

HEARING BEFORE THE CITY COUNCIL, AUGUST 24, 2015

Hearing opened at 6:40 P.M. with Councillor Nickel, Chair of the PUBLIC SERVICE COMMITTEE, presiding.

All members were present.

The following PETITION was the subject of the hearing:

4-16 National Grid and Verizon New England, Inc.: Elm Street-Install 1 jointly owned pole beginning at a point approximately 300 feet Southwest of the centerline of the intersection of Biscuit Hill Drive. National Grid to install one service Pole 29-1 at side of road to service new home at 243 Elm Street.

Ken Dobie of National Grid said it is a new pole to service a new home that awaits the pole for the service.

No one in the audience spoke against the petition.

No Councillors spoke.

HEARING ADJOURNED AT 6:42 P.M.

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

HEARING BEFORE THE CITY COUNCIL, AUGUST 24, 2015

Hearing opened at 6:45 P.M. with Councillor Dombrowski, Chair of the LEGAL AFFAIRS COMMITTEE, presiding.

This hearing was continued from July 13, 2015.

All members were present.

Present were Patrick McCarty of McCarty Engineering.

The following PETITION was the subject of the hearing:

57-15 James J. Carnivale, Karen L. Carnivale and Jeffrey T. Duval: Modify the Zoning map by changing the district designation from Residential to Commercial for land owned by the petitioners as shown on the Assessors Map 239, Lots 5 and 8, and Map 240, Lots 3 and 4.

Mr. McCarty, on behalf of the petitioners, requested the Councillors vote to change the zoning on four parcels of land owned by the petitioners and one owned by the Commonwealth from Residence B to Commercial. The property is located on Main Street just south of the Route 2 overpass. He said both properties have been in the applicants hands for a number of years. The Duval property since 1950, and the Carnivale property since 1990's. The Duval family operates their business there which is a fourth generation business and the plan is to continue to do so. There are no immediate plans for them to move on or change locations, their plan is to stay right there in operation throughout Jeff's career. He said there is a vacant lot that had a multi family house on it which has been raised. The parcel closest to Route 2 is the Carnivale Real Estate property that has been a real estate office for a number of years. We have two non-conforming uses right now and changing to commercial would greatly improve the Carnivale piece because it would go from non-conforming to conforming. There is some debate to the benefit of changing the Duval parcel. It would change from non-conforming to requiring a Special Permit from the Planning Board and Site Plan Approval if there were any alterations proposed to the building. If it was to stay as is it would simply be a continuation of a pre-existing non-conforming use.

Mr. McCarty said E.T. Duval plans on staying. They don't plan on going anywhere. They have a nice successful local family run business that is going to stay in that location. The E. T. Duval business occupies 2.75 acres of the area in discussion. If there were any development to occur that development would trigger Site Plan Approval and that applicant, at that time, will be required to prepare detailed site plans that would be submitted to the Planning Board for Site Plan Approval and would go through the regular department head review process, Police, Fire, DPW, Board of Health, Conservation and Building Inspector. All the department heads would have the opportunity to weigh in and make sure a responsible design was put forth at that time that conforms to the regulations of the City. That being said, there are no plans right now, nobody waiting in the wings. This is not a plan to hurry up and change so we can bring in some developer that is waiting in the wings, there is nothing. It is simply the two land owners that are trying to look forward and be responsible on the planning of their property so that they can at some point in the future realize the highest and the best use of that land.

Mr. McCarty said the vacant lot and the Carnivale parcel are just shy of an acre and the remaining three quarters of an acre, that we are requesting to be rezoned, is actually quite a bit different in elevation. It is down at the elevation of Route 2 and it is the swamp land that you can see on your right hand side as you are traveling eastbound on Route 2. So roughly we have about an acre of developable land because the Duval business is staying. An acre will support a 8,000-10,000 square foot building. There was a question of traffic and 8,000 -10,000 square foot building is not a huge traffic generator. A comparable building would be Ramsey Rehab that was built down at Searstown which is a 7,000 square foot building. ElderCare is about a 12,000 square foot building so that gives you a perspective on the size of the building that can fit there. We are not trying to put a Best Buy or Target or massive traffic generator on this site. The hope would be some kind of medical or professional building.

