

**CITY OF WOBURN
JANUARY 5, 2010 - 7:30 P.M.
REGULAR MEETING OF THE CITY COUNCIL**

Roll Call

Anderson	Gately
DiTucci	Haggerty
Drapeau	Mercer-Bruen
Gaffney	Raymond
Denaro	

VOTED to dispense with the reading of the previous meeting's Journal and to APPROVE, all in favor, 9-0.

MAYOR'S COMMUNICATIONS: None.

PUBLIC HEARINGS:

On the petition by Alderman Scott Galvin concerning the structure or structures located in the City of Woburn, County of Middlesex, Commonwealth of Massachusetts known and numbered as 17-19 Franklin Street, Woburn, Massachusetts for the purposes of determining whether said structure or structures are a public nuisance, a nuisance to the neighborhood, a dilapidated or dangerous building or other structure, as said terms are used in Massachusetts General Laws Ch. 139, Sec. 1, and if so, enter an order adjudging it to be a nuisance to the neighborhood, or dangerous, and prescribing its disposition, alteration or regulation. PUBLIC HEARING OPENED. A communication dated January 5, 2010 was received from Building Inspector Thomas Quinn, Inspectional Services Department as follows:

Re: 17-19 Franklin Street

With regard to the above locus that is has been the subject of a nuisance hearing, I offer the following information to update the Council on the status of this concern.

1. Electrical Inspector has signed off for occupancy December 2009.
2. Fire Department has signed off for occupancy December 2009.
3. Plumbing Inspector and Plumbing Contractor are still in the process of working through inspections to obtain occupancy sign off.
4. A site visit was conducted on this day January 5, 2010 and it appears that the project is in the process of being finished and I am hopeful that a formal request for final inspection will be conducted in a timely manner.

If there are further concerns or questions as always do not hesitate to contact me, also once this project has been issued a Certificate of Occupancy I will forward notification for your records.

Alderman Gaffney stated that the contractor indicates that the work is finished at the site, and that the occupancy permit must be signed by the Building Department. IN FAVOR: None. OPPOSED: None. Motion made and 2nd that the PUBLIC HEARING be CONTINUED TO THE REGULAR MEETING OF THE CITY COUNCIL ON JANUARY 26, 2010, all in favor, 9-0.

On the petition by Alderman Richard Gately concerning the structure or structures located in the City of Woburn, County of Middlesex, Commonwealth of Massachusetts known and numbered as 320 Main Street aka 286 Main Street, Woburn, Massachusetts, commonly referred to as the Woburn Armory, for the purposes of determining whether said structure or structures are a public nuisance, a nuisance to the neighborhood, a dilapidated or dangerous building or other structure, as said terms are used in Massachusetts General Laws Ch. 139, Sec. 1, and if so, enter an order adjudging it to be a nuisance to the neighborhood, or dangerous, and prescribing its disposition, alteration or regulation. PUBLIC HEARING OPENED. Alderman Gately stated that the city has been working with the landowner and the contractor to clean this property, that a list of twenty-three conditions was prepared to make the building safe and to resolve zoning issues, that the work has progressed, that the property may be sold soon, that he asks that this matter be continued to the first City Council meeting in June 2010 so that the progress can be followed, that this will ensure that the work progresses as the sale of the property is consummated, that this proceeding will not impair the sale transaction, and that once the property was declared a nuisance it may affect the transaction. IN FAVOR: Lisa Roach, 5 Myrtle Street stated that the property has been secured and repaired, that without this process the work would not have progressed, that there are drainage issues with puddling on both sides of the property, that there are rodent issues, and that there are a couple of drainpipes that need to be repaired and secured. OPPOSED: None. Motion made and 2nd that the PUBLIC HEARING be CONTINUED TO THE REGULAR MEETING OF THE CITY COUNCIL ON JUNE 1, 2010, all in favor 9-0.

CITIZEN'S PARTICIPATION: None.

COMMITTEE REPORTS: None.

