

JOINT PUBLIC HEARING OF APRIL 3, 2023

Monday evening, April 3, 2023. The Joint Public Hearing of the City Council and Planning Board, held in the City Council Chamber, was called to order by Council President Elizabeth Kazinskas at 6:30 o'clock p.m. for the purposed amendment involves changing the zoning of:

- **10891** – An Ordinance to Amend the Code of the City of Gardner, Chapter 675 Thereof, entitled “Zoning,” to Change the Classification of Certain Parcels of Land Along Route 140.
- **10892** – An Ordinance to Amend the Code of the City of Gardner, Chapter 675 thereof, entitled “Zoning,” to add “Sports Betting” to the Zoning Table of Uses.
- **10893** – An Ordinance to Amend the Code of the City of Gardner, Chapter 675 thereof, entitled “Zoning,” to Amend Section 1070 thereof, entitled, “Marijuana Establishments” to increase the quota allowed by the Code of the City of Gardner.

City Clerk Titi Siriphan called the Roll. Present were:

Members of the City Council (10)

Elizabeth J. Kazinskas, President
James Boone
Craig R. Cormier
Ronald F. Cormier
Aleksander Dernalowicz
Karen Hardern
Dana M. Heath
Paul Tassone
George Tyros
James Walsh

Members of the Planning Board (4)

Paul Cormier
Stephen E. Cormier
Mark M. Schafron
Robert J. Swartz

Councillor Judy Mack was absent.

Planning Board Member, Robert Bettez was absent.

Others present, Mayor Michael Nicholson, Trevor Beauregard (via telephone conference), Community Development and Planning Director, City Engineer Rob Oliva, and Police Chief Eric McAvene.

President Elizabeth Kazinskas announced Pursuant to G.L. 40A, § 5, notice is hereby given that the City Council and Planning Board will conduct a Joint Public Hearing on Monday, April 3, 2023 at 6:30 P.M. in the City Council Chamber, Room 219, City Hall, 95 Pleasant Street, Gardner, to consider amending Chapter 675, the Zoning Code of the City of Gardner.

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The proposed Amendment involves changing items: • 10891 – An Ordinance to Amend the Code of the City of Gardner, Chapter 675 Thereof, entitled “Zoning,” to Change the Classification of Certain Parcels of Land Along Route 140. • 10892 – An Ordinance to Amend the Code of the City of Gardner, Chapter 675 thereof, entitled “Zoning,” to add “Sports Betting” to the Zoning Table of Uses. • 10893 – An Ordinance to Amend the Code of the City of Gardner, Chapter 675 thereof, entitled “Zoning,” to Amend Section 1070 thereof, entitled, “Marijuana Establishments” to increase the quota allowed by the Code of the City of Gardner Information regarding this amendment is available for viewing in the City Clerk’s Office, the Department of Community Development and Planning (DCDP), or on the City’s webpage – www.gardner-ma.gov. All persons interested in this matter and desire to offer testimony are invited to attend the hearing.

10891 – An Ordinance to Amend the Code of the City of Gardner, Chapter 675 Thereof, entitled “Zoning,” to Change the Classification of Certain Parcels of Land Along Route 140.

Director Trevor Beauregard informed the Committee that the Planning Board met on March 22, 2023 and voted unanimously 4-0 to not approve the proposed amendment. The board noted the importance of maintaining the historic and current recreational uses of the City’s open space, identified in the open space and recreation plan, especially those in close proximity to our watershed land.

Mayor Nicholson submitted testimony in support of this zoning ordinance:

Over the last three (3) years, Gardner has seen unprecedented economic growth, and we as a City should be doing everything we can to tap into this new attention that the City has been receiving to build our economic base, relieve some of the burden we place on our residential tax payers, provide for increased job creation, and create measures that improve the overall public safety of highly trafficked areas.

This proposal, submitted by my Administration, takes all of those factors into effect in order to act in the best interest of the City.

Gardner is a very “land poor” community. While we have seen growth, we struggle to attract larger companies and corporations to the City, because we simply do not have the land to put them. It is the goal of the Administration, in the event that the aforementioned zoning ordinance is approved, to place the land out for a competitive request for proposal (“RFP”) process to try and attract a new commercial base for the City.

This area was chosen due to the high number of traffic incidents causing a large public safety concern. Issues of speed and road design in the area simply do not make the area conducive



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to increased residential housing. With the current zoning as Rural Residential 3, the potential for new houses in the area would not only place a large burden on City services but would also severely increase public safety concerns by adding additional traffic to the area in a way that is not as easily controlled and regulated by the City as a commercial location can be through site plan approval.

It has been no secret that over the last three (3) years, my administration has made a concerted effort to get properties back on the tax rolls. This proposal helps mitigate severe public safety concerns regarding traffic in the area, while also upholding our fiduciary responsibility we have to our residents by getting these underutilized properties back on the tax rolls to help boost our economic base.

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PART A: FEEDBACK FROM PLANNING BOARD MEETING

At the Planning Board Meetings of March 22, 2023 and March 29, 2023, the question was raised about the existence of Watershed Land within the proposal.

