

**CITY OF LEWISTON  
PLANNING BOARD MEETING  
MINUTES for August 18, 2003 - Page 1 of 6**

**I. ROLL CALL:** This meeting was held in the City Council Chambers, was called to order at 7:01 p.m., and was chaired by John Cole.

- **Members in Attendance:** John Cole, Rob Robbins, Robert Connors, Lucy Bisson, William Horn, and Tom Truchon.

- **Members Absent:** Roger Lachapelle, Jeffrey Gosselin, and John Racine.

- **Staff Present:** David Hediger, City Planner; Eric Cousens, Land Use Inspection Officer; and Doreen Christ, Administrative Secretary - Planning & Code Enforcement.

- **Student Member Absent:** Wade Morgan.

**II. ADJUSTMENTS TO THE AGENDA:** None.

**III. CORRESPONDENCE:** None.

*John Cole disclosed to the Board that at one time, Denis Latulippe was a client of his law firm of Skelton, Taintor & Abbott, P.A. He presently is not a client. John Cole then asked the Board Members, if they felt it to be a conflict for him to remain on the Board. The Board Members felt it to not be, therefore, John Cole remained on the Board and Chaired this item along with the remainder of the agenda items.*

**IV. HEARINGS:**

**A. A hearing on a minor amendment to the Latulippe Development by Denis Latulippe to divide one lot into two (2) lots located at the end of East Merrill Road. (COUNCILOR WARD 2 - Renee Bernier)** David Hediger read his Staff Memorandum dated August 15, 2003. Denis Latulippe has submitted an amendment to a subdivision off East Merrill Road. He is requesting that a parcel of approximately 21.6 acres be split into two (2) lots. This land was originally labeled as "Remaining Land of Denis and Lorraine Latulippe, which was previously approved by the Planning Board in 1988 and consisted of the "Remaining Land" and seven (7) lots for single-family dwellings. In a recent opinion from the City Attorney, "Remaining Land" outside a proposed subdivision is a lot within a subdivision that must be included as part of the subdivision review. Denis Latulippe is requesting that the remaining land be divided into an 11.6 acre parcel and a 10-acre parcel. The proposed lot line dividing the parcels is also the zoning boundary. Denis Latulippe indicated that adequate water is available in the area with the five (5) developed lots in the existing subdivision having drilled wells. This subdivision and the two (2) proposed lots are split by a zoning line for the Low Density Residential (LDR) District and the Rural Agricultural (RA) District. Both of these lots exceed the minimum lot size requirements. Since this subdivision's last approval in 1988, the Public Works Department's requirements for a City-accepted cul-de-sac radius has increased from 40 to 50 feet, therefore, the Public Works Department has requested it to be extended to 50 feet.

*Denis Latulippe and his son, David Latulippe* were present at this meeting. David Latulippe gave a presentation to the Board Members. He stated that all the requirements of the zoning laws have been met. He said that they have adjusted the plan because of the wetlands on the property. They have decreased the building envelopes to a sufficient size to have a zero wetland impact. David Latulippe said that they are basically dividing the 20-acre parcel along the zoning line for the LDR District and the RA District into two (2) almost equal size lots. They are proposing to widen the existing right-of-way at the cul-de-sac to gain the required minimum frontage for each lot.

Rob Robbins commented that he could not read his modification/waiver request form. Doreen Christ provided him with the original, which had been filled in with red marker and did not photocopy well.

David Hediger showed the location of this project on the map presented to this Board. There was no public audience present on this agenda item. The following motion was made.

**MOTION:** by **Lucy Bisson**, seconded by **Rob Robbins** that the Planning Board grant approval of the modification/waiver checklist; find that the application for the Latulippe Development, East Merrill Road meets all the necessary approval criteria contained under Article XIII, Sections 4 and 5 of the Zoning and Land Use Code; grants approval to Denis Latulippe that this application meets all the concerns raised at this meeting; and determine the Latulippe Development, East Merrill Road to be complete.

**VOTED:** 6-0.

After this motion was made, David Hediger reminded Denis and David Latulippe that he needs two (2) mylar copies with the Chairman's signature.