NEW PETITIONS:

A communication dated December 30, 2009 with attachments was received from Attorney Joseph R. Tarby III, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 as follows:

Re: Minor Modification to Landowner's Decision and Notice of Special Permit dated December 27, 2007, as amended by Notice of Modification of Special Permit dated September 24, 2009 (the "Decision") Granted to Allied Building Products Corp., 41 Atlantic Avenue, Woburn, MA

Dear Mr. Campbell:

Please be advised that I represent Allied Building Products Corp. ("Allied") of 41 Atlantic Avenue, Woburn, Massachusetts (the "Property"). As you know, on December 27, 2007, the City Council issued a Special Permit to Allied for the use of the Property as a wholesale establishment, warehouse and distribution center, outside storage of new or used building materials and equipment and the accessory parking of commercial motor vehicles. On September 24, 2009, the City Council issued a Modification to the Special Permit allowing for a modified site plan (the "Decision"). Enclosed please find ten (10) copies of the Decision.

- Condition 4 of the Decision states: "That no more than four (4) commercial vehicles shall be parked at the premises and all registered vehicles shall be parked on the premises overnight shall be registered in the City of Woburn.
- Condition 9 of the Decision states: "That the Special Permit is granted to Allied Building Products Inc. ("Allied") and is not transferable except to any affiliate of Allied; any corporation into which or with Allied or its parent corporation may merge; or to any corporation or any other business entity or to any company which may result from a reorganization or consolidation by or with Allied; this permit is not transferable if Allied is sold, purchased or taken over by a non-affiliate".

My client has entered into an Agreement to sell its business to American Builders and Contractors Supply Company, Inc., d/b/a ABC Supply Co., Inc. of Beloit, Wisconsin (hereafter, "ABC"). ABC (similar to Allied) is a wholesale distributor of roofing materials, siding, windows and other select exterior building products. ABC has 380 stores in 46 states including five stores in Massachusetts with one located at 100 Commerce Way, Woburn, MA. ABC will operate consistent with Allied Building's operations and similar to other businesses in the area such as Harvey Door and Window, New England Wholesale Supply and KAMCO.

On behalf of my client, I respectfully request approval by the City Council to modify: (i) Condition 4 of the Decision to allow for eight (8) commercial vehicles and (ii) Condition 9 of the Decision allowing for the transfer of the Special Permit to American Builders and Contractors Supply Company, Inc. All of the Conditions attached to the Special Permit Decision will remain in full force and effect. I also request that this matter be placed on the agenda of the City Council meeting scheduled for January 5, 2010. If you have any questions, please feel free to contact me.

Very truly yours, s/Joseph R. Tarby, III

A further communication dated January 5, 2010 was received from Attorney Joseph R. Tarby III, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 as follows:

Re: Minor Modification to Landowner's Decision and Notice of Special Permit dated December 27, 2007, as amended by Notice of Modification of Special Permit dated September 24, 2009 (the "Decision") Granted to Allied Building Products Corp., 41 Atlantic Avenue, Woburn, MA

Dear Mr. Campbell:

As you know, I represent Allied Building Products Corp. ("Allied") of 41 Atlantic Avenue, Woburn, Massachusetts (the "Property"). On behalf of Allied, I respectfully request that the request by Allied to modify the above-referenced Permit be continued to the City Council meeting on January 26, 2010.

Thank you.

Very truly yours, s/Joseph R. Tarby, III

Motion made and 2nd that the MATTER be LAID ON TABLE UNTIL THE REGULAR MEETING OF THE CITY COUNCIL ON JANUARY 26, 2010, all in favor, 9-0.

Petitions for renewal of Second Class Motor Vehicle Sales License by Cambridge Road Auto Service, Inc., 293 Cambridge Road and Woburn Gas & Service, Inc., 545 Main Street. Motion made and 2nd that the MATTER be REFERRED TO COMMITTEE ON POLICE AND LICENSES, all in favor, 9-0.

Petition by Ali Saleh dba Metro Car Service, 21 Cummings Park, Suite 224 to amend a current Taxi Cab License by increasing the number of vehicles from one (1) vehicle to two (2) vehicles. Motion made and 2nd that the MATTER be REFERRED TO COMMITTEE ON POLICE AND LICENSES, all in favor, 9-0.