Put simply, these parcels were originally included, because the §632-3 of the Code of the City of Gardner already provides protection to watershed land, by prohibiting the City from selling land designated as Watershed. (See Attachment A)

However, I understand this concern and would absolutely be amenable to the proposal being reduced to only parcels M47-22-4 and M47-24-1, as these two parcels are completely outside of the watershed land in the area. (See Attachment B) (See Attachment C)



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This would require that the following parcels be removed from the proposed ordinance amendment: M42-8-8, M42-8-5, M42-20-7, R42-21-1, R37-1-2, M42-14-6, M42-25-1, M37-20-10, M42-25-3, and R37-16-27. (See Attachment D).

This reduces the total number of acres included by 285.5, from 462.5 acres to 177.

PART B: PUBLIC SAFETY CONCERNS

At their meeting of February 2, 2023, the Traffic Commission voted to recommend that the Administration look into ways to reduce or eliminate future residential house development along the section of Route 140 between Green Street and the border with the Town of Winchendon.

This idea was originally proposed in 2010, when the Montachusett Regional Planning Commission (“MRPC”) performed a study for the City of Gardner and the Towns of Ashburnham and Winchendon regarding the future growth at the location. While this study primarily focused on the section of Route 140 between Green Street and Pearl Street, the Commission and the Administration as a whole found many similarities between this section of 140 and the section proposed in the ordinance amendment.

MRPC 140 Study:

This study found that as things currently stand – as no changes have been made since the study was published- there is potential for 792 new single-family homes to be constructed in this area with the current zoning being designated as Rural Residential 2. (See Attachment E) This study also stated that at that rate of growth in this area there would be a strain on the existing water infrastructure that exists in the area. (See Attachment E)

The study then broke this down further, stating that with the Rural Residential 2 Zoning Designation requiring a minimum of 150 feet of frontage and 60,000 square feet minimum lot size, 792 homes could be constructed in that area, leading to 1,862 new residents and 319 new students based on data from the 2000 Census. Utilizing data from the water and sewer departments, they estimate that this amount of residential development would require the use of 368,494 gallons of water per day. Whereas there are currently no water or sewer utilities in this area (See Attachments F and G) these units would likely have to be on well and septic systems, which would not be sustainable to the area environmentally, nor would the current staffing in the City’s Health Department be adequate for the required inspections of such systems.

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Furthermore, should this build out occur, there would be a substantial amount of increased traffic in the area which the area would not be able to support with the current safety lay out and infrastructure.

Relation between MRPC 140 Study and the Area of Route 140 from Green St to Winchendon:

Like the area of Route 140 that was studied in the MRPC Build Out Analysis Report, this area of 140 has large public safety and city service strain concerns as well.

This section of Route 140 is also zoned as Rural Residential 2. As such, the requirements there are a minimum of 150 feet of frontage and a minimum lot size of 60,000 square feet. With a total area of 177 acres of land proposed in this amendment, which is the equivalent of 7,710,120 square feet or 129 building lots.

While some areas of the location may be wet or unbuildable, unbuildable and wetland portions of a lot can still be considered when obtaining the minimum lot size and only restrict where the structures on that property can go.

According to the 2020 Census, the average number of people per household in the Commonwealth is 2.5 to 4. Utilizing this data to extrapolate what this would mean for the City, this could bring in between 323 and 516 new residents. Utilizing our 2020 Census data that our school aged population currently makes up 17.3% of our total population, this could mean an additional 56 to 90 students enrolled in our schools.

Additionally, Article VII of Chapter 675 of the City Code does not allow for properties in the City to have shared driveways. (See Attachment H) As we have seen with developments in similar areas in the City, build out would likely result in new cul-du-sacs being constructed, adding new roads. At a required 150 feet frontage requirement under the Rural Residential 2 Zoning, and area enough for 129 lots, this would likely require the creation of 19,350 feet of road, or an additional 4 miles. The City currently pays approximately \$1.2 million per mile in pavement to maintain roads and \$100 per round of snow and ice treatment per mile, the number of rounds for which is dependent on the type of storm that the City is experiencing.

Furthermore, like the area reviewed in the MRPC Buildout Analysis Study of Route 140, this area also does not have public utilities. The Department of Public Works currently estimates that it costs between \$300 and \$500 to install one foot of utility pipe in the ground. With the distance between where each utility ends to this location, it would require an approximate investment of \$5 million to \$7 million per utility to get the infrastructure out to this location,

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let alone additional infrastructure that would have to run to the potential homes that could be constructed under the current zoning.

If the change to Commercial 2 Zoning were to occur, the developer would bear the full cost of all of this, while still having only one or two meters in the area and a significantly lesser drain on the amount of water used each day rather than a few hundred new residents living there full time.

Traffic Safety Concerns Route 140 from Green Street to Winchendon:

The concerns raised by the Traffic Commission recently came from the increased number of very serious accidents that have occurred in the area. While the Gardner Police Department and the Department of Public Works are in discussion regarding safety improvements with the Massachusetts Department of Transportation (“MassDOT”), adding additional driveways for residences in the area would only exacerbate the problem.

According to data from the Gardner Fire Department, over the last ten (10) years, there have been 191 motor vehicle accidents in the Route 140 corridor, of which, 125 resulted in injuries to the drivers and passengers involved. (See Attachment I)

Route 140 is simply not constructed as a location for residential development.

Adding additional residential units to the area, and thus increasing traffic out of driveways and common streets onto a four-lane divided highway is just not in the best interest of public safety. Our public safety departments spend enough time dealing with accidents on this road already without adding additional permanent traffic to the location.