HEARING BEFORE THE CITY COUNCIL, AUGUST 24, 2015, continued

Relative to the abutters, we reached out to the direct abutters to the site but we haven't set up a neighborhood meeting. This is really the form for those meetings to occur. It's public, it's recorded, people are taking minutes and it is video taped and whatever I say is being said into the microphone and the people at home are watching it. In an outside meeting there can be a lot of different sides to the same story and I prefer to always do it in a public forum. He said we did take the advice of the Council and reached out to the direct abutters.

He said this was referred to the Planning Board and the Planning Board did review it and voted unanimously to support it. The Building Inspector was in support and a letter from the Mayor is in support. Route 13 is a main thoroughfare out of the City which is where you would want to see commercial development. We wouldn't want to propose this in a small residential neighborhood, we would want it on these main thoroughfares especially immediately adjacent to the interstate.

Mr. McCarty said, lastly, the applicant wants to be afforded the opportunity to use their land to the highest and best potential.

Over the last two weeks Mr. Duval has gone to visit some of his abutters and he has letters signed by Joseph Clermont of 373 Main Street, Scott Borden, Cindy Borden and Sheila M. Corkum of 364 Main Street and Aaron Tremblay of 372 Main Street stating they do not oppose the rezoning of the E.T. Duval & Sons property from Residential to Commercial. Letters are on file in the City Clerk's Office.

Councillor Freda asked Mr. McCarty if he had any comments from abutters on Allen Street.

Mr. McCarty said no, but there was one abutter that came and spoke at the first meeting.

Councillor Freda asked if there was a proposed buffer.

Mr. McCarty said the Duval business has been there and is going to stay. So as far as Allen Street and any abutters to the south, nothing is going to change in the way it is today.

Councillor Bodanza said he was confused by the term immediate abutters, what does that mean?

Mr. McCarty said direct abutter, common boundary.

Councillor Bodanza asked if he included the people on the opposite side of the street.

Mr. McCarty said yes.

Councillor Bodanza asked how many immediate abutters are there.

Mr. McCarty said nine immediate abutters.

Councillor Bodanza asked if he contacted to all of them.

Mr. McCarty said he tried to go to some of them but some were not home and not available.

Councillor Bodanza said he is confused as to why the Duval parcel is part of this.

Mr. McCarty said the Duval's have daughters who are not interested in continuing the sheet metal business and line of work that that Jeff and his father and grandfather have. At some point in the future, Jeff will look to retire and his girls are leaning towards the medical field. It would be nice to see a small medical building on his land as a good reuse continued family business, not the same business, but a family business. If he wanted to do any expansion now he would be expanding of a non-conforming use where as if this was changed to commercial and wanted expansion he would be afforded the Site Plan Approval review process and a Special Permit from the Planning Board.

Councillor Bodanza said what Mr. Duval is saying, in regards to his property, is that he is looking to use the land in the highest and best use of the property in the future which is commercial, correct?

Mr. McCarty said yes.

Councillor Bodanza asked as we sit here today there is no concerted effort to put these properties together as a single property?

Mr. McCarty said no.

Councillor Lanciani said he went to the property to get a closer look. The area that abuts Allen Street is a small area. He said there was an abandoned home beyond the edge of the roadway. He said it is a good thought to do something there and if they stay within their boundaries he doesn't have a problem with that.

Councillor Salvatelli asked Mr. McCarty if he was in charge when someone came in two years ago looking for changes. He said they came in with a proposal for changes and this Council obviously had problems with it because they withdrew the petition. What is the difference between the two?

Mr. McCarty said he was not involved.

Councillor Marchand said it was Rick Healey from Foster Healey who represented the Carnivale family. They came in with a proposal to change to Commercial property and did not disclosed who the potential tenant was and it and it fell short. He said it was only one site and not the Duval property.