Petition by Viewpoint Sign & Awning, 35 Lyman Street, Northboro, Massachusetts 01532 for a special permit for an additional sign at 65 Winn Street. The Clerk of the Council stated that this matter may be under the jurisdiction of the Board of Appeals. Motion made and 2nd that the MATTER be LAID ON TABLE UNTIL THE REGULAR MEETING OF THE CITY COUNCIL ON JANUARY 26, 2010, all in favor, 9-0

COMMUNICATIONS AND REPORTS:

A communication dated December 22, 2009 with attachments was received from Joanne Collins, Director, Woburn Council on Aging along with the minutes of the December meeting of the Council on Aging and the Director's report for the month of December. Motion made and 2nd that the MATTER be RECEIVED AND PLACED ON FILE, all in favor, 9-0.

A communication dated December 16, 2009 with attachments was received from Joanne Collins, Director, Woburn Council on Aging relative to the establishment of the Woburn Council on Aging Associate Membership Program. Motion made and 2nd that the MATTER be RECEIVED AND PLACED ON FILE, all in favor, 9-0.

A communication dated December 14, 2009 was received from Attorney Patricia A. Cantor, Kopelman and Paige, P.C. relative to FCC establishment of time limits for wireless siting decisions. Motion made and 2nd that the MATTER be RECEIVED AND PLACED ON FILE, all in favor, 9-0.

A copy of a communication dated December 11, 2009 to Rosa DiTucci, Carol Seitz and Woburn Historical Commission was received from Brona Simon, Executive Director, State Historic Preservation Officer, Massachusetts Historical Commission, 220 Morrissey Boulevard, Boston, Massachusetts 02125 advising that the Middlesex Canal Historic and Archaeological District, Lowell-Boston, Massachusetts, including a portion in Woburn, was accepted by the National Park Service, Department of Interior, for listing in the National Register of Historic Places on November 19, 2009. Motion made and 2nd that the MATTER be RECEIVED AND PLACED ON FILE, all in favor, 9-0.

UNFINISHED BUSINESS OF PRECEDING MEETING: None.

APPOINTMENTS AND ELECTIONS: None.

MOTIONS, ORDERS AND RESOLUTIONS:

From the Woburn Traffic Commission:

ORDERED MAIN STREET – Handicapped parking space shall be established on the southerly side at 415 Main Street.

Motion made and 2nd that WITH RESPECT TO THIS MATTER RULE 29 be WAIVED AND THE ORDER be ADOPTED, all in favor, 9-0.

Presented to the Mayor: January 7, 2010 **s/Scott D. Galvin January 7, 2010**

Motion made and 2nd to suspend the rules for the purpose of adding the following late filed matters to the Order of the Day, all in favor, 9-0.

ORDERED That the sum of \$3,000.00 be and is hereby transferred as so stated from Inspections – Temp. Help Acct #0125151-512000 \$3,000.00 to Inspections – Office Supplies Acct #0125154-542000 \$1,500.00, Inspections – Vehicle Maint. Acct #0125152-524915 \$1,500.00, Total \$3,000.00

I hereby recommend the above. s/Steven M. Paris, Building Commissioner
I have reviewed the above. s/Gerald W. Surette, City Auditor
I hereby approve the above. s/Scott D. Galvin, Mayor

s/President Denaro

Motion made and 2nd that the MATTER be REFERRED TO COMMITTEE ON FINANCE, all in favor, 9-0.

ORDERED That the sum of \$15,000.00 be and is hereby transferred as so stated from City Solicitor – Salary Acct #0115151-511000 \$15,000.00 to City Solicitor – Supplies Acct #0115154-542000 \$15,000.00.

I hereby approve the above: s/Scott D. Galvin, Mayor
I have reviewed the above: s/Gerald W. Surette, City Auditor
I recommend the above: s/John McElhiney, City Solicitor

s/President Denaro

Motion made and 2nd that the MATTER be REFERRED TO COMMITTEE ON FINANCE, all in favor, 9-0.

