\$.25

The following PETITION was received, referred to the PUBLIC SERVICE COMMITTEE, given REGULAR COURSE and referred to the Wire Inspector and the Department of Public Works. A hearing was set for October 24, 2011 at 6:30 P.M. Vt. 8/0

13-12 National Grid and Verizon: Graham Street Install one jointly owned pole at a point approximately 105 feet west of the centerline of the intersection of Pole 9 on Central Street.

The following PETITION was received, referred to the WAYS & MEANS COMMITTEE and given REGULAR COURSE. A hearing was set for October 24, 2011 at 6:35 P.M. Vt. 8/0

14-12 Andrew Rome: Grant a license for one pool table at the Columbia Tavern, 11 Merriam Avenue.

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

Office of Emergency Management -Auxiliary Unit - Paul Topolski, Kevin Goguen, Kathy Truax

Office of Emergency Management – EMS Unit – Brendan Flynn

Election Officers – Paul Cannavino, Silvia Dube

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

Excess and Deficiency Account (Free Cash)	\$ 6,526,756.00
Stabilization Account	\$11,092,716.00
Emergency Reserved Account	\$ 14,000.00

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

C-9 Relative to the appropriation of \$5,000.00 to the Sealer of Weights and Measures Salary and Wages Account; same to be transferred from the Weights and Measures Receipts Reserved for Appropriations Account.

REGULAR MEETING OF THE CITY COUNCIL, OCTOBER 11, 2011, continued

ORDERED: - that the sum of Five Thousand Dollars (\$5,000.00) be appropriated to the Sealer of Weights and Measures Salary and Wages Account; same to be transferred from the Weights and Measures Receipts for Appropriation Account.

C-10 Relative to the appropriation of \$36,000.00 to the Sanitation & Drainage Expense Account; same to be transferred from the Emergency Reserve Account.

ORDERED: - that the sum of Thirty Six Thousand Dollars (\$36,000.00) be appropriated to the Sanitation and Drainage Expense Account; same to be transferred from the Emergency Reserve Account.

Upon request of the LEGAL AFFAIRS COMMITTEE, the following PETITION was given FURTHER TIME. Vt. 8/0. Hearing is continued to November 14, 2011 at 6:45 P.M.

8-12 Kathleen A. Sousa for Cumberland Farms, Inc.: Amend the underground storage license for the property located at 1287-1289 Main Street to increase the capacity of the underground tanks from 24,000 gallons to 40,000 gallons.

Upon recommendation of the CITY PROPERTY COMMITTEE, the following PETITION was GRANTED. Vt. 8/0

12-12 New England Farm Worker's Council: Request permission to use the City Council Chambers of October 12th, November 10th, December 1st and 22nd, 2011 to take Fuel Assistance applications.

Upon recommendation of the WAYS & MEANS COMMITTEE, the following PETITIONS were GRANTED. Vt. 8/0

10-12 Virginia A Tocci: Grant a Second Hand Dealer's License for Joseph's Group Inc./ Joseph's Jewelers located at 28 Central Street for the purchase and sale of precious metals.

11-12 Scott & Joanne Atwood: Renew the Second Hand Dealer's License for The Repair Palace, Inc. located at 100 Commercial Road for the purchase and sale of precious metals and jewelry.

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

Cultural Commission - terms to expire April 15, 2014
Maureen Noviello, Gilbert Tremblay

Election Officers – terms to expire August 31, 2012 - Emilda E. Sauvageau,
Robert J. Gourdeau, Barbara A. Burque, Beverly Fratoni

Leominster Police Department – Temporary Chief - Robert Healey

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

2nd Reading Ordinance – Amend Chapter 22 of the Revised Ordinances, entitled "Zoning", Article II, Section 16.6.1.2 to read "No more than four (4) lodgers or boarders except in Residence B and C. All boarding/lodging houses need a special permit from the Planning Board.

Under Old Business, Councillor Rowlands, Chair of the President's Zoning Committee, said they met last Wednesday and reviewed the zoning document focusing on use, promotion of growth and neighborhood protection. He said they are waiting to hear back from the Planning Director.

The following ORDINANCE was read once, ADOPTED as presented and ordered published. Vt. 8 "yeas". Hearing set for October 24, 2011 at 6:45 P.M.

1st Reading Ordinance - Amend Chapter 13, Section 13-77 of the Revised Ordinances entitled "stop signs" by inserting "Tanzio Road against eastbound drivers at Aspinwall Avenue". Vt. 8 "yeas". Hearing set for October 24, 2011 at 6:45 P.M.

The following ORDINANCE was read once, ADOPTED as presented and ordered published. Vt. 8 "yeas" Hearing set for October 24, 2011 at 6:47 P.M.

1st Reading Ordinance – Amend Chapter 13, Section 13-77 of the Revised Ordinances entitled "stop signs" by inserting "Tanzio Road against southbound and northbound drivers at Lancaster Street".

REGULAR MEETING OF THE CITY COUNCIL, OCTOBER 11, 2011, continued

The following ORDINANCE was read once, ADOPTED as presented and ordered published. Vt. 8 “yeas” Hearing set for October 24, 2011 at 6:50 P.M.

1st Reading Ordinance – Amend Chapter 13, Section 13-77 of the Revised Ordinances entitled “stop signs” by inserting “Aspinwall Avenue against northbound drivers at Malburn Street”.

The following ORDINANCE was read once, ADOPTED as presented and ordered published. Vt. 8 “yeas” Hearing set for October 24, 2011 at 6:55 P.M.

1st Reading Ordinance – Amend Chapter 13, Section 13-77 of the Revised Ordinances entitled “stop signs” by inserting “Grove Terrace against eastbound and westbound drivers at Grove Avenue”.

The following ORDINANCE was read once, ADOPTED as presented and ordered published. Vt. 8 “yeas” Hearing set for November 14, 2011 at 7:00 P.M.

1st Reading Ordinance - Amend Chapter 22 of the Revised Ordinances entitled “Zoning” by changing the Leominster Zoning Map so that the land identified as Assessor’s Map 430, Parcel 6 shown as 7 Prospect Street, and Assessors’ Map 430, Parcel 12, known as 15 Prospect Street, are designated as zoning district Business B.

Under New Business, Councillor Freda requested a letter be sent to the Police Department. They have had such a stressful week with the incidences that have occurred. They have acted with such professionalism and it is important that we let them know that we appreciate their efforts and professionalism and recognize how stressful it must have been for them.

MEETING ADJOURNED AT 8: P.M.

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