

HEARING BEFORE THE CITY COUNCIL, AUGUST 25, 2014

Hearing opened at 7:02 P.M. with Councillor Dombrowski, Chair of the LEGAL AFFAIRS COMMITTEE, presiding.

All members were present.

Present at the hearing was Peter Niall.

This hearing is a continuation from August 11, 2014.

The following PETITION was the subject of the hearing:

3-15 Leominster Planning Board and Peter Niall, Building Commissioner: Amend the Leominster Zoning Ordinance by adding “sales and service of all recreation vehicles and motor cycles” to Section 22-17, Underlying Districts Table of Uses and removing the word “vacant” from Article I, Section 22-10.1.1.

Mr. Niall said removing the word “vacant” from Article I, Section 22-10.1.1 the Zoning Act M.G.L. Chapter 40A states that if you have common ownership with any adjoining land it basically cancels out the grandfathering clause. We put in the word vacant lot instead of adjoining so it makes it sound as if you have a house, and you own another lot, the lot with the house doesn't count but it does. The State Regulations says any adjoining land and it doesn't have to be vacant. We simply want to remove the word “vacant” from the City zoning so we will match the State.

Mr. Niall said about a year ago we had a man come in that wanted to open up a shop selling and repairing motorcycles and there is no where in the zoning that says where you can do that. It says you can repair boats, cars and other things but no place that specifically said you could repair motorcycles or sell them. That is why we are requesting “sales and service of all recreation vehicles and motor cycles” be added in.

Councillor Dombrowski asked if there was a reason why these two changes are combined.

Mr. Niall said one came up many months ago and then the other came up and the Planning Board submitted them at the same time. He said we have had a couple of cases where people had a lot for sale and they owned the adjoining land which means is the lots are undersized then it is not a buildable lot. This can confuse people because our zoning says it has to be a vacant lot next door. So, if you have a house they are thinking my lot is buildable when it isn't. By removing that word it will take away the confusion so people will understand better how it works.

Councillor Bodanza said in respect to the issue in Section 22-10.1.1 on the next page of the section that deals with nonconforming uses, structures and lots. There is a provision 12.1 that says “nonconforming lots uses and structures are regulated as provided in Chapter 40A Section 6 of the General Laws as provided in this Ordinance” which is the precise statute that you are referring to in respect to undersized lots and grandfathering, correct?

Mr. Niall said yes.

Councillor Bodanza said the issue that is presented by 10.1.1 has been there for a long time and he would agree that the language is confusing. It would be kind of rare to have a situation where you would have two lots that abut each other that are approved and somebody is seeking grandfathering status because the lots were not in common in ownership. This particular provision confuses a lot of people because what it is, is a merger. If the law changes and requires a greater size in area you have to use abutting land if it is in common ownership. Would it be a good idea and take 10.1.1 as said in the case of a nonconforming lot it should be regulated in accordance with M.G.L. Chapter 40A, Section 6 and take all the other language out of it together?

Mr. Niall said that would probably work even better.

Councillor Bodanza said if we just refer it to the State statute we won't have any problems.

Councillor Nickel said in reference to mergers does that mean that you're merging the additional lot and essentially have one lot that is big enough now meets the requirements as far as square footage but now you have a lot with two buildings on it?

Councillor Bodanza said Mr. Smith owns a home on lot A which might be 10,000 square feet or 15,000 square feet. Mr. Smith and his brother own lot B that abuts it. Lot B is 15,000 square feet and at the time Mr. Smith and his brother bought lot B that 15,000 square feet is all what the City required in order for it to be a building lot. If five years after they buy it the City changes its ordinance and increases the area required for a building lot to 20,000 square feet then Mr. Smith has to use the abutting land to satisfy the requirement. He can no longer rely on the fact that it is a non conforming lot unless he has previously pulled a Building Permit and started construction on lot B. It forces people to have enough land to satisfy the requirement when it is increased to use that land.

Councillor Nickel said does that now mean that the two of them are considered one lot.

Councillor Bodanza said no, they are two separate lots with only one that isn't buildable.

Councillor Nickel said the lot already has something on it that has been built and that is grandfathered.

Councillor Bodanza said correct.

Councillor Nickel said so somebody combines two lots with each a building and try to split it off and sell the house, is that possible?