Mr. McCarty said that is correct. He said they had somebody waiting in the wings that didn't want to disclose and believed it was because he was leaving his work to start a competitive business.

HEARING BEFORE THE CITY COUNCIL, AUGUST 24, 2015, continued

Councillor Salvatelli asked what parcel he was trying to get changed at that time.

Councillor Marchand said the first one after the bridge.

Councillor Marchand asked if that was an acre parcel.

Mr. McCarty said the Carnivale property is shy of an acre and some of that is down below at the elevation of Route 2. He said from an Engineering perspective this is actually an improvement over that because if you just wanted to develop that, and someone was to hire him to do the plan for that one parcel, that puts the entrance that much closer to the set of lights with everything else, if they were to include the vacant lot then you could actually come up with a better site plan design than you could looking at that one parcel that you are speaking to years ago.

Councillor Feckley asked Mr. McCarty to show on the map where the direct abutters are that signed letters.

Councillor Feckley asked if there is a big box planning on going in there.

Mr. McCarty said no, it physically doesn't fit. You look at Lowe's they need 13 acres, and we are only 4 acres here and an acre is down in the swamp. Even Best Buy needs 5 acres, so it's not conceivable you would see a big box development.

Councillor Freda asked Mr. McCarty to point out what house Susan Chalifoux Zephir owned.

Mr. McCarty said it was not showing on the map because it was on the opposite corner of Priest Street. If you are heading south into town and you turn right on Priest Street it is immediately on your left.

Councillor Freda said the people that are in support are the people that are direct abutters.

Mr. McCarty said yes, in between the subject property and the Chalifoux Zephir property.

Councillor Salvatelli said he asked that the Building Inspector and the Chairman of the Planning Board to give us the rationale why they approve the recommendation, particularly after two years ago.

Building Inspector Peter Niall and Planning Board Chairman John Souza joined the hearing.

Councillor Dombrowski told Mr. Niall and Mr. Souza the reason they were called down was because they sent favorable recommendations for this petition and some of the Council members, particularly Councillor Salvatelli, are looking for clarification on why you are coming down with that particular decision.

Mr. Niall said it wasn't a decision it was an opinion and if you look on the map the whole area behind it is commercial, so it is not spot zoning it is just extending the commercial zone further. He said it's not in an area where a normal person would want to build a new home right next to Route 2 and at the lights. For the property owners it would probably increase the usability of their property. You are just continuing the Commercial Zone further and it's a commercial looking area. He said he looks at it that it makes more sense for it to be commercial than residential.

Mr. Souza said when the Planning Board looked at this we are always looking for the City to grow and we spent a lot of time. We went through a rezoning recently and primarily that was to look at the best use. We did overlay districts on West Street, Merriam Avenue and Mechanic Street, etc. because we know in doing that the City is going to grow. At the same time we see growth coming and this is a logical area. It's not spot zoning because it is a continuation of the commercial area. We knew the controls that we have through the Planning Board and the site planning process that we have that we could mitigate pretty much everything that could happen. We could protect the people with buffers and in a number of other ways to protect the people in the neighborhood and at the same time come up with the most beneficial for the City and the people who own the property so their property would get the best use. Again, like Mr. Niall said it's not going to be residential so we know something else is going to be there and by going to commercial it really doesn't change anything for Duval because if they were going to change that from Business B they would have to come in for a Special Permit. So to them it doesn't make any difference whatsoever. If we did just one lot it becomes suspect to the State zoning as far as spot zoning. When you try to do something you try to encompass a bigger area, try to shoot for an area of 4 acres so you see growth. We saw this as a logical area for growth and not for a particularly terrible area because of the restriction of the size of the land and didn't see there was much problem with traffic. That would be looked at and controlled and a traffic study would be required on any Site Plan. For those reasons the Planning Board looked at it for regular growth of the City it made sense to move forward.

Councillor Salvatelli said you have lived in North Leominster all your life and you weren't concerned about traffic?

Mr. Souza said 42 years, the size of the building doesn't warrant concern. It wouldn't be that much. The heavy traffic there is not on that side of the bridge. The heavy traffic is over on the other side of the bridge down lower.

