

HEARING BEFORE THE CITY COUNCIL, OCTOBER 22, 2012

Hearing opened at 7:15 P.M. with Councillor Rowlands, Chair of the LEGAL AFFAIRS COMMITTEE, presiding.

All members were present.

Present at this hearing was Rick Healey, President of Foster Healey Real Estate and representing the owners of the property.

This hearing is continued from September 24, 2012.

The following PETITION was the subject of the hearing:

14-13 James J. Carnivale, Trustee Carnivale Realty Trust: Rezone Parcel 240-4 and 240-3 located at 404 Main Street from Residence B to Commercial.

Councillor Rowlands said he received recommendation from Christopher Noonan, the Temporary Director of Inspections to grant this petition. Councillor Rowlands said they received a map from Mr. Roseberry regarding the small sliver of parcel that is owned by the state.

Mr. Healey was asked to give an update of his meeting with the neighbors.

Mr. Healey said they sent out letters to the neighbors across the street. He said they spoke with four or five of the neighbors and had a meeting in his office which was attended by two of the neighbors. He said they expressed some concerns about traffic, the environmental protection of the wetlands and what impact it might have to property values. He said after the meeting, at Councillor Marchand's request, he sent an additional letter to the rest of the neighbors going all the way to Priest Street. He said he neglected to invite them to the meeting but informed them of the hearing this evening and also offered his phone number for any questions.

Mr. Healey said it is their opinion this is a uniquely situated property. The front of this property is Route 13 with a traffic count of 9,700 cars a day. The intersection 150 feet away from this property has a traffic count of 21,000 cars a day. He said this property is abutted by Route 2. The property goes down to Route 2 and is impacted by sight and sound where there are 50,000 cars a day. He said the adjacent land between the highway is owned by the Commonwealth of Massachusetts and is sloped very steeply and does not have any building potential. The adjacent land to the west is a pre-existing industrial use. The rear is zoned commercial and is wetland.

Mr. Healey said this property has been used for business purposes for at least the past twelve years. Not long ago there were fourteen real estate agents working there for Carnivale Real Estate. One of the concerns was additional traffic. He said the client that he represents to purchase the property is looking to construct 14 parking spaces along with a 2,500-3,000 square foot building. The business plan for Site Plan Review anticipates 25-35 visits a day. The business hours will be 9:30 A.M. to 5:30 P.M. and on occasion some nights until 8:00 P.M. He said it is not a high impact business and it is their opinion regardless of what use goes there, this site would not accommodate a drive thru or intensive development. Even our most ambitious projection of business, for the business that is planning on locating here, would add ½ or 1% of the current traffic count. He said they don't think that it will have a significant impact on the abutters. This site is a small footprint, buffered by non-residential uses and Site Plan Review will address traffic, value and location. We think it will benefit the City. Changing the zoning would be a significant investment on this site rather than retrofitting to form a residential structure. It will be an attractive improvement to the entrance of the City which is one of the most traffic impacted residentially zoned parcels in the City. He said the options for this site are limited to similar office space in the existing structure as it was constructed for residential purposes. The footprint constraint, the size of the lot and the wetlands really prevents intensive development here. They feel the change will benefit the City, the neighborhood and cannot create significant impact to the traffic conditions and will promote substantial investment on a uniquely located and impacted parcel.

Councillor Rowlands said there is a ruling from Kopelman & Paige on spot zoning and the answer was no. He said Councillor Nickel ask about a traffic report and have not received that information yet.

Councillor Rowlands said Councillor Marchand asked to take up the discussion of location at the President's Zoning Committee meeting. He said one of the discussions was what could be allowed there Business B use vs. Commercial use. The idea that a Business B use is more restrictive than a full fledged Commercial use. So, Business B is an option as retail is allowed in Business B.

Councillor Rowlands read an email from Roger Parmenter which is on file in the City Clerk's Office. He is a resident concerned with safety issues, big business not registering with the City Hall and commercial sprawl.

Councillor Chalifoux Zephir asked if he heard back from any of the neighbors between Priest and that area.

Mr. Healey said no he did not.

Councillor Marchand asked Mr. Healey if Business B would be an option.

Mr. Healey said it would appear to be an option.

Councillor Marchand asked if it was part of a compromise for the rezone would that be something you would be amendable to?

Mr. Healey said he can't speak for his client but he believes his client only cares if he can open a business there doing retail and it looks like Business B accommodates that.

Julie Munsternam of 1 Montana Court spoke in opposition.

HEARING BEFORE THE CITY COUNCIL, OCTOBER 22, 2012, continued

Councillor Freda asked Mr. Healey if he had a conversation with his client regarding losing his business and what possibly could go into this space.