Councillor Bodanza said if you have two buildings on a lot you probably needed to get relief to do that in the first place depending when you did it and if it is one recorded lot and you want to separate it into two you have to satisfy the area

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requirements for both of those lots and also satisfy the setback requirements for both lots. If you can satisfy the area but not the setbacks you might be able to get a variance for the setbacks but you are not going to get a variance for undersized. The Zoning Board of Appeals does not have the authority to do that.

Councillor Nickel asked Mr. Niall how many lots can you say that you know of that would be affected by this.

Mr. Niall said hundreds. There are a lot of paper streets that have little quarter acre lots that were subdivided 40-60 years ago and nobody has ever touched. As legal lots are getting eaten up and disappearing we have people coming in on a regular basis showing us the small lots asking if they can build a house there.

Councillor Salvatelli said we have a motorcycle repair shop on Central Street already, what is the difference?

Mr. Niall said there is no difference. They were already there before I came and I don't know how they got there. But if they wanted to open that same motorcycle shop today zoning would not allow them to.

Councillor Dombrowski asked Mr. Niall to ask the Planning Board to extrapolate on what areas this particular use would be allowed as a matter of right and what areas it would need a Special Permit. He said they are still waiting for a recommendation from the Planning Board.

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

HEARING ADJOURNED AT 7:23 P.M. AND CONTINUED TO SEPTEMBER 22, 2014 AT 7:00 P.M.

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

REGULAR MEETING OF THE CITY COUNCIL, AUGUST 25, 2014

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

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

The Committee on Records reported that the records through August 11, 2014 were examined and found to be in order. The records were accepted.

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

- C-8 Relative to the appropriation of \$1,600.00 to the Highway Regular Labor Account; same to be transferred from the Highway Regular Labor Account.
- C-9 Relative to the appropriation of \$245,000.00 to the Highway Capital Outlay Expense Account; same to be transferred from the Stabilization Fund.
- C-10 Relative to the appropriation of \$2,500,000.00 for the purpose of financing the construction of the following water pollution abatement facilities: engineering, planning, designing, constructing and equipping wastewater treatment and related facilities in and for the City, including the payment of all costs incidental and related thereto; that to meet this appropriation the Treasurer with the approval of the Mayor is authorized to borrow \$2,500,000.00 and issue bonds or notes therefore under G.L. c.44 or any other enabling legislation, and/or Chapter 29C of the General Laws; that such bonds or notes shall be general obligations of the City unless the Treasurer with the approval of the Mayor determines that they should be issued as limited obligations and may be secured by local system revenues as defined in Section 1 of Chapter 29C; that the Treasurer with the approval of the Mayor is authorized to borrow all or a portion of such amount from the Massachusetts Clean Water Trust established pursuant to Chapter 29C and in connection therewith to enter into a financing agreement and/or security agreement with the Trust and otherwise to contract with the Trust and the Department of Environmental Protection with respect to such loan and for any federal or state aid available for the project or for the financing thereof; and that the Mayor is authorized to enter into a project regulatory agreement with the Department of Environmental Protection, to expend all funds available for the project and to take any other action necessary or convenient to carry out the project.

The following APPOINTMENTS were received under SUSPENSION OF THE RULES, referred to the WAYS & MEANS AND VETERANS AFFAIRS COMMITTEE and given REGULAR COURSE. Vt. 9/0

Leominster Police Department Permanent Police Officers –
Daniel Contois, Shane M. Crawford, Scott E. Doucette,
Anthony Eydenberg, Jodi L. Kwan

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

REGULAR MEETING OF THE CITY COUNCIL, AUGUST 25, 2014, continued

5-15 Matt Zvacek: Renew the Second Hand Dealers License for Gold Buyers of America located at 100 Commercial Road, Unit 86.

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

4-15 Christopher Nikolow: Renew the Second Hand Dealers License for Ashlyn Fine Jewelry located at 3 Park Street.

A recess was called at 7:36 P.M. to discuss Communication C-5 with Beth Greenblatt from Beacon Intergrated Solutions, owners agent for the City, and Brian Coprill from Renewable Energy Massachusetts.

Meeting reconvened at 7:57 P.M.