While commercial development will also likely increase traffic, this can be much more regulated by the City to add new safety improvements to their traffic plans through the site plan approval for commercial development required by Chapter 675 of the City Code. In the past this process has required things such as turning lanes, traffic lights, lighting fixtures, parking lot layout, ingress and egress locations, and more- all of which can be done with commercial development and not with residential development.

PART C: HOUSING PRODUCTION CONCERNS

At previous meetings of the City Council, concerns were raised regarding this proposal restricting residential development.

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While, it is true that this proposal would remove the ability for new single family homes to be constructed in the area, it is also true that Gardner needs more housing units. The City also needs to develop in a smart way that meets the City's need for growth while also taking public safety concerns into account and providing for enough economic opportunity for the residents who live here and are moving here.

In Gardner there are currently 520 housing units in construction or under renovation after being vacant for more than eighteen (18) months. (See Attachment J) This is also a very conservative number as some of these projects are still in the early proposal stage due to recent ongoing RFP processes. Once those are completed, this number will increase between 65 units at a minimum to upwards of 87 units.

None of the units numbered above include the temporary housing that the Commonwealth is looking at utilizing in Gardner for a six (6) month period to house migrant refugees from the Bolivarian Republic of Venezuela and Ukraine, as this is being done through private agreements with the Commonwealth and only for a temporary basis of under a year.

We are doing everything we can in the City to promote housing growth and production and play our part in the current housing crisis that the Commonwealth is seeing.

However, the location where this zoning amendment is proposed is simply not the smart growth location for this to take place, due to the safety concerns listed above.

The Administration has also begun talks with the Healey – Driscoll Administration regarding state owned properties being utilized for later housing production, however these discussions are still very early on in the process.

PART D: LEASE/SALE METHOD FOR PROPERTY

It is the goal of the Administration to place the property listed in this proposal out for a competitive sale to help grow the City's economic base.

As has been stated several times before, the process for the City to sell or lease any land owned it owns is severely regulated by Chapter 30B of the General Laws and monitored by the Office of the Inspector General.

The process would be as follows:

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1. The Administration would have to obtain a recent survey of the location to determine its accurate meets and bounds and then get a current appraisal on the property.
 - a. The Administration has begun the process of obtaining a survey for the City owned locations so we can have those for our record regardless of what the outcome of this vote is.
 - b. The Administration has not begun the process of obtaining an appraisal of the property.

2. The Administration would then send a proposal to the City Council requesting that the City Council vote to declare the land surplus for disposition for a minimum price amount.
 - a. Per the requirements of the General Laws, the minimum asking price set by vote of the City Council must be at the appraised value unless the Administration can provide documented reasons, approved by the Office of the Inspector General, why it is in the best public interest for the City to sell or lease the property for under what it is appraised at.
 - b. It is the goal of the Administration to list the property for its appraised value.

3. If approved for disposition by the City Council, the Administration would then issue a competitive Request for Proposal solicitation, requesting parties to submit their bids for sale as well as a description of what their intended use of the property would be.
 - a. The General Laws require that this solicitation be posted in the Central Register and twice in a newspaper of general circulation.
 - b. The Administration would also utilize the services of our on-call real estate broker to help market the property.
 - c. The General Laws require that this solicitation be public for a minimum of thirty (30) days.

4. After the deadline to receive the proposals has passed, there is a public listing of everyone who has submitted proposals in response to the solicitation. The documentation that is submitted is not yet opened until after the review is completed, but a public listing of all submitters is then made available for public review.
 - a. Note that Chapter 30B of the General Laws require that the proposed use of the location (known as the Technical Proposal) and the monetary offer that is submitted (known as the Price Proposal) must be in separately sealed envelopes and the price proposals cannot be opened until after the technical proposals are all evaluated.

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5. A committee of three (3) to five (5) individuals is then selected who will conduct the preliminary review of the proposals that have been submitted.
 - a. These individuals then review the technical proposals that have been submitted and score the responses based on a rubric to determine which proposal has the highest and best use of the land and is in the best interest of the City.
 - b. The committee members then submit all of their review materials to the Mayor's Office for final review.
6. After the initial review is done, my Office will conduct a final review of the materials submitted and the documentation of the initial review.
7. After this final review of the technical proposals is completed, the price proposals are opened by my Office and the City Purchasing Director.
 - a. The proposals are then weighed fully based on their score in the technical review process and the offers submitted along with them.
8. An award is then made by the Administration to the proposal that received the highest technical score alongside the highest price proposal.
 - a. At this point, all documentation associated with the process becomes subject to public records review.
9. If the award is a lease, it would then require City Council approval on the lease agreement. If the award is a sale, it would then go to the City's Law Department to conduct a closing.

As a result of all of the reasons listed above, it would be completely incorrect and inaccurate to say that this proposal relates to a specific project and organization as that cannot legally be done. This is a highly regulated process that is spelled out step by step by law.

PART E: RECENT SALE OF CITY PROPERTIES AND ECONOMIC BENEFIT

Over the last three (3) years, the City has sold more properties that are either unutilized by the City or have been taken through the tax title process in this period of time than it has since 1983.

Table E-1 shows the increased amount of tax collection the City is now receiving without any work being done on those properties yet.