Councillor Salvatelli asked you don't think that intersection is bad?

Mr. Souza said there would be an impact but the impact doesn't preclude us from doing something there and we feel the impact could be taken care of.

Councillor Salvatelli asked Mr. Souza what the vote was for the positive recommendation.

Mr. Souza said it was unanimous.

Councillor Dombrowski said to Mr. McCarty you indicated that the Duval parcel was not going to change in the immediate future and that the Carnivale and Duval parcels could only support an 8,000 to 10,000 square foot building.

Mr. McCarty said leaving the Duval building as is and in operation, yes.

HEARING BEFORE THE CITY COUNCIL, AUGUST 24, 2015, continued

Councillor Dombrowski asked if the Duval building wasn't left as is and truly combined, what size building?

Mr. McCarty said because of the geometry of the lot the building itself wouldn't get that much bigger assuming it is positioned in the front field area, you probably would have a little more parking that would support a second story but that would be more of a professional office building.

Councillor Dombrowski asked what the largest possible size building that this total parcels (all four parcels) could support?

Mr. McCarty said an ideal situation you could get 8,000 square feet an acre. By the time you put the building in, the parking, storm water controls and major landscape buffers that is really where you are at. So if he have just about 4 acres then you'd be 30,000 square feet without taking the special considerations of this site being the geometry and the slope that drops down to the swamp and setbacks. From the traffic perspective, if you took the traffic for that building and compared it to the 10 plus thousand cars that are on Route 13 you're probably less than 2% of impact to the daily traffic at the peak hours and probably your average daily. You are not going to generate a 1,000 trips a day against the 10,000 plus that are there.

Councillor Freda said the Carnivale family had a very lucrative real estate business there for many years and there was a lot of traffic in and out. It was a very active office. She said she didn't think the traffic is the biggest issue.

Robert Alario, representing his daughter whose property immediately abuts this property and said they are in favor of this change. It seems to be the right and logical choice.

Wendy Latino of 21 Allen Street said at this point she can't say that she is for or against it. She said her and the neighbors are concerned with the traffic coming in and out at the intersection. If a professional building for medical would be okay. She is afraid of the unknown.

Robert Macphail of 95 Allen Street said his biggest concern he has is the uncertainty of it. Duval has been a great neighbor and does great sheet metal work. The problem is when you start looking at that property whether you are putting a house on it or another commercial piece of property the shape of that property is going to have dramatic impact on the neighborhood.

Jeff Duval, owner of E.T. Duval and Sons and said he is trying to look forward for the future for his daughters. He has been in business for over 82 years. He is the 4th generation and is looking towards the 5th generation earning a living on the land. He is not looking to put anything there in the near future. He is only 45 years old and his oldest is a senior. He said he is looking ahead. He is just looking ahead to have the land provide for the Duval family.

Karen Carnivale, owner of Karen Carnival Real Estate, and has been doing business there since 1990. She said they had quite a bit of traffic there when real estate was going crazy. She had 12 people working for her and traffic was going in and out all the time and never had a problem. She believes the best use would be commercial zoning.

Councillor Dombrowski read letters from the Director of Inspections, the Zoning Board of Appeals, the Conservation Commission and the Mayor which are on file in the City Clerk's office.

Councillor Dombrowski read a letter from Susan Chalifoux Zephir dated August 23, 2015 as follows:

Dear Lynn,

I have written a letter to Councilor Dombrowski (below) re: 57-15 that I would like read into the public record at the public hearing on the petition on Monday, August 24th. I will not be able to attend the meeting but want my opposition to the zoning change included in the public record. I am copying the City Council on this message but want to ensure they all get a paper copy. Thank you.

Dear Councilor Dombrowski,

I am writing to express my concern and opposition to Petition 57-15 which asks for a zoning change from residential to commercial for parcels along Main St. in Leominster. As a homeowner in the area I believe this change to commercial would be harmful to and inconsistent with the existing, surrounding residential area.

The area north of the bridge over Route 2 has a mix of commercial entities. However, south of the bridge, where the change to commercial is being sought, the area is residential.

