

HEARING BEFORE THE CITY COUNCIL, DECEMBER 10, 2012

Hearing opened at 6:30 P.M. with Councillor Rowlands, Chair of the LEGAL AFFAIRS AND PRESIDENT'S ZONING COMMITTEE, presiding.

All members were present. Councillor Marchand arrived late.

This hearing is continued from September 10, 2012.

Present at the hearing were Stephen Mullaney and Mark Bodanza.

The following PETITION was the subject of the hearing:

C-68 (2011) Dean J. Mazzarella, Mayor: Adopt the proposed changes to the Leominster Zoning Ordinance.

Councillor Rowlands said this is the final draft. He said there was a tremendous amount of work done putting the map together which will be a major improvement.

A handout was distributed entitled "Leominster Zoning Ordinance Final Draft-October 29, 2012 Executive Summary" which was reviewed during the meeting and is on file in the City Clerk's office.

Mr. Mullaney said the document pages went from 200 pages to 137 pages. They did not sacrifice content but increased content. Much of the change is simplifying language as close as possible into the guidelines recommended by the Attorney General's office for zoning ordinances. He said there were over 1600 changes to the document. The committee met over the course of six months meeting once a week. A new draft was generated between each session and additional changes were worked on. It was a very open process with all publicly posted meetings of the committee. Members of the public contacted the Councillors on the committee. Some of the Councillors that were not on the committee came to the meetings, which was very helpful to the committee. Mr. Mullaney said they went line by line through the ordinance. He said one of the changes made to the document is to bring it into the modern age recognizing that society is moving towards electronic documents. This zoning ordinance has hyperlinks in it so that where there are references to state statutes or industry codes, you press the hyperlink within the document and it takes you to that website to make it as easy for a user to use as possible. It also makes it easier for city staff to be able to guide applicants or concerned neighbors when they are reviewing proposals.

Mr. Mullaney said there were 91 definitions that have been changed or added. MU1 and MU2 are now acronyms for Multi Use 1 and Multi Use 2 districts. The "Nonconforming Uses and Structures" subsection has been rewritten in its entirety as well as the "As-Of Right Change, Extension or Alteration" subsection.

Mr. Mullaney said the Planning Board is the Special Permit granting authority. The City Council is the authority pertaining to Adult Entertainment.

He said the Water Supply Protection District had some contradictions in it regarding impervious surface on a lot, parking, driveway grades, and snow storage. He said there was a Special Permit process introduced so that the Planning Board is able to put controls on it. He said the "Right to Farm" was deleted.

Mr. Mullaney said some of the changes to the map were Crawford and Hamilton Street to MU1; Castle, Cook, Lincoln and Marguerite Streets from Industrial to Residence A; Albert, Central and Marguerite Streets from Industrial to Commercial; Central/Willard Streets from Industrial and Commercial to MU1; Willard and Railroad Streets and Debbie Drive from Residence A to Industrial; Malburn Street and Malburn Terrace from Industrial to Residence A; Lancaster Street from Industrial to MU1; Johnson and Wheeler Streets from Business A to Commercial; Pond, Adams and Pleasant Streets from Village to Industrial and Residence C; Old Mill Road to the line from Industrial to MU1; New Lancaster Street, Walmart from Industrial to Commercial; the Transfer Station from Industrial to Commercial; Nashua/Lawrence Streets/Rte 2 from Industrial to MU1; Viscoloid/Dudley/Florence Streets from Residential B to Industrial; Green/Main/Mill Streets from Industrial to Business B; Summer/Prescott Streets from Industrial to Residence B or Business B (another look to be taken); Orchard Hill Park/existing retail from Industrial to MU2; Harvard/ESP Lock from Industrial to MU1.

Mr. Mullaney said there are 10 changes to the Hospital Overlay District. Within the Healthcare Overlay District the committee felt that the following may be appropriate; convenience store, music, martial arts, yoga, personal service, restaurant, retail store, but felt they should be done as a Special Permit which will give the opportunity for the neighbors to express their concerns and have any issues addressed through conditions on the Special Permit. Public and private library and museum has been added by the committee as allowed use in the Healthcare Overlay. Certain uses will be excluded unless the underlying use allows them. For example the area around the corner of Nelson Street and North Main Street where McDonalds is, is already zoned Commercial so they would be allowed to do all the usual commercial uses there but the remainder of the overlay district where the language was looking to accommodate more commercial uses, the committee felt that things like outdoor recreation, hotels, motor vehicles service stations, pet services, television or radio broadcasting and veterinary aren't necessary to meet the purposes of the overlay district and is proposing to prohibit them in those areas.

Phil Belk of 372 Hill Street said there is a business next door to him and there is vehicle pollution. He asked the committee to look into this.