TABLE E-1: City Land Sales since 2020



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Location	Assessment	Annual Tax Collection
53 School St	\$ 223,700.00	\$ 3,608.28
73 Stuart St	\$ 72,400.00	\$ 1,167.81
177 West St	\$ 49,700.00	\$ 801.66
14 Leamy St	\$ 58,400.00	\$ 941.99
73 East Broadway	\$ 1,895,700.00	\$ 30,577.64
Nichols St	\$ 92,100.00	\$ 1,485.57
Catherine St	\$ 62,000.00	\$ 1,000.06
20 Rock St	\$ 56,600.00	\$ 912.96
Chelsea St	\$ 57,300.00	\$ 924.25
TOTAL INCREASED TAX REVENUE:		\$ 41,420.23

Both parcels in this proposed Zoning Amendment are currently owned by the City. At a current tax rate of \$16.13 per thousand dollars of valuation, the following would be added to the City’s tax base without anything happening on the site:

TABLE E-2: Proposed Land Tax Assessments

Parcel	Assessment	Annual Tax Collection
M47-22-4	\$ 424,000.00	\$ 6,839.12
M47-24-1	\$ 334,100.00	\$ 5,389.03
TOTAL POTENTIAL TAX REVENUE INCREASE:		\$ 12,228.15

PART F: CURRENT ECONOMIC INTEREST IN GARDNER

Gardner has seen unprecedented economic growth and development over the last three (3) years. In 2022 alone, 33 businesses opened their doors in Gardner and \$420 million of real estate sales was undertaken.

Since January 1, 2023, six (6) businesses have opened their doors and a substantial amount of additional development, particularly in the Downtown, is going to be taking place this summer with large commercial buildings that were recently constructed.

While the main impetus for this zoning change was due to significant traffic safety concerns in the area, Commercial 2 designation was selected as a proposed zoning designation, because of the interest the City has seen from larger corporations that require a minimum lot size that we no longer furnish unless we start to get creative in our development processes.

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Since I have been in office, there have been twelve (12) different developers who have asked for land of a minimum of 100 acres – including hotels, restaurant plazas, shopping centers, youth entertainment facilities, sports betting facilities, and others, who the City has had to turn away because we don't have the land. This means turning away economic opportunities, an increased tax base, and job creation from Gardner.

The Administration is looking to capitalize on this new attention Gardner is receiving and find ways to meet all of these goals for the City in a way that allows the City to also mitigate concerns that we have in this location, creating a situation that is truly and fully in the best interest of the City, our departments, and our residents.

PART G: WATERSHED CONCERNS

Working with the City Engineer's Office, whose purview it is to determine the locations of watershed in the City, we have determined that Parcels M47-22-4 and M47-24-1 are not located within the watershed.

Definition of Watershed:

Chapter 632 of the City Code defines watershed land as:

Those areas of land that lie adjacent to the City water supply sources, including but not limited to Crystal Lake, Perley Brook Reservoir and Marm John's Pond, as located and bounded as shown on map of the City of Gardner watershed as updated and on file in the office of the City Engineer. Said map and explanatory matter thereon are hereby made part of this chapter. (See Attachment A)

The City Engineer has interpreted this to follow the same definitions provided in the Code of Massachusetts Regulations under 310 CMR 22.00 as Zones A, B, and C.

Zone A is defined as

- A. land area between the surface water source and the upper boundary of the bank;*
- B. the land area within a 400 foot lateral distance from the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a); and*
- C. the land area within a 200 foot lateral distance from the upper boundary of the bank of a tributary or associated surface water body.*

Zone B is defined as:

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land area within one-half mile of the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a), or edge of watershed, whichever is less. Zone B always includes the land area within a 400 ft lateral distance from the upper boundary of the bank of a Class A surface water source.

Zone C is defined as:

land area not designated as Zone A or B within the watershed of a Class A surface water source, as defined in 314 CMR 4.05(3)(a).

In Attachment B, the City Engineer has provided a Map of the area showing these three zones to include the full extent of the City's watershed as they relate to this proposal. (See Attachment K)

As can be seen from this Map, M47-22-4 and M47-24-1 fall completely outside the City's watershed area, as defined by the City Code and the Code of Massachusetts Regulations.

City Engineer Map Designations:

Section 632-2 of the City Code ties the definition of watershed lands to the maps on file in the Office of the City Engineer. In conducting research into these maps, it is the determination of the Administration that the aforementioned parcels are not considered watershed land.

The City Engineer was able to find a map from 1945 that shows all watershed areas located within the City. This map shows that the area of parcels M47-22-4 and M47-24-1 not to be included in any watershed locations, even before Route 140 was constructed. (See Attachment L)

This is further seen on the City Engineers Map from 1954 that also shows all watershed lands within the City as well as City owned land abutting watershed lands. This map specifically states that parcels M47-22-4 and M47-24-1 are "Not Watershed Lands" directly on the map itself. (See Attachment M)

This was further articulated in the 1958 map that shows this specific area of the City. Directly written on this map is the language "Not Watershed" on both parcels M47-22-4 and M47-24-1. (See Attachment N).

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As such, all watershed maps held by the Office of The City Engineer, match the definitions listed in Chapter 632 of the City's Zoning Code and 310CMR 22.00, showing that parcels M47-22-4 and M47-24-1 are **NOT** considered watershed lands.

Protection of Land that IS designated as Watershed Land

While Parcels M47-22-4 and M47-24-1 are not included in the City's watershed, other parcels in the original proposal are.