**B. A hearing for approval of the St. James Place Subdivision, a 13-lot, single-family subdivision off Boston Avenue near Stevens and Adele Street.** David Hediger read his Staff Memorandum dated August 15, 2003. A revised plan has been submitted along with a draft of the Homeowners Association, and easements to access the stormwater pipes and outfalls. The grade of the cul-de-sac has been designed to not exceed three percent (3%). Note #23 has been added to the plan, which indicates that Lots 73-75 of the "Farwell Park Extension" subdivision plan dated 1916 and Lots 31-34 of the "Highland Terrace Section B" subdivision plan dated 1896 are being amended as part of this proposed subdivision. Other notes added to the plan are referencing the 24-month expiration period for development and that a planted buffer will be provided on Lot No. 6 along the property line. Street tree species have been added as being red maples and green ash. There were no concerns from the Police and Fire Departments.

Present at this meeting were Scott Teiss (TFH Architects); James Gurney (St. James Builders); and Scott Blais (Pinkham & Greer). Scott Teiss stated that the plans reflect the concerns expressed at the previous Planning Board Meetings and the progress made in the past month. This plan reflects all concerns expressed. The documents are presently out for bidding to excavators for the site work., etc. The estimated costs have been included. This concluded Scott Teiss presentation.

John Cole stated that it does appear that the issues have been pretty much resolved. One (1) item that does remain is in regards to a Performance Guarantee. John Cole made reference to this in the City of Lewiston Zoning and Land Use Code under Article XIII, Section 12. There are a number of requirements. A Performance Guarantee has to at least equal the 125 percent cost of improvements that are necessary. It has to include that these items will be completed within a couple of years. Scott Teiss said that he does not believe there is an issue with the 125 percent or the time period. In order to establish this, there needs to be a plan. John Cole stated that the Performance Guarantee is a requirement and that there are several ways to approach it. One (1) is to specify the nature of the Performance Guarantee.

John Cole then asked David Hediger his thought on what has been done in the past. David Hediger stated that a Performance Guarantee is secured in the form of a bond or irrevocable letter of credit. A Conditional Agreement has been provided, saying that no lots could be sold or conveyed until the road is built and accepted by the City. It specifies to the City that lots can be sold and conveyed and building permits could be issued, but no Certificate of Occupancy can be issued. Nobody could move into those homes until the road is completed. After the Conditional Agreement has been cleared they will come back and submit a bond. The Public Works Department would get a number that both the City and the developer are agreeable to, which comes up to 125 percent. That bond, whatever type of Performance Guarantee it is, gets filed in Code Enforcement's office. Staff is comfortable with granting approval of this project, however, no activity can occur without a bond. John Cole made a reference to this which is covered in Article XIII, Section 12(a)(1). John Cole stated that he was concerned with prior releasing of an approved plan. John Cole said that if the Planning Board approves the plan, there is nothing in the ordinance other than this section that deals with releasing of the approved plan. He is not sure of what the legal consequence is, unless there are conditions to the approval. John Cole asked James Gurney is he would have any objection to the approval of the subdivision being contingent on the delivery of a satisfactory Performance Guarantee in a form satisfactory to the City of Lewiston Planning Department? James Gurney responded

that in order for him to commit the exact amount of dollars (the 125 percent needed) he said he is going to need a solid cost of what it is going to be to put the road in. He said he cannot come up with that Letter of Guarantee without knowing what that number is and this shackles him to do business in another part of the state. John Cole said that if James Gurney is granted approval of the subdivision, then he would have to provide a satisfactory Performance Guarantee that is consistent with Section 12 in an amount to be determined by Staff. John Cole asked James Gurney if that would be satisfactory. James Gurney responded with "Yes".

**Roger Pelletier (51 Boston Avenue)** stated that he had two (2) issues: One (1) being that he does not believe that a lot of problems will be alleviated by the plan and the other is in placement of a fence around the pond. He showed the location on the map of where Stevens Street, Boston Avenue, and Adele Streets are located. The children use Boston Avenue to do skateboarding. He stated that he could not see where the big expense would be to put up a fence. This is a safety precaution. There are a lot of children in the neighborhood and he feels that they should be protected.