The petitioners' are asking for rezoning of 4.5 acres. This is a very large tract of land that not only abuts homes on Main Street but also abuts and impacts residents along Allen St. The area experiences a significant volume of traffic every day and a change to an unspecified and unknown commercial use would only exacerbate the existing traffic problem.

While the petitioners have not specified a particular use should the land be changed to commercial there are any number of uses allowed in commercial zones that would have a negative effect on the neighborhood. Commercial uses include but are not limited to big box retail, banks, convenience stores, retail stores, hotel, motel, restaurant, etc. More traffic, significant noise, spillover from commercial lighting and other nuisances that are part of commercial development would directly impact this *residential* neighborhood.

As a homeowner and taxpayer I strongly urge you to deny Petition 57-15. There is not a compelling argument for this zoning change and numerous potential negative impacts on the existing neighborhood should the change be approved.

Thank you very much.
Sincerely,
Susan Chalifoux Zephir

HEARING ADJOURNED AT 7:38 P.M.

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

HEARING BEFORE THE CITY COUNCIL, AUGUST 24, 2015

Hearing opened at 7:39 P.M. with Councillor Dombrowski, Chair of the LEGAL AFFAIRS COMMITTEE, presiding.

All members were present.

Present at the hearing was Peter Niall, Inspector of Buildings and John Souza, Planning Board Chairman.

The following PETITION was the subject of the hearing:

1-16 John Souza, Patrick Perla, Salvatore Ciccone, Fred Fredricks, Thomas Carignan: Remove the word “vacant” from Article I, Section 22-10.1.1 of the Leominster Zoning Ordinance so that Leominster’s Ordinance conforms with the State’s definition of a “single lot exemption” in M.G.L. Chapter 40A, Section 6.

Mr. Niall said in the Zoning Ordinance 10.1.1 says “In the case of a nonconforming lot no adjoining vacant lot is in the same ownership.” He said what they are talking about is when somebody has two lots that touch each other, according to the State if they are undersized they automatically join as one and you cannot separate them again. When this was written somebody may have accidentally or on purpose put in the word “vacant” lot and it causes confusion because if you own a house on a lot and you own an empty lot next door people are coming into his office saying they have a right to build on the empty lot because it doesn’t touch a vacant lot. The State zoning doesn’t exempt a lot that has a house on it, it just says parcels of land. So, it doesn’t have to be an empty parcel. If you have two parcels of land and one has a house and one doesn’t they join and cannot be separated again. In our zoning there is another section where it agrees with the State.

Mrs. Souza said we agreed with that. He said there are a lot of odd sized lots in the City and once they come under a single ownership they become one. Some people come in for an ANR later on where they want to divide it out then it’s a non-conforming lot or a lot you just can’t do it or you can’t build on it. We found there has been confusion where some of these people have come in for lots and they go to the Building Inspector and they want to divide this out and the Inspector turns them down then they go to the Zoning Board of Appeals. We have had some cases where the Zoning Board of Appeals has approved it and have no authority to approve it because it doesn’t meet the zoning for the City or the State. We have had some problems and by taking the word “vacant” out it should clarify it.

Councillor Bodanza asked if this was regarding a West Street property.

Mr. Niall said this is something that been going on and has nothing to do with any particular property.

Councillor Bodanza asked if that is where it happened.

Mr. Niall said this is one of the cases that it has happened. It came before me, we denied it, they appealed to the Zoning Board of Appeals. Something went wrong at the meeting. Once it leaves us it is out of our hands.

Councillor Bodanza asked if this petition has come down before them before.

Mr. Niall said according to the City Ordinances if he wants to change zoning he is suppose to present it to the Planning Board and then they present it to the City Council. He said he did send this in before but somehow it got combined with another article and did not get acted on it.

Councillor Bodanza said his recollection of it was granted.

Councillor Marchand said you sent in two on the same petition.

Mr. Niall said he did not send in two.