ORDERED That the sum of \$22,000.00 be and is hereby appropriated as so stated from Unreserved Fund Balance Acct #01-359000 \$22,000.00 to Sick Leave Buy Back Acct #0113651-511000 \$22,000.00. Purpose: William McGowan, Retired/Purchasing Dept.

I hereby approve the above: s/Scott D. Galvin, Mayor
I have reviewed the above: s/Gerald W. Surette, City Auditor

s/President Denaro

Motion made and 2nd that the MATTER be REFERRED TO COMMITTEE ON FINANCE, all in favor, 9-0.

Alderman Mercer-Bruen recused herself from participating in the following matter and left the Council Chamber.

A communication dated January 5, 2010 was received from Attorney Joseph R. Tarby III, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 as follows:

Re: Application for Second Class Motor Vehicles License/ACT Leasing Inc., 215 Salem Street, Woburn, Massachusetts

Dear Mr. Campbell:

As you know, I represent ACT Leasing, Inc. of 215 Salem Street, Woburn, Massachusetts. As you further know, on September 1, 2009, the above-referenced Application was sent to the Committee on Police and License pending review by the Committee of the various renewal applications in Committee at that time. On December 15, 2009, the Application was taken from Committee for action. However, since the Second Class License formerly used at 306 Montvale Avenue, Woburn, Massachusetts by Robert McSheffrey was not due to expire until December 31, 2009, the City Council deferred action on the Application and kept it in Committee.

I had expected to request that the City Council take this matter from Committee this evening and act on the Application. However, with Alderman Mercer-Bruen ineligible to vote on the Application because of a conflict, the question arose as to whether or not the new City Council members could vote on the Application.

On July 18, 2006, Kopelman & Paige rendered a legal opinion relative to the requirement for attendance by City Council members at quasi adjudicatory proceedings and found that in some instances, such as voting on amendments to the Zoning Map or changes to the Zoning Ordinance, the approval of inter-municipal agreements and similar agreements were matters of legislative policy and did not require attendance by a City Council member at a public hearing. However, the opinion clearly stated that City Council members would need to be present at public hearings in order to vote on a Special Permit request. That issue has further been defined by the adoption by the City of Woburn of Massachusetts General Laws Chapter 39, §23 D.

In this instance, the Second Class License Application is not a Special Permit request. However, Second Class Motor Vehicle License Applications were not addressed in the Kopelman & Paige opinion. Therefore, in taking a conservative approach, I would like to make the following requests:

1. That the City Council request a legal opinion from the City Solicitor as to whether or not an Application for Second Class License falls within a quasi adjudicatory proceedings or is a matter of legislative policy; and
2. As a result of my client's business need to have the license issued, I respectfully request that the Application for a Second Class License be scheduled for a new public hearing at the City Council meeting scheduled for February 2, 2010.

In the event that the City Solicitor determines that Second Class Motor Vehicle license fall within matters of legislative policy, then I would ask that the City Council vote on the License at its meeting on January 26, 2010.

Thank you for your assistance in this matter.

Very truly yours, s/Joseph R. Tarby, III

Motion made and 2nd that a request for a written legal opinion be forwarded to the City Solicitor inquiring as to whether the issuance of Second Class Motor Vehicle Sales Licenses fall within a quasi adjudicatory proceeding or is a matter of legislative policy and that a public hearing be scheduled for the Regular Meeting of the City Council on February 2, 2010 with respect to the petition by ACT Leasing, Inc. for a Second Class Motor Vehicle Sales License, 8 in favor, 0 opposed, 1 absent (Mercer-Bruen absent).

Alderman Mercer-Bruen entered the Council Chamber.

Motion made and 2nd to return to the regular order of business, all in favor, 9-0.

Motion made and 2nd to ADJOURN, all in favor, 9-0. Meeting adjourned at 7:46 p.m.

A TRUE RECORD ATTEST:

William C. Campbell
City Clerk and Clerk of the City Council