Section 3 of Chapter 632 of the City Code does provide further protection of these parcels by placing a legal prohibition on the City being able to sell watershed land. (See Attachment A)

Zoning - Surface Water Protection Overlay District

In 2011, the City created a Surface Water Protection Zoning Overlay District, now codified in Section 550 of Chapter 675 of the City Code. This Overlay District regulates and restricts what can and cannot be done in areas designated by the overlay. However, a Zoning Ordinance **does not** create watershed land, as both the City Code and the Code of Massachusetts Regulations define watershed lands through a scientific definition based on the topography of an area.

The definition of the Surface Water Protection Overlay District does, for the most part, mimic the definitions of watershed land, except for the fact that it changes Zone C, to Zone C+. However, this still does not change the fact that the watershed ends at Zone C, even if zoning regulations control what occurs in the area abutting Zone C even further. (See Attachment O)

Furthermore, the Surface Water Protection Overlay District does allow for uses to take place within the overlay district, several of which are allowed within Commercial 2 zoned areas, through special permit by the Planning Board. (See Attachment O - §675-550(F)(2))

As such, even though Parcel M47-24-1 is located fully within this overlay district and a small portion of Parcel M47-22-4 is located in the overlay, it is the determination of the Administration that this does not make these parcels watershed lands as they still do not meet the definitions for watershed land by the City, Commonwealth, and Federal government. Rather, they are simply further regulated on what can and cannot be done on the areas of these parcels that are included in the Surface Water Protection Overlay District.



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This has been confirmed by the City Engineer and the City Building Commissioner acting in his capacity as the City Zoning Enforcement Officer.

Furthermore, if this Zoning Amendment were to pass, it would not remove the provisions of this overlay from these parcels or this area, as the overlay exists independently of the underlying zoning of the area.

PART H: OPEN SPACE AND RECREATION:

Page 32 of the 2015 Open Space and Recreation Plan states:

Properties can experience various degrees of protection and by several methods:

- *Private lands can be protected in perpetuity or for a specified time through deed restrictions or conservation easements.*
- *Lands under special taxation programs (Chapter 61, 61A, or 61B) are actively managed by their owners for forestry, agricultural, horticultural, or recreational use. These lands have limited protection.*
- *Lands acquired for watershed and aquifer protection are usually permanently protected open space.*
- *Public recreation and conservation lands may be permanently protected open space, provided they have been dedicated to such use by deed.*
- *Municipal properties may be protected via a City Council vote to acquire them as protected properties.*
- *Private, public, and non-profit conservation and recreation lands are protected under Article 97 of the Articles of Amendment to the State Constitution.*
(See Attachment P)

Working with the City Engineer's Office, the Administration has determined that these parcels do not relate to parcels listed in this zoning amendment proposal – particularly parcels M47-22-4 and M47-24-1, as listed above.

These lands are both publicly owned by the City so would only relate to the following criteria:

1: Lands acquired for watershed and aquifer protection are usually permanently protected open space.

Parcel M47-24-1 was acquired by the City in May of 1888 without mention of conservation, watershed, or protection. The parcel was initially required should Gardner Public Schools

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ever need the land. This has since been deemed surplus by the School Department and placed under the care and control of the City Administration. (See Attachment Q)

The same can be said for Parcel M47-22-4, which was acquired by the City in 1937, from Harriet Heywood for “consideration paid”. (See attachment R)

Furthermore, as defined above in this document, neither parcel is considered to be watershed land. Even if they were to be considered aquifer protection, there is no documentation as such and the plan even states that these parcels are only “usually” protected. As stated in the section above, the City’s Surface Water Protection Overlay District **does** allow for uses to take place within the overlay district, rather than providing an outright protection and prohibition of any use. (See Attachment O)

2: Public recreation and conservation lands may be permanently protected open space, provided they have been dedicated to such use by deed.

As is evident in the Deed of Parcel M47-22-4 (See Attachment R) and M47-24-1 (See Attachment Q) there are no deed restrictions that require these parcels to be listed as protected open space, recreational, or conservation land.

3: Municipal properties may be protected via a City Council vote to acquire them as protected properties.

There are no such votes by the City Council on record for these properties.

Furthermore, on the City’s official listing of properties under the ownership of the City, it does not list any parcels in this area as being under the custody, care, and control of the City’s Conservation Commission, aside from M47-24-9, which was not included in the original proposal. (See Attachment S)

4: Private, public, and non-profit conservation and recreation lands are protected under Article 97 of the Articles of Amendment to the State Constitution.

This Constitutional Amendment provides additional protection for land that has been designated as conservation land in the Commonwealth through an official process of designating the land as conservation land.

This process has been done in the City in locations previously, and is also currently being done in neighboring communities. This process would require that a conservation restriction

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be voted on for the property and filed with the Commonwealth, which has not been done for the aforementioned properties.

As is seen in Attachment S, there are only thirteen (13) City owned parcels with conservation restrictions located within the City, none of which are included in this proposal. (See Attachment S)

This is further backed by the fact that around 2010, the previous Administration was approached by members of the Patrick – Murray Administration about potentially creating conservation protections to land in this area of the City in return for compensation at a rate of up to \$500 per acre placed in a restriction. However, the previous Administration chose not to undertake this offer and thus no protections were ever voted on by the City Council for this land since then, nor was there any formal intent given to protect the land, but rather a denial of an offer to do so.