Upon recommendation of the LEGAL AFFAIRS COMMITTEE, the following COMMUNICATIONS were GRANTED. Vt. 9/0

C-5 Dean J. Mazzarella, Mayor: Request authorization to enter into an agreement for Net Metering Power Purchase for solar generated electricity and related net electricity metering credits and authorization of the mayor to execute such agreements and take such actions as are necessary to administer and implement such agreements.

C-6 Dean J. Mazzarella, Mayor: Accept MGL Chapter 60A, Paragraph 8 relative to excise tax exemption for active duty servicemen deployed.

Upon request of the LEGAL AFFAIRS COMMITTEE, the following PETITION was given FURTHER TIME. Vt. 9/0 (Hearing continued to September 22, 2014 at 7:00 P.M.)

3-15 Leominster Planning Board and Peter Niall, Building Commissioner: Amend the Leominster Zoning Ordinance by adding "sales and service of all recreation vehicles and motor cycles" to Section 22-17, Underlying Districts Table of Uses and removing the word "vacant" from Article I, Section 22-10-1-1.

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

Stabilization Account	\$12,545,407.93
Emergency Reserved	\$ 100,000.00

Upon recommendation of the FINANCE COMMITTEE, the following COMMUNICATION was GRANTED and ORDERED. Vt. 9 "yeas"

C-7 Relative to the appropriation of \$50,000.00 to the Library Expense Account; same to be transferred from the Library State Aid Reserved for Appropriations Account.

ORDERED: that the sum of Fifty Thousand Dollars (\$50,000.00) be appropriated to the Library Expense Account; same to be transferred from the Library State Aid Reserved for Appropriations Account.

RE: Library books

Upon recommendation of the WAYS & MEANS AND VETERANS AFFAIRS COMMITTEE, the following APPOINTMENT was CONFIRMED. Vt. 9 "yeas"

Council on Aging - Margaret Takarabe – term to expire April 15, 2017

Upon recommendation of the FINANCE and the WAYS & MEANS AND VETERANS AFFAIRS COMMITTEES, the following RESOLUTION was ADOPTED. Vt. 9 "yeas"

RESOLUTION

State of Massachusetts Health Care Security Trust Investment Agreement Authorization.

RESOLVED: that the Treasurer and Assistant Treasurer of the City of Leominster Massachusetts be authorized to execute and deliver the Investment Agreement with the Health Care Security Trust (HCST) in substantially the form presented to this meeting of the City Council and attached hereto, to sign checks and wire OPEB Trust Funds to HCST or to the Pension Reserves Investment Trust, or as it may otherwise be directed by HCST, and to make withdrawals and investments and enter into such agreements and deliver such certificates and other documents as HCST or the Pension Reserves Trust Investment Management Board may direct; and

RESOLVED: That the sum of \$10,000.000 be appropriated as the initial investment into the OPEB Trust Fund.

REGULAR MEETING OF THE CITY COUNCIL, AUGUST 25, 2014, continued

The following ORDINANCE was read a second time ADOPTED as presented and passed to be ordained. Vt. 8 “yeas” and 1 “nay”, Councillor Freda opposed.

CITY OF LEOMINSTER

In the year two thousand and fourteen

AN ORDINANCE

Amending Chapter 22 of the Revised Ordinances, entitled “Zoning.”

Be it ordained by the City Council fo the City of Leominster as follows:

Chapter 22 of the Revised Ordinances, entitled “Zoning,” Article I, Section 22-4, Definitions, is hereby amended as follows.

The definition of “Life Sciences” is amended by deleting the following sentence in its entirety: “Facilities that utilize animal testing of products are not included in this definition.”

The following ORDINANCE was read a second time ADOPTED as presented and passed to be ordained. Vt. 9 “yeas”

CITY OF LEOMINSTER

In the year two thousand and fourteen

AN ORDINANCE

Amending Chapter 22 of the Revised Ordinances, entitled “Zoning.”

Be it ordained by the City Council of the City of Leominster as follows:

Chapter 22 of the Revised Ordinances, entitled “Zoning,” is hereby amended by adopting a new Article as follows:

22-105 Special Requirements for Medical Marijuana Facilities 105.1 *Purposes*

105.1.1 To provide for the establishment of Medical Marijuana Facilities in appropriate places and under strict conditions in accordance with the passage of Initiative Petition 11-11 (Question #3 on the November, 2012 state ballot).