Richard Comeau owns a six family on Merriam Avenue and has asked before to increase the boundary of the MWOD from Foster Court to Orchard Street. This would affect seven properties including his. At the time I spoke with you before you told me to go out and canvas some of the people and get letters. He said to this date he has three letters with signatures of landlords. As soon as he gets two more he will have five. He handed Councillor Rowlands three of them. He said everyone that he talked to was very interested in the changes and the opportunity to take advantage of the changes.

Councillor Rowlands said MWOD is the acronym for Merriam West Street Overlay District.

Kevin Fitzpatrick, 143 Merriam Avenue is not in favor of the overlay district going further than Foster Court. He said he resides at 143 Merriam Avenue as Mr. Comeau does not reside there. He feels that it is an encroachment to the neighborhood.

Paul Keating, 49 Cloverleaf Road said he is here to tonight to discuss one issue which is the surprising and disheartening inclusion of the word “quarry” in the definition section. He said that is done without mention anywhere else in the document. It is a little bit surprising because the first time he knew of this was being considered was when it was published on the website. Because it affects the production of stone products being sold into the construction industry he is a little bit disheartened. After an appeal on a case Leominster Materials vs. the City of Leominster the zoning was corrected in 2001 for the ability for them to clear their land. He said with the word “quarry” in the definition section there is no other reference in the document. This precludes them and other people in town, specifically the City of Leominster, from developing their properties. He asked that they work with the Planning Board to resolve this issue.

Councillor Rowlands said they will figure it out and will talk about it at the next committee meeting and hoped that Mr. Keating would be available to attend. He said he didn’t know anything about a “quarry” or its definition or impact or concern from zoning until about an hour before the meeting started. If someone had told me last week, last year or five years ago we would have addressed it. He said he will find out about what the details are.

Mr. Mullaney said back around June 6th there was a period in time when the committee was seeking to add definitions to the definitions section for any use that appeared in the use section that didn’t have a definition. At that juncture the term “quarry” appeared as a potential use in the use table. That is why the definition was added.

Councillor Rowlands said the zoning document that we received from VHB had in the Table of Uses the use of a “quarry”. He said any definitions, across the board, anything that is in the Table of Uses as a use we want to have a definition for that. So, if “quarry” was listed in the original VHB document that would have triggered them to make sure there was a definition that match.

Mr. Mullaney said that was correct. He said they sought out definitions from other Massachusetts communities. The source for “quarry” was the town of Lancaster.

Councillor Rowlands asked Mr. Keating if his concern was with the definition or what is highlighted in terms of the general use and the way it is specified or both.

Mr. Keating said it is the fact that you placed a definition but there is nothing in the Table of Uses anywhere for a quarry.

Councillor Rowlands said one of the action items they will take up is not only looking at this definition and other definitions of “quarry” in the state but they will look at adding an item in the Table of Uses relative to a “quarry”.

John Souza, Chairman of the Planning Board, said this was news to him. He said he will talk to the Planning Director and discuss it with her. He said he knew under Site Plan they could do certain things but he did not know there was a limitation on quarrying rock when you are trying to site. He wants to get it clarified.

Councillor Nickel said one evening they had Attorney Bodanza and Mr. Mullaney come down and speak about the Milton Street area off Mechanic Street changing it from Residence B to Commercial. He said he initially said he would go along with allowing a change to commercial but he would start walking the neighborhood and talking to the residents. He said his opinion was not set in stone. He said he has received negative comments from the people he talked with. He said anyone who lives in that area and has an active interest in it he strongly encourages them to come to the December 13th, 2012 meeting express to their feelings one way or another.

Councillor Chalifoux Zephir asked Mr. Mullaney regarding the Site Plan section, the change of use classification on a lot no longer serves as a trigger in the draft for Site Plan Review and now it is the parking spaces that will do that, correct?

Mr. Mullaney said that is correct.

Councillor Chalifoux Zephir asked about a change in use that doesn’t have a net change in the number of parking spaces could still be a significant change for a neighborhood?

Councillor Rowlands said first of all the use has to be allowed in that district. He said there was a trade off between like businesses.

Councillor Chalifoux Zephir said she understands that and it makes sense to have parking as a trigger but she also thinks a change in use could potentially cause problems for the neighborhood. It could be a noise issue, lighting or truck traffic.

Mr. Bodanza said the idea partially driven is economic. You want to encourage the adaptation of property, encourage the land owner to have a reasonable use of the property. On a very small business a Site Plan Approval can be a tremendous expense that really could squelch any potential redevelopment of the property or adaptive use. He said we wanted to balance that with a relatively low threshold on the triggering of Site Plan Approval via parking. He said it is a balance. The idea behind it was to allow those small businesses to get their start without spending prohibitive amount of money. Remember the underlying use is already permitted.