Mr. Healey said he has substantial discussion with his client on this. He said if this property is not rezoned it will be no value to him. He said it is a very high traffic area with a small footprint where you cannot have substantial parking and parking or a drive-thru. He said they believe the worse case, with Site Plan Review, with value of the site, we don't have a whole lot of development in the City of Leominster that has this much traffic count that has negative development with Site Plan Review in the small footprint we have here.

Councillor Freda said to rezone, and to responsibly rezone that area without knowing what the possibilities are bothers her.

Mr. Healey said this property is zoned Residential and with 50,000 cars a day going by on Route 2 he would not anticipate there would be great deal of future investment as a residential property on this site.

Councillor Freda said it was a real estate office for many years with a lot of cars in and out of there. It's a site that has been used heavily but it keeps the neighborhood appearance.

Councillor Chalifoux Zephir said Route 2 is very close but there is the half acre next door to it that is the buffer between that property and the highway.

Mr. Healey said if you go on the site and look at the edge of the 404 Main Street property it's a buffer but not for the sound because it goes straight down to Route 2.

Councillor Rowlands said in Business B banks, retail, neighborhood retail stores and office displays are allowed, so Business B offers a slight difference to Commercial. Business B is more restrictive than Commercial.

Councillor Nickel said he walked to all the houses starting at the Mullahey's next to the cemetery walked all the way down, first and second floors, and including the three houses on Montana Court. He said there were some negative feelings about it, but the only person who got up to speak was Ms. Munsterman. He asked to extend the hearing for another two week period since the other letter went out to the residents.

Mr. Healey said they could do two weeks.

Councillor Marchand said his side of the street is in a good position right now. He doesn't have many folks affected by it like the other side of the street. He has no objections to closing the hearing but would consider leaving the hearing open to give a window of opportunity to the other side of the street.

Councillor Nickel would like to see the hearing continued due to some of the neighbors not knowing about the meeting.

Councillor Marchand suggested to Mr. Healey to entertain moving in the direction of Business B instead of Commercial.

Councillor Rowlands said it's not just you when rezoning property it's long after you're gone.

HEARING ADJOURNED AT 8:20 P.M. AND CONTINUED TO NOVEMBER 13, 2012 AT 6:15 P.M.

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

REGULAR MEETING OF THE CITY COUNCIL, OCTOBER 22, 2012

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

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

A recess was called at 7:34 to continue the public hearing and to hold a public forum.

The meeting reconvened at 8:22 P.M.

The following PETITION was received, referred to the LEGAL AFFAIRS COMMITTEE, given REGULAR COURSE and referred to the Temporary Director of Inspections and the Fire Department. A hearing was set for November 13, 2012 at 6:30 P.M. Vt. 9/0

22-13 David Tickle for CAMCO: Amend the storage license for storage of inflammable fluids for the property located at 163 Pioneer Drive.

REGULAR MEETING OF THE CITY COUNCIL, OCTOBER 22, 2012, continued

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

Stabilization Account	\$ 12,527,648.33
Emergency Reserved Account	\$ 77,000.00
Interest	\$ 13,240.40

Upon request of the FINANCE COMMITTEE the following COMMUNICATION was given FURTHER TIME. Vt. 9/0

C-15 Relative to determining the factor to be used in setting the Fiscal Year 2013 tax rate. (A hearing is set for November 26, 2012 at 6:45 P.M.)

Upon recommendation of the LEGAL AFFAIRS COMMITTEE the following COMMUNICATION was GRANTED. Vt. 9/0

C-16 Dean J. Mazarella, Mayor: Accept a donation of land located on Valley Street as shown on Assessors' Map 299 as Lot 113 from Benedetto R. Marchetti.

Upon request of the LEGAL AFFAIRS COMMITTEE the following PETITIONS were given FURTHER TIME. Vt. 9/0

3-13 David Rowlands: Amend Article VI, Section 2-25, Article VII Section 2-28, Article VIII, Section 2-28 and all similar sections in the city ordinances relative to Mayoral Appointments to add "Said term may be extended indefinitely by the mayor at his/her discretion without vote of the City Council"

9-13 John Scribner, Lisciotti Development: Accept the deed from Massapoag Development, LLC which grants to the City of Leominster land titled "Open Space Parcel D" containing approximately 4.96 acres as per condition 12 of the Planning Board Subdivision Approval.

14-13 James J. Carnival, Trustee Carnivale Realty Trust: Rezone Parcel 240-4 and 240-3 located at 404 Main Street from Residence B to Commercial.

17-13 Kenneth Vachon: Grant a Special Permit to expand the existing 9 holes golf course to 18 holes located at 449 Wachusett Street as shown on Assessor's Map 388, as Lot 1 and located in the Water Supply Protection District. (Hearing set for November 13, 2012 at 6:45 P.M.)