Part H Conclusion:

As such, none of the parcels listed in the proposed zoning amendment – particularly M47-22-4 and M47-24-1 – should be considered protected open space and recreational lands. Furthermore, Table 2 of Appendix C of the 2015 Open Space and Recreation Plan lists 58 parcels that have a priority ranking for obtaining conservation restrictions for them- these parcels are not included in this list. (See Attachment T)

PART I: OPEN SPACE AND RECREATION PLAN

At the Planning Board Meeting of March 29, 2023, the question was raised regarding the weight of the City's 2015 Open Space and Recreation Plan.

The resolution that the City Council voted to adopt in order to endorse the City's 2015 Open Space and Recreation plan stated the following:

*WHEREAS, the OSRP proposal does not seek nor require funding directly, but **simply makes recommendations** for preservation, maintenance, and for expansion of open space and recreation activities within City boundaries; (emphasis added)*

(See Attachment U)

This action recognizes that the Open Space and Recreation Plan is truly only a plan rather than a binding document. Similar to the City's Urban Renewal Plan, Housing Production Plan, Master Plan, Economic Development Plan, and other planning documents that the City

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has created, these plans help guide the City in what the City should look to do, rather than bind the City to specific actions.

This is reaffirmed in the Plan Summary of the 2015 Open Space and Recreation Plan which identifies the plan as a “comprehensive planning document that *guides* future policies and actions.” (See Attachment V)

Such demarcation is further validated on the Commonwealth’s Division of Conservation Services website describing Open Space and Recreation Plans which identifies these types of documents as “tools through which a community plans for the future.” (See Attachment W)

As a result of all of the above, the City’s Open Space and Recreation Plan helps guide the City’s Administration on potential actions that the drafting committee believed the City should take but is not a binding document that regulates what the City can do.

CONCLUSION:

If we as a City want to revitalize our economy, grow our tax base, lessen the tax burden on our residents, provide jobs for those who live here, and provide resources to meet our growing population, then something like this must be done or the City will soon be left behind without reaching its true and full potential.

It is the full opinion of the Administration that this proposal is truly in the best interest of the City and I respectfully request its approval.

The City needs to undertake a smart growth approach to its future in order to fully solidify the City’s economic needs not only for now, but for the next generation. This is not a question about whether or not the parcels listed should be protected open space or not. There is currently nothing stopping the City from simply selling the land as is- it would just have to be for housing rather than commercial purposes due to the current Rural Residential 2 Zoning designation.

Should you require any further information, please do not hesitate to contact me at any time.

Respectfully Submitted,

Michael J. Nicholson
Mayor, City of Gardner



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Enclosures:

EXHIBIT LISTING

Exhibit	Document
A	Chapter 632 of the City Code
B	Ordinance Document reduced to two parcels
C	Map of new zoning proposal area
D	Ordinance Document showing amendments from original proposal
E	MRPC Route 140 Buildout Analysis Report
F	City Sewer System Map
G	City Water System Map
H	Zoning Parking Regulations §675-710 City Code
I	Letter from Fire Chief regarding motor vehicle accidents on Rt 140
J	Listing of Housing Units Currently under construction/renovation
K	Map of City Watershed compared to proposed parcels for re-zoning
L	1945 Map of City Watershed lands on 140 showing proposed parcels not watershed
M	1954 Map of City Watershed lands showing proposed parcels not watershed
N	1958 Map of City Watershed lands on 140 showing proposed parcels not watershed
O	Surface Water Protection Zoning Overlay District §675-550 City Code
P	2015 Open Space and Recreation Plan Inventory of Lands
Q	Deed for Parcel M47-24-1
R	Deed for Parcel M47-22-4
S	City Assessor Listing of City owned Conservation Restricted Lands
T	2015 Open Space and Recreation Plan Priority Table
U	City Council Resolution to Endorse 2015 Open Space and Recreation Plan
V	Plan Summary of 2015 Open Space and Recreation Plan
W	Mass.gov- Open Space and Recreation Plans

City Engineer, Rob Oliva informed the Committee of watershed concerns:

- Watershed as well as what is mapped as the surface water protection overlay district are two separate things.
- Watershed surrounding our three reservoirs, Crystal Lake, Baily Brook Reservoir and John's Pond.
- Watershed is everywhere there's runoff within that land area that enters into a tributary reservoir surface water body that's connected to those reservoirs is considered watershed.
- The state currently maps three zones within our watershed, and they do this for every community's drinking water supply.

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- Zone A represents 400 feet from the surface water body. In this case the three reservoirs.
- Zone B represents everything outside of Zone A, which is within a half a mile of Zone A.
- Zone C is everything that's not Zone A and Zone B, essentially everything within the Watershed. That's the definition of the Watershed towards drinking water supply.
- The city has an Overlay District Zoning, which is called the surface water protection overlay District, and that includes by definition, mimics Zone A and Zone B which is described by the state.
- In the rezoning packet, there are two parcels, northerly approaching the Winchendon border line that are not watershed.

Police Chief, Eric McAvene expressed concerns from 23 years of responding access, and other traffic issues:

- The issue up on route 140 are the speeds and the sight lines.
- He has called and sent an email to DOT after the last fatal accident.
- The speeds are highway speeds.
- The majority of accidents that do happen over there involve personal injury that are relatively serious.
- There is no permanent delineator and cars cross those lines.
- There are too many variables to introduce another 200 homes over there.