Councillor Marchand said we had a request for two different concepts in one petition and they were really separate issues so that is where the confusion was at that point. So you went back to the drawing board and you submitted this.

Councillor Bodanza said he recollects added language to the petition that came down to comply with the State regulations.

Councillor Marchand asked if this is targeted for a homeowner that happens to have a parcel of land and it abuts the parcel, so they picked up a second lot or a second lot involved, and they want to develop it but it is non-conforming and if it is a non-conforming lot in order for them to get a Building Permit on it they would have to go to the ZBA and demonstrate a hardship?

Mr. Niall said according to the State if you own a house and if you either already own or you buy an undersized lot that touches your property they automatically combine and there is no relief for that.

Councillor Marchand asked if they get two tax bills or one.

Mr. Niall said a lot of people get two tax bills.

Councillor Marchand said so I want to build a house for my daughter here but they can’t because it’s one parcel.

Mr. Niall said yes.

Councillor Bodanza said we have no control because it is a State statute. Even putting the two lots in separate spouse names doesn’t work.

Councillor Lanciani said he is looking at a letter from Attorney Riley from Kopelman & Paige and the last paragraph says “this amendment would extend the merger doctrine to apply to any adjoining lots, not just vacant ones. While the current ordinance provision is legal, the amendment would make Section 22-10.1.1 consistent with Chapter 40A regarding the protected status afforded to pre-existing nonconforming lots.

HEARING BEFORE THE CITY COUNCIL, AUGUST 24, 2015, continued

Councillor Nickel said let's say you own a piece of property on West Street and you have a piece of land beside you that you now have had the opportunity to buy then that means you could do a number of things. Essentially you could have a business on the side of your house, you could have a farmstand and you could be selling stuff, plants, corn etc. out of your house beside your property.

Councillor Bodanza said it doesn't matter whether you own the abutting lot or not you still are subject to approval. It makes no difference. If you owned a parcel A and parcel B, side by each, the zoning law applies to your respective use of the vacant parcel. If you buy only the vacant parcel and you don't own an abutting parcel you're subject to the same. It doesn't make a difference.

Councillor Nickel said so the zoning doesn't allow you to.

Councillor Bodanza said there are certain things you can do depending on what zone you are in and what you want to do. Whether you own the abutting parcel or you don't you are still subject to the same regulations. This is saying you've got to use all the land you have to minimize the non-conforming.

No one in the audience spoke in favor or in opposition of this petition.

Letters from Attorney Brian Riley of Kopelman & Paige, the Zoning Board of Appeals and Inspector of Buildings were read and are on file in the City Clerk's office.

HEARING ADJOURNED AT 7:56 P.M.

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

REGULAR MEETING OF THE CITY COUNCIL, AUGUST 24, 2015

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 10, 2015 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, to hold a public forum and to interview the Planning Board appointee.

The meeting was reconvened at 8:04 P.M.

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

- C-7 Relative to the appropriation of \$125,000.00 to the Fire Department Capital Outlay Expense Account; same to be transferred from the Stabilization Fund.
- C-8 Relative to the appropriation of \$40,000.00 to the Library Expense Account; same to be transferred from the Library State Aid Reserved for Appropriation Account.
- C-9 Relative to the appropriation of \$13,000.00 to the Police Department Expense Account; same to be transferred from the Stabilization Fund.
- C-10 Relative to the appropriation of \$395,000.00 to the Wire Department Capital Outlay Expense Account; same to be transferred from the Stabilization Fund.

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

- 3-16 Lynn A. Bouchard: Authorize the use of the ImageCast Precinct Tabulator which is distributed by LHS Associates of Salem, NH beginning with the November 3, 2015 Municipal Election and discontinue the use of Accu-Vote ES-2000 Optical Scan Vote Tabulating Equipment.

Upon recommendation of the PUBLIC SERVICE COMMITTEE, the following PETITION was GRANTED. Vt. 8/0, Councillor Cormier abstained due to a possible conflict of interest.

- 4-16 National Grid and Verizon New England, Inc.: Elm Street-Install 1 jointly owned pole beginning at a point approximately 300 feet Southwest of the centerline of the intersection of Biscuit Hill Drive. National Grid to install one service Pole 29-1 at side of road to service new home at 243 Elm Street.