Upon recommendation of the LEGAL AFFAIRS COMMITTEE the following PETITION was given LEAVE TO WITHDRAW. Vt. 6/2, Councillors Marchand and Dombrowski opposed. Councillor Freda abstained due to a possible conflict of interest.

18-13 Michael D. Piermarini and Tammy H. Piermarini: Request the City Council to rescind/revoke Special Permit #2 of 2012 for Lot A-2 located on Elm Street and re-open the public hearing process.

Upon recommendation of the LEGAL AFFAIRS COMMITTEE the following PETITION was given LEAVE TO WITHDRAW. Vt. 8/0. Councillor Freda abstained due to a possible conflict of interest. A letter will be sent to the Temporary Director of Inspections asking to provide a list of any changes on the site of the Special Permit plans that were approved by the City Council. Also, if there is anything that is not in compliance with those plans he asked the Clerk to inform the recipient of the Special Permit by letter that he is not in compliance and he has to come back to either to correct those situations or has to apply for a new Special Permit to go through the process for an amendment which will include new hearings and pay the fee.

19-13 Manoel Loka Leite: Request the City Council to amend Special Permit #2 of 2012 to allow the installation of a well located on Lot A-2 Elm Street.

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

20-13 Thomas Hazzard for Vietnam Veterans of America Chapter 116: Consider moving 2 Parrott rifles from Evergreen Cemetery to Carter Park's Civil War Monument.

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

21-13 Richard M. Marchand on behalf of the Johnny Appleseed Festival Committee: Close off West Street from the intersection of Cottage Street to Main Street; close off Park Street at the intersection of Main Street; close off Church Street but maintain public safety access; allow the use of the City Hall Parking Lot; allow the use of the parking lot adjacent to City Hall on West Street; allow the use of the John Tata Auditorium in the City Hall; allow the use of the parking lot between the First Church Unitarian and the First Baptist Church to host the 20th year anniversary of the Annual Johnny Appleseed Arts and Cultural Festival on September 21, 2013 (rain date September 28, 2013) from 5:30 A.M. to 10:30 P.M.

REGULAR MEETING OF THE CITY COUNCIL, OCTOBER 22, 2012, continued

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

- C-19 Dean J. Mazzearella, Mayor: Request that James Imprescia be exempt from the provisions of M.G.L. Chapter 268A, (20B) Conflict of Interest as he is currently employed by the City of Leominster as the Plumbing and Gasfitter Inspector and will be taking a position setting up polling places for the City Clerk Elections and Registration Office.

Upon request of the WAYS & MEANS COMMITTEE the following COMMUNICATION was given FURTHER TIME. Vt. 9/0

- C-20 Dean J. Mazzearella, Mayor: Request the City Council pass a resolution to require the Council to follow the Rules of Procedures dated 2012 "Ways and Means and Post Audit Committee."
- C-21 Dean J. Mazzearella, Mayor; Request the City Council pass a resolution calling attention to Section 5.6 of the City Charter "Meetings with the City Council."

Upon request of the WAYS & MEANS COMMITTEE the following RESOLUTIONS were given FURTHER TIME. Vt. 9/0

RESOLUTION: Regarding Meeting With The Ways & Means Committee
(Communication C-20)

RESOLUTION: Regarding Meetings With The Council
(Communication C-21)

Under Old Business, Councillor Rowlands asked the Council President if he received answers to the questions directed to the Mayor and about coming down to answer them.

Council President said he has not.

The following ORDINANCE was read once, ADOPTED as presented and ordered published. A hearing was set for November 13, 2012 at 7:10 P.M. Vt. 9 "yeas"

1st Reading Ordinance - amending Chapter 13, Section 77 of the Revised Ordinances entitled "Stop Signs" by inserting "Lido Avenue against eastbound drivers at Seventh Street." (Legal Affairs - Petition 13-13)

Under New Business, Council President Dombrowski said it sounds like we will have to have a special meeting with the Mayor and Kopelman & Paige. He suggested to have it on an off night. He said he will contact Attorney Masur for a few dates.

The following Committee Meetings were established on November 7, 2012

Ways & Means Committee 6:30 P.M.
Legals Affairs 7:00 P.M.

Councillor Cormier said the Girl Scout Troup 37902 is doing a project on government and he and Donna Ciccone were asked to answer questions and speak to them about local government. Councillor Cormier extended an invitation to the troop to come down before the Council meeting to see the Council Chambers and watch how they Council operates and maybe lead them in the Pledge of Allegiance. Councillor Cormier will contact them with a date.

MEETING ADJOURNED AT 9:53 P.M.

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