President Elizabeth Kazinskas announced thrice if anyone wishes to speak in favor of the proposed zoning amendment.

Warner Pogel, 39 Orchard Lane, Templeton spoke in favor. He said that route 140 area could be developed into hundreds of homes that cost nothing but could cause the City public safety aggravation. Winchendon, just over the line could drive businesses away from Gardner. Gardner has already allocated more than the average open space.

President Kazinskas announced thrice if anyone wishes to speak in opposition of the proposed zoning amendment.

Alan Rousseau of 211 Betty Spring Road, Gardner, spoke in opposition to the zoning amendment. Mr. Rousseau handed the Committee and Council written testimony. He has attended the Planning Board meetings and agrees with the concerns raised.

Patrick Fisher of 4th Street, Templeton. He owns land on parcel 47, Gardner. He received a letter regarding the public hearing. He had concerned about his property because he would

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like to build a two family on there. Mr. Fisher does not want commercial building being built by his property or a parking lot that could endanger kids with more traffic coming into the area.

Dave Antaya of 444 Stone Street, Gardner spoke in opposition to the proposed zoning ordinance amendment. He expressed concerns about traffic. If there are commercial businesses, there will be more traffic with trailer trucks passing through that could be dangerous. Mr. Antaya's other concern is the water and septic that could affect the surrounding houses.

Anna Wilkins of 17 Water Street, Ashburnham spoke in opposition of the proposed zoning amendment. Mrs. Wilkins works for North County Land Trust. The trails by Wilder Brooks are used by several walkers, families, snowmobilers, cross country skiers, hikers and dog walkers. If commercial development is built in the proposed open space areas, would fragment the habitat. Mrs. Wilkins stated that this is not the right place for commercial development.

Councillor James Walsh had some questions for the Mayor and Police Chief. He would like some clarification of the parcels on the map and surface water protection overlay district. Councillor Walsh would also like to know why the Mayor relied on the 2010 Constitutional Regional Planning Study to support his proposed amendment when the proposed parcels are excluded. The study was mainly for the Matthew Street area and not the northerly areas of route 140.

Mayor Nicholson responded that his proposal is consistent with Chapter 675-550 of the Code of the City of Gardner. Regarding why he used the 2010 study, there are similar and distinct parallels in this area of 140.

Councillor James Walsh had some questions for the Police Chief regarding safety. The more access to egress along these parcels, the more potential dangerous it becomes. The less access to egress or none, the better.

Police Chief McAvene agreed with Councillor James Walsh.

Councillor James Boone spoke in favor of the proposed zoning ordinance amendments. The City shouldn't restrict development to the city that could bring us tax dollars. The City has more open space than needed. Bringing commercial businesses would help the taxpayers, otherwise, it would be the single-family homeowners paying the taxes.

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Councillor George Tyros had some traffic safety concern questions. Would safety measures be put in place if commercial development comes in.

Mayor Nicholson responded that there would be that would be put in place and regulated to control the traffic.

Councillor Dana Heath also supports and in favor of the proposed zoning ordinance amendment. It is a great idea and opportunity to have more commercial businesses in Gardner.

Councillor Paul Tassone spoke in favor of the proposed zoning ordinance amendment. This would bring growth to the city in the future. It is a good commercial opportunity that could help surrounding businesses and make Gardner more of a destination.

The public hearing on item #10891 closed at 7:23 PM.

10892 – An Ordinance to Amend the Code of the City of Gardner, Chapter 675 thereof, entitled “Zoning,” to add “Sports Betting” to the Zoning Table of Uses.

Community Development Director Trevor Beauregard informed the Committee and Council that at a meeting on March 22nd 2023, the planning board voted 5-0, to recommend approving the proposed Zone Amendment. It was recommended to rewording of #54 with table of uses. The recommendation reads as follows:

Indoor amusement business, recreational place, place of assembly, or a sports betting facility, provided that the building is so insulated and maintained as to confine noise to the premises and is located not less than one of her feet from a residential district. In addition due to the potential significant scope and complexity of such a project is implemented, under the submitted zoning, the board recommends changing use table for number 54 from committed by right to special permit by the planning board for commercial one and commercial of two zones and number 56 from permit by right to special permit planning board for commercial two and Industrial one zones.

Mayor Nicholson submitted a proposed presentation in favor of the proposed Zoning Amendment to add the term “Sports Betting,” to line items 54 and 56 the Zoning Table of Uses.

In May of 2018, the United States Supreme Court stuck down the federal Professional and Amateur Sports Protection Act (“PASPA”)¹, also known as the Bradley Act, as

¹ 28 U.S.C. ch.178 §3701 et seq.

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unconstitutional in their ruling of *Murphy v. National Collegiate Athletic Association*². This federal statute had effectively outlawed sports betting nationwide, except for a few excluded states. The Supreme Court had ruled this act as unconstitutional, thus paving the way for several states to legalize sports betting.

In August of 2023, former Governor Charlie Baker signed House Bill 5164 into law, legalizing online, retail, and kiosk sports betting in the Commonwealth for residents ages 21 and older. Retail sports betting went live on January 31, 2023, and online sports betting launched on March 10, 2023. Kiosk sports betting will go live later this year.

There are currently three (3) approved retail sites and ten (10) approved mobile betting applications. When kiosk sports betting goes live later this year, they will be allowed across the Commonwealth in locations that follow a specific procedure as outlined by the new law.