REGULAR MEETING OF THE CITY COUNCIL, AUGUST 24, 2015, continued

Upon recommendation of the PUBLIC SERVICE COMMITTEE, the following PETITION was GRANTED. Vt. 9/0

- 5-16 Wayne Nickel: Place “no parking” signs on the south side of Central Place for a distance of approximately 146 feet in a northerly direction from its terminus with Central Street.

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

- C-4 Dean J. Mazarella, Mayor: Consider acquiring, by eminent domain, permanent and temporary easements on certain properties located on or near Mechanic Street in connection with the Mechanic Street Rehabilitation Project. The properties affected by the taking are set forth more particularly in Schedule A, enclosed herewith, and shown on a plan entitled “Mechanic Street Leominster, MA Easement Plan” dated July 10, 2015, revised through July 29, 2015, prepared by CHA.

Upon request of the LEGAL AFFAIRS COMMITTEE, the following PETITION was given FURTHER TIME. 9/0

- 57-15 James J. Carnivale, Karen L. Carnivale and Jeffrey T. Duval: Modify the Zoning map by changing the district designation from Residential to Commercial for land owned by the petitioners as shown on the Assessors Map 239, Lots 5 and 8, and Map 240, Lots 3 and 4.

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

- 1-16 John Souza, Patrick Perla, Salvatore Ciccone, Fred Fredricks, Thomas Carignan: Remove the word “vacant” from Article I, Section 22-10.1.1 of the Leominster Zoning Ordinance so that Leominster’s Ordinance conforms with the State’s definition of a “single lot exemption” in M.G.L. Chapter 40A, Section 6.

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

- 2-16 Richard Marchand: Prohibit parking at the intersection of Hall Street and Academy Road; on Hall Street 15 feet on both sides at the entrance to Academy Road and on Academy Road 15 feet on both sides from Hall Street.

The following email was received from the Traffic Bureau.

From: Richard Kinney
Sent: Tuesday, August 11, 2015 2:52 PM
To: Lynn Bouchard
Subject: RE: Recommendation on petition 2-16

Lynn A. Bouchard,

In reference to Petition 2-16, a request for “No Parking” signs on Academy Road and Hall Street. City Ordinance Sec. 13-24.4. General prohibition– Towing zones, prohibits parking upon any street or highway within twenty feet of an intersecting way, except alleys. The area the Petition is requesting to restrict parking in is already covered by City Ordinance. All that needs to be done is request the DPW to place “ No Parking Here to Corner” signs 20 feet back from the intersection in the location the Petition is requesting.

The only thing that will not be covered is parking on the south side of Hall Street along the playground field. This is the area across from the Academy Road entrance. I see no reason to prohibit parking there because vehicles parked in this area will not obstruct visibility of cars turning onto or off of Academy Road. If the Petitioner requested “No Parking” signs for the 20 foot area on either side of the intersection I would not be opposed to it, I just don’t believe it is necessary for traffic safety reasons.

Sgt. Richard J. Kinney

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

Stabilization Account	\$12,796,665.00
Emergency Reserve	\$ 100,000.00

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

- C-5 Relative to the appropriation of \$8,000.00 to the Conservation Commission Salary & Wages Account; same to be transferred from the Wetland’s Fee’s Reserved for Appropriation Account.

ORDERED: - that the sum of Eight Thousand Dollars (\$8,000.00) be appropriated to the Conservation Commission Salary & Wages Account; same to be transferred from the Wetland’s Fee’s Reserved for Appropriation Account.

REGULAR MEETING OF THE CITY COUNCIL, AUGUST 24, 2015, continued

Upon recommendation of FINANCE COMMITTEE the following COMMUNICATION was GRANTED and ORDERED. Vt. 7 “yeas” and 1 “nay”, Councillor Bodanza abstained.

C-6 Relative to the appropriation of \$76,807.36 to the prior year City Council Expense Account; same to be transferred from the Stabilization Fund.