Mr. Mullaney said the compliance with the DEP Noise Policy which puts severe restrictions on noise particularly during overnight hours even as late in the morning as 7:00 A.M. The noise of a snowblower on a property crossing a property line before 7:00 A.M. is prohibited under the DEP Noise Policy.

HEARING ADJOURNED AT 7:17 P.M. AND CONTINUED TO JANUARY 14, 2013 AT 6:30 P.M.

REGULAR MEETING OF THE CITY COUNCIL DECEMBER 10, 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 7:33 P.M. to continue the public hearing and to hold a public forum.

The meeting reconvened at 8:38 P.M.

The following COMMUNICATION was received with an EMERGENCY PREAMBLE and referred to the FINANCE COMMITTEE. Vt. 8 'yeas' and 1 "nay", Councillor Dombrowski opposed. Upon recommendation of the FINANCE COMMITTEE, the following COMMUNICATION was GRANTED and ORDERED. Vt. 9 "yeas"

C-25 Relative to the appropriation of \$40,000.00 to the Highway Capital Outlay Expense Account; same to be transferred from the Excess and Deficiency Account.

ORDERED: - that the sum of Forty Thousand Dollars (\$40,000.00) be appropriated to the Highway Capital Outlay Expense Account; same to be transferred from the Excess and Deficiency Account.

The following COMMUNICATIONS were received with EMERGENCY PREAMBLES and referred to the FINANCE COMMITTEE. Vt. 9 "yeas". Upon recommendation of the FINANCE COMMITTEE, the following COMMUNICATIONS were GRANTED and ORDERED. Vt. 9 "yeas"

C-26 Relative to the appropriation of \$130,000.00 to the Fiscal Year 2013 Revenue; same to be transferred from the Excess and Deficiency Account.

ORDERED: - that the sum of One Hundred Thirty Thousand Dollars (\$130,000.00) be appropriated to the Fiscal Year 2013 Revenue Account; same to be transferred from the Excess and Deficiency Account.

C-27 Relative to the appropriation of \$575,000.00 to the Debt Service Principal Expense Account; same to be raised by Fiscal Year 2013 Revenue.

ORDERED: - that the sum of Five Hundred Seventy Five Thousand Dollars (\$575,000.00) be appropriated to the Debt Service Principal Expense Account; same to be raised by FY 2013 Revenue.

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

C-28 Relative to the appropriation of \$28,000.00 to the Water Department Regular Labor Account; same to be transferred from the Water Support Service Collective Bargaining Account.

C-29 Relative to the appropriation of \$500,000.00 to the Water Department Capital Outlay Expense Account; same to be transferred from the Excess and Deficiency Account.

C-30 Relative to the appropriation of \$13,000.00 to the Water Department Regular Labor Account; same to be transferred from the Excess and Deficiency Account.

C-31 Relative to the appropriation of \$7,000.00 to the Wastewater Department Regular Labor Account; same to be transferred from the Excess and Deficiency Account.

C-32 Relative to the appropriation of \$14,000.00 to the Wastewater Department Regular Labor Account; same to be transferred from the Wastewater Support Services Collective Bargaining Account.

C-33 Relative to the appropriation of \$75,000.00 to the Fire Department Overtime Account; same to be transferred from the Excess and Deficiency Account.

C-34 Relative to the appropriation of \$10,949.00 to the Police Department Expense Account; same to be transferred from the Excess and Deficiency Account.

C-35 Relative to the appropriation of \$9,000.00 to the Police Department Salary and Wages Account; same to be transferred from the Prior Year Police Salary & Wages Account.

C-36 Relative to the appropriation of \$19,000.00 to the Police Department Salary and Wages Account; same to be transferred from the Collective Bargaining Account.

C-37 Relative to the appropriation of \$75,000.00 to the Police Department Overtime Account; same to be transferred from the Excess and Deficiency Account.

C-38 Relative to the appropriation of \$24,800.00 to the Highway Capital Outlay Expense Account; same to be transferred from the Excess and Deficiency Account.

C-39 Relative to the appropriation of \$20,500.00 to the follow accounts; \$13,500.00 to the Highway Regular Labor Account, \$4,000.00 to the Forestry Salary & Wages Account, \$3,000.00 to the Cemetery Salary & Wages Account; same to be transferred from the Excess and Deficiency Account.