105.1.2 To minimize the adverse impacts of Medical Marijuana Facilities on adjacent properties, residential neighborhoods, and other land uses potentially incompatible with said Facilities.

105.1.3 To regulate the siting, design, placement, security, safety, monitoring, modification, and removal of Medical Marijuana Facilities.

105.2 *Applicability*

105.2.1 No Registered Marijuana Dispensary shall be established except in compliance with the provisions of this Section 105.

105.2.2 Nothing in this Ordinance shall be construed to supersede federal and state laws governing the sale and distribution of narcotic drugs.

105.2.3 If any provision of this Section or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this Section, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Section are severable.

105.3 *Definitions*

Registered Marijuana Dispensary -- Medical Marijuana Treatment Center, also known as RMD, shall mean an establishment operated by a non-profit entity and properly registered with the Massachusetts Department of Public Health under 105 CMR 725.100 that acquires, cultivates, possesses, processes (including development of related products such as edible marijuana infused products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers.

Marijuana for Medical Use — Marijuana that is designated and restricted for use by, and for the benefit of, Qualifying Patients in the treatment of Debilitating Medical Conditions as set forth in Citizens Petition 11-11.

Marijuana — The same substance defined as "marijuana" under Chapter 94C of the Massachusetts General Laws.

Cultivation Site -- A registered Marijuana Dispensary (RMD) that exclusively cultivates marijuana pursuant to 105 CMR 725.105(B)(1)(c) such that all phases of cultivation take place in designated, locked, limited access areas that are monitored by a

REGULAR MEETING OF THE CITY COUNCIL, AUGUST 25, 2014, continued

surveillance system, the specific detailed requirements of such system being as stated in 105 CMR 725.110(D)(1)(d) through (i). It may also process (including development of related products such as edible Marijuana Infused Products, tinctures, aerosols, oils, or ointments), transport and distribute to other RMDs that dispense marijuana. All portions of the RMD shall be non-mobile and shall not have on-site retail sales or make off-site deliveries to registered Qualifying Patients as defined in 105 CMR 725 or their Personal Caregivers from this site. Any accessory retail sales at such locations may only be allowed by special permit issued by the Planning Board pursuant to the provisions of Section XI.01.1.

105.4 *Eligible Locations for Registered Marijuana Dispensaries.*

105.4.1 Registered Marijuana Dispensaries may be allowed by Special Permit from the Leominster City Council in the Industrial Zoning District provided the facility meets the requirements of this Section 105.

105.5 *General Requirements and Conditions for all Registered Marijuana Dispensaries.*

105.5.1 All Registered Marijuana Dispensaries shall be contained within a building or structure.

105.5.2 A *Registered Marijuana Dispensary* shall not be located in buildings that contain any medical doctors' offices or the offices of any other professional practitioner authorized to prescribe the use of medical marijuana.

105.5.3 The hours of operation of Registered Marijuana Dispensaries shall be set by the City Council, but in no event shall said Facilities be open and/or operating between the hours of 8:00 PM and 8:00 AM. unless the Registered Marijuana Dispensary is a cultivation site.

105.5.4 No smoking, burning or consumption of any product containing marijuana or marijuana-related products shall be permitted on the premises of a Registered Marijuana Dispensary.

105.5.5 No Registered Marijuana Dispensary shall be located inside a building containing residential units, including transient housing such as motels and dormitories, or inside a movable or mobile structure such as a van or truck.

105.5.6 Signage for the Registered Marijuana Dispensary shall include the following language: "Registration card issued by the MA Department of Public Health required." The required text shall be a minimum of two inches in height.

105.5.7 Registered Marijuana Dispensaries shall provide the Leominster Police Department and the Building Commissioner with the names, phone numbers and email addresses of all management staff and key holders to whom one can provide notice if there are operating problems associated with the establishment.

105.5.8 No Registered Marijuana Dispensary may be located within 500 feet of a residential zoning district, church or other religious use. No Registered Marijuana Dispensary may be located within 1000 feet of a school, child care facility, family child care home, park, playground, or other Registered Marijuana Dispensary. Distance shall be measured as the shortest between buildings, or as the shortest distance between the building of the Registered Marijuana Dispensary and the lot line of a church, child care facility, school, park, playground or other recreational area.