ORDERED: - that the sum of Seventy Six Thousand Eight Hundred Seven Dollars and Thirty Six Cents (\$76,807.36) be appropriated to the City Council Expense Account; same to be transferred from the Stabilization Fund.

RE: S. J. Mullaney Engineering, Inc.

Councillor Dombrowski read an email from Attorney Brian Riley dated August 24, 2015.

Subject: C-6 - appropriation for Mullaney Engineering

Lynn: I am following up on Councilor Marchand’s request for an opinion on C-6, the Mayor’s communication requesting a transfer of \$76,807.36 from the Stabilization Fund to pay the claim/invoice of S.J. Mullaney Engineering (“Mullaney”). I won’t go through all the history of this claim, but it was determined that since the work performed by Mullaney at the Council’s behest had no written contract, no public bidding and no appropriation, the City was not obligated to pay it and the debt was unenforceable. The District Court affirmed this position when Mullaney attempted to collect his claim in that forum. The Mayor and City Council petitioned for a special act [enacted as Chapter 192 of the Acts of 2013, or “the special act”] to authorize payment, but to date no payment has been made and the City Comptroller has declined to approve Mullaney’s claim for payment. You have asked whether the Comptroller would be obligated to make the payment if C-6 is approved and the funds appropriated.

In my opinion, the Comptroller will be obligated to approve this payment, unless he submits a detailed statement to the Treasurer pursuant to G.L. c.41, §56 stating that the claim is, in whole or in part, fraudulent or excessive.

When the Mullaney claim was first submitted, the largest obstacle to paying it was that there had been no compliance with the contract and procurement laws, and it would have therefore been unlawful to make the payment (even if there had been an appropriation). The special act cured that problem, however, stating:

The comptroller of the city of Leominster may pay, from sums appropriated, an unpaid bill incurred by the city council in the amount of \$76,807.36, which is legally unenforceable against the city, to S.J. Mullaney Engineering Inc., for consulting services provided to the city council in connection with a revision of the city's zoning ordinance, notwithstanding the failure of the city to comply with the laws relative to procurement and competitive bidding in the awarding of the contract.

Therefore, the illegality of the contract is no longer grounds to disallow Mullaney’s claim. The special act itself does not mandate the payment, however, but only authorizes it. Payment is still subject to the Comptroller’s review and approval under G.L. c.41, §56, which provides in relevant part:

The town accountant may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive, and in such case he shall file with the town treasurer a written statement of the reasons for such refusal. The treasurer shall not pay any claim or bill so disallowed by the town accountant. So far as apt this section shall apply to cities.

This statutory requirement is still applicable even after the Council’s appropriation, in my opinion. If the Comptroller intends to submit such a written statement, it must set forth the detailed basis for the disallowance on one or more of these grounds, i.e., fraud or excessive charges.

Just to be clear, there are no supportable grounds to deny this payment based on any procurement violations, bidding requirements, lack of a written contract or other such issues that made Mullaney’s claim unenforceable – the special act explicitly dealt with all that. If the City Council does approve the appropriation this evening, I would recommend that Mullaney be paid. The lack of an appropriation (and the Court’s lack of authority to order an appropriation) was certainly a significant factor that the District Court considered last fall, and that would no longer be the case. If the Comptroller believes he has evidence that there was fraud or that the charges are excessive, than he is obligated to state that evidence in writing and I recommend that he contact this office as well.

Upon recommendation of the WAYS & MEANS AND VETERANS AFFAIRS COMMITTEE, the following APPOINTMENTS were CONFIRMED. Vt. 9 “yeas”

Cultural Commission- Eileen O’Leary – term to expire April 15, 2018

Planning Board – Paul Weizer – term to expire April 15, 2020

Upon recommendation of the LEGAL AFFAIRS COMMITTEE, the following ORDER OF TAKING was ADOPTED. Vt. 9 “yeas”

A Legal Affairs Committee meeting was established on September 3, 2015 at 6:30 P.M.

MEETING ADJOURNED AT 9:12 P.M.

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