REGULAR MEETING OF THE CITY COUNCIL, DECEMBER 10, 2012, continued

- C-40 Relative to the appropriation of \$46,500.00 to the following accounts: \$31,500.00 to the Highway Regular Labor Account, \$8,000.00 to the Forestry Salary & Wages Account, \$7,000.00 to the Cemetery Salary & Wages Account; same to be transferred from the Collective Bargaining Expense Account.
- C-41 Relative to the appropriation of \$12,000.00 to the Sidewalk & Curbing Expense Account; same to be transferred from the Excess and Deficiency Account.
- C-42 Relative to the appropriation of \$62,000.00 to the Sanitation and Drainage Expense Account; same to be transferred from the Emergency Reserve Account.
- C-43 Relative to the appropriation of \$4,000.00 to the Forestry Expense Account; same to be transferred from the Excess and Deficiency Account.
- C-44 Relative to the appropriation of \$5,000.00 to the Emergency Management Agency Expense Account; same to be transferred from the Excess and Deficiency Account.
- C-45 Relative to the appropriation of \$464,644.00 to the School Transportation Expense Account; same to be transferred from the Excess and Deficiency Account.

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

- C-46 Dean J. Mazzearella, Mayor: Amend Section 16-30 of Revised Ordinances entitled "Compensation Grades" by deleting Schedule "W" in its entirety and inserting in its place a new Schedule "W" (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7) by 0% effective 7/1/2009, 0% effective 7/1/2010, 2% effective 7/1/2011, 2% effective 7/1/2012, 1% effective 1/1/2013, 3% effective 7/1/2013, 3% effective 7/1/2014.
- C-47 Dean J. Mazzearella, Mayor: Amend Section 16-30 of the Revised Ordinances entitled "Compensation Grades" by adding Schedule (d) Pay For Dispatchers with effective dates of July 1, 2009, July 1, 2010, July 1, 2011, July 1, 2012, July 1, 2013 and July 1, 2014.

The following PETITION was received, referred to the PUBLIC SERVICE COMMITTEE, given REGULAR COURSE and referred to the Department of Public Works and the Wire Inspector. A hearing was set for January 14, 2013 at 6:25 P.M. Vt. 9/0

- 30-13 National Grid: West Street – Install a singly owned pole beginning at a point approximately 120 feet northwest of the centerline of the intersection of Orchard Street.

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

Leominster Fire Department – Roger LaPointe – Permanent Lieutenant

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

Stabilization Account	\$12,527,648.00
Free Cash	\$ 6,467,484.00

Upon recommendation of the FINANCE COMMITTEE the following COMMUNICATION was RATIFIED. Vt. 9/0

- C-23 Relative to the appropriation of \$661,000.00 to the Prior Year Snow and Ice Expense Account; same to be raised by Fiscal Year 2013 Revenue. (Granted with an Emergency Preamble on November 26, 2012; another vote is required.)

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

- C-24 Relative to the appropriation of \$15,000.00 to the Highway Overtime Account; same to be transferred from the Emergency Reserve Account.

ORDERED: - that the sum of Fifteen Thousand Dollars (\$15,000.00) be appropriated to the Highway Overtime Account; same to be transferred from the Emergency Reserve Account.

REGULAR MEETING OF THE CITY COUNCIL DECEMBER 10, 2012, continued

Upon recommendation of the LEGAL AFFAIRS COMMITTEE, the following PETITION was GRANTED. Vt. 8/1, Councillor Freda opposed.

29-13 Dennis C. Hillman and David R. Cormier: Amend the City Ordinance sewer rate schedule to include an abatement for filling swimming pools.

A letter was read from the Water Department's Business Manager Roger Brooks which is on file in the City Clerk's office.

Upon request of the LEGAL AFFAIRS and THE PRESIDENT'S ZONING COMMITTEE, the following COMMUNICATION was given FURTHER TIME. Vt. 9/0. The hearing is continued to January 14, 2013 at 6:30 P.M.

C-68 (2011) Dean J. Mazarella, Mayor: Adopt the proposed changes to the Leominster Zoning Ordinance.

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

27-13 David Rowlands: Request the City Council utilize the powers vested in them per Section 5.1 of the Leominster Home Rule Charter to reorganize the Personnel and Labor Services.

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

Board of Assessors – Walter Poirier – Chief Assessor - term to expire April 15, 2013

Board of Assessors – Christopher Paquette – term to expire April 15, 2015

Planning Board - John J. Souza – term to expire April 15, 2015

Treasurer/Collector– David Laplante – term to expire April 15, 2015

Under Old Business, Councillor Rowlands said regarding Special Permit #2 to Manoel Loka Leite for the property located at 909 Elm Street, he ran into the attorney representing this client at the Planning Board meeting the other night. He asked the attorney what was going on and he said he was working with the engineer to get a comprehensive list and drawings for the site so that they could do all the changes in one shot. He said he relayed the importance of communicating with the Council. The attorney assured Councillor Rowlands that they were not ignoring this. Councillor Rowlands said he was told by the Building Department that a Certificate of Occupancy would not be issued until the matter is resolved by the City Council. No other communication has been received through the City Clerk's office.

On behalf of the City Council, Council President Dombrowski was awarded a plaque and gavel for his service for the past two years.

MEETING ADJOURNED AT 9:35 P.M.

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