105.6 *Special Permit Requirements Planning*

105.6.1 A Registered Marijuana Dispensary shall only be allowed by special permit from the City Council in accordance with G.L. c. 40A, §9, subject to the following statements, regulations, requirements, conditions and limitations.

105.6.2 A special permit for a Registered Marijuana Dispensary shall be limited to one or more of the following uses that shall be prescribed by the Special Permit Granting Authority:

- a) cultivation of Marijuana for Medical Use;
- b) processing and packaging of Marijuana for Medical Use, including Marijuana that is in the form of smoking materials, food products, oils, aerosols, ointments, and other products;
- c) retail sale or distribution of Marijuana for Medical Use to Qualifying Patients;

105.6.3 In addition to the application requirements set forth in Sections 105.5 and 105.6 of this Ordinance, a special permit application for a Registered Marijuana Dispensary shall include the following:

- a) the name and address of each owner of the facility;
- b) copies of all required licenses and permits issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the Facility;
- c) evidence of the Applicant's right to use the site of the Facility for the Facility, such as a deed, or lease;
- d) if the Applicant is a business organization, a statement under oath disclosing all of its owners, shareholders, partners, members, managers, directors, officers, or other similarly-situated individuals and entities and their addresses. If any of the above are entities rather than persons, the Applicant must disclose the identity of the owners of such entities until the disclosure contains the names of individuals;
- e) a certified list of all parties in interest entitled to notice of the hearing for the special permit application, taken from the most recent tax list of the City and certified by the City Assessors;
- f) Proposed security measures for the Registered Marijuana Dispensary, including lighting, fencing, gates and alarms, etc., to ensure the safety of persons and to protect the premises from theft.

REGULAR MEETING OF THE CITY COUNCIL, AUGUST 25, 2014, continued

105.6.4 Mandatory Findings. The City Council shall not issue a special permit for a Registered Marijuana Dispensary unless it finds that:

- a) the Facility is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest, as defined in G.L. c. 40A, §11;
- b) the Facility demonstrates that it will meet all the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will be in compliance with all applicable state laws and regulations; and
- c) the applicant has satisfied all of the conditions and requirements of Sections 105.5 and 105.6 herein;

105.6.5 Annual Reporting. Each Registered Marijuana Dispensary permitted under this Ordinance shall as a condition of its special permit file an annual report to and appear before the City Council and the City Clerk no later than January 31st, providing a copy of all current applicable state licenses for the Facility and/or its owners and demonstrate continued compliance with the conditions of the Special Permit.

105.6.6 A special permit granted under this Section shall have a term limited to the duration of the applicant's ownership of the premises as a Registered Marijuana Dispensary. A special permit may be transferred only with the approval of the City Council in the form of an amendment to the special permit with all information required in this Section 105.

105.6.7 The permit holder shall enter into a Host Community Agreement (HCA) with the City of Leominster. The HCA shall address any known and additional impact of the Registered Marijuana Dispensary on the City's public safety and infrastructure, and any other stipulations as deemed necessary by the Mayor of the City of Leominster, including a Community Impact Fee.

105.6.8 The City Council shall require the applicant to post a bond at the time of construction to cover costs for the removal of the Registered Marijuana Dispensary in the event the City must remove the facility. The value of the bond shall be based upon the ability to completely remove all the items noted in 105.7.2 and properly clean the facility at prevailing wages. The value of the bond shall be developed based upon the applicant providing the City Council with three (3) written bids to meet the noted requirements. An incentive factor of 1.5 shall be applied estimating costs associated with determining the appropriate value of all bonds necessary to ensure compliance and adequate funds for the City to remove the Registered Marijuana Dispensary.

105.7 *Abandonment or Discontinuance of Use*

105.7.1 A Special Permit shall lapse if not exercised within one year of issuance.

105.7.2 A Registered Marijuana Dispensary shall be required to remove all material, plants equipment and other paraphernalia:

- a) prior to surrendering its state issued licenses or permits; or
- b) within six months of ceasing operations; whichever comes first.

HEARING ADJOURNED AT 8:15 P.M.

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