The Supreme Court of the United States has ruled on several occasions, that under the First Amendment of the Constitution, a municipality cannot outright ban a particular industry or business from opening within its borders, but can limit where these businesses are located.

Since the City cannot bar this type of business from opening in Gardner, and since this type of activity is not currently listed in the City's Zoning Table of Uses, it leaves the City open to liability of not being able to control whether these types of facility are located in largely residential neighborhoods or in areas in the City that may not be suited for this type of activity.

As such, it is the request of my Administration that this use be added to the City Code's Zoning table of uses under Line 54: Indoor Amusement, and Line 56: Outdoor Amusement, as these items fit the closest to the realm of sports betting.

This amendment to the Zoning Table of Uses, does not waive the other requirements these locations would have to go through should any sports betting facility open in Gardner in the future.

Per the requirements of the sports betting enabling legislation, any sports betting facility would have to enter into a Host Community Agreement ("HCA") similar to cannabis facilities in the Commonwealth. The Expanded Gaming Act requires that all applicants for sports betting licenses must first submit to the Massachusetts Gaming commission:

² *Murphy v. NCAA*, 138 S.Ct. 1461 (2018).

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“a signed agreement between the host community and the applicant setting forth the conditions to have a gaming establishment located within the host community; provided, however, that the agreement shall include a community impact fee for the host community and all stipulations of responsibilities between the host community and the applicant, including stipulations of known impacts from the development and operation of a gaming establishment.”

Additionally, after the HCA is approved by the City Council and signed by the Mayor, the City Council must then annually vote to allow the proposed establishment to operate a sports betting facility within the City at its location.

Lastly, before any facility should open, they must also go through the regular requirements for site plan approval and Development Review Committee vetting, both listed in Chapter §675-1010 of the City Code.

As such, this action to add this type of use to the Zoning Ordinances still requires this type of industry to be heavily regulated and vetted by the City by both branches of its government and its boards and commissions.

This action is simply being put forward to protect the City in the long run and pre-plan should one of these facilities come to Gardner rather than waiting and reacting if this should ever come up.

Respectfully Submitted,

Michael J. Nicholson
Mayor, City of Gardner

The joint public hearing went to recess at 7:29 PM to open the regular city council meeting.

The joint public hearing resumed at 7:33 PM.

President Kazinskas announced thrice if anyone wishes to speak in favor of the proposed zoning amendment.

Councillor James Walsh questioned what types of outdoor facilities would be there.

Mayor Nicholson responded that it would be outdoor sports betting kiosks where people can watch events outside in a “movie style”. Use #2 would allow people to go both in and out of

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the facility to bet if there is a festival going on. The third use is if there's anything to do with horses.

Councillor Dana Heath asked if there has been any interest for sports betting coming to the city?

Mayor Nicholson responded that there have been. One indoor and one outdoor facility.

President Kazinskas announced thrice if anyone wishes to speak in opposition of the proposed zoning amendment.

No one spoke.

The public hearing for item #10892 closed at 7:42 PM.

10893 – An Ordinance to Amend the Code of the City of Gardner, Chapter 675 thereof, entitled “Zoning,” to Amend Section 1070 thereof, entitled, “Marijuana Establishments” to increase the quota allowed by the Code of the City of Gardner.

Community Development and Planning Director Trevor Beauregard informed the Committee and Council that the meeting on March 22nd 2023, the planning board voting unanimously five to zero to recommend approving the proposed amendment.

Mayor Nicholson proposed a presentation in favor of the proposed amendment.

When the retail sale of cannabis products was legalized in the Commonwealth in 2019, several municipalities, including Gardner, took steps to heavily regulate the industry since we didn't really know what would happen once the cannabis industry became legalized.

Since then we have seen that commercial enterprises like these do not cause as much of a strain on our services as we had originally been concerned about and have not been a public safety concern at all for us.

This proposal seeks to loosen the market constraints in the City and simply let the economic market be the market. If the City does not have the capability of handling more up to four (4) retain cannabis stores, then the market will correct itself for that.

An example of this can be seen with the regular tobacco/vape smoke shops that used to exist in the Downtown area. These businesses, unregulated in terms of number of facilities that could open in the City, were not marketed by the City and simply opened and then

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consolidated from five (5) to one (1) on their own because that was all the market was able to carry.

The purpose of this amendment, while it also provides a financial benefit to the City through statutorily required sales tax and host community agreement fees, is simply to relax some of the regulations placed on this industry and let the City's economy play itself out. This does still regulate the retail cannabis industry to four (4) locations, but it at least loosens the restriction of only being able to allow two (2) locations in the City.

Respectfully,

Michael J. Nicholson
Mayor, City of Gardner

Police Chief Eric McAvene spoke in favor of the proposed zoning ordinance amendment. There have been no remarkable issues with the marijuana facilities in the city. The Cannabis Control Commission heavily regulates this. The facilities are heavily covered by surveillance cameras. He has no concerns about expanding marijuana facilities.

President Kazinskas announced thrice if anyone wishes to speak in favor of the proposed zoning amendment.

No one spoke.

President Kazinskas announced thrice if anyone wishes to speak in opposition of the proposed zoning amendment.

No one spoke.

The public hearing closed at 7:49 p.m.

Accepted by the City Council: June 5, 2023