Steve Blais explained that only during a storm situation would there be water. In a two- (2-) year storm event, the maximum water height would be 1.3 feet. Four (4) hours after it reaches that height, it would be four inches (4") deep. Then it will drain out slowly. In a 25-year storm event, the maximum height would be three (3) feet, four (4) hours later, it would be down to half a foot. With engineering practice throughout the country, this is an open and obvious area where people can see in. If a fence is placed there, you are preventing rescue from getting in. This is the general practice and this is how it has been designed. There is an 18 inch pipe in this area that has been wrapped so no children can get in there. Steve Blais stated that his number one concern for the community is safety and this has been done here. Steve Blais stated that this detention pond has been modeled with a frozen ground. To place a fence around the detention pond would be about 600-800 feet of fencing. A fence would need to be gated. A pipe has been lowered to create more area for the volume to keep the water level lower. They have over-compensated for the additional water. Jim Horn asked, "How deep is the ponding right now?" Steve Blais responded that it is 1-2 feet. The neighboring properties are at a higher level. The depth of the hole has increased and the water level will not be any higher. John Cole said that there are a lot of areas in the City where there is open water and they are not fenced. John Cole asked is there truly an undue risk to a child presented by this corner in a way that it has been figured on this plan? Roger Pelletier stated that all kids are curious to see what is on the other side. A fence would be a good way to keep the children out. Kids are kids and they are going to go in there.

David Hediger said that there is no policy on the fencing in of a detention pond and if there is a fence, it would need to be gated. Then, maintenance would need to be eventually done. The site is being heavily landscaped. A fence would not even be visible. Scott Teiss stated that this area is not a pond, it is an area that occasionally fills up with water. This detention pond will be a totally vegetated bowl. Since there was no further public comments, the public portion was closed and the following motion made.

**MOTION:** by **Lucy Bisson**, seconded by **Tom Truchon** that the Planning Board grant approval of the modification/waiver checklist; find that the application for the St. James Place Subdivision off Boston Avenue near Stevens and Adele Streets meets all the necessary approval criteria contained under Article XIII, Sections 4 and 5 of the Zoning and Land Use Code; and grant approval to this application, subject to the issuance of a Performance Guarantee that meets the dollar amount that is satisfactory to the Planning Staff and in a form that is also satisfactory to Planning Staff.

**VOTED:** 6-0.

**C. A hearing to review the creation of a five- (5-) lot subdivision (Laura's Hilltop Subdivision) to be served by a private court located at 221 Ferry Road.** David Hediger read his Staff Memorandum dated August 15, 2003. This application is for a five- (5-) lot residential subdivision. This parcel consists of 37.88 acres and is proposed to be serviced by a 600' long private court. All five (5) of the

proposed lots are located in the Rural Agricultural (RA) District. This subdivision contains several small wetland areas. Soils tests have been performed. Laura Hodgkin owns an adjacent lot that lacks street frontage that is being created as part of this subdivision. The "other land" is approximately 70 acres. The City has an option to buy this property and is allowed as an exemption under state subdivision law. This parcel would not be subject to subdivision review or standards. Laura Hodgkins is requesting the Board to approve this five- (5-) lot subdivision with the condition that the sale or development of Lot No. 3 not be finalized until the "other land" is transferred either to the City or an abutter or it is merged with Lot No. 3. If merged with Lot No. 3, the subdivision plan must be amended to include the entire area of the lot and to meet all the subdivision requirements. Association documentation has not been prepared for this development. The Public Works Department is requesting a 15 foot paved apron at the entrance to the court and the plan should reflect a street light at the entrance to the court. The Fire Department recommends sprinklering the houses and converting the existing farm pond and detention pond with a dry hydrant. The Police Department had no concerns.

Present at this meeting were Bob Faunce and Laura Hodgkin's son, Doug Hodgkins and his wife, Phyllis.

David Hediger stated that a letter from Attorney John Crouch is available to the Board for review and does speak to the proposed deeds containing several covenants and restrictions.

Bob Faunce on behalf of Technical Services, Inc. made a brief presentation to the Board. This subdivision is five- (5-) lots located off Ferry Road. There is a 600 foot private court serving these lots. They tried to put in a reversed curve. Because this is in the RA District, there are no access standards, therefore, the building setbacks are an additional 25-50 feet. There is a man-made pond. In a 25-year storm event, the depth would go up to 2.1 feet and drains off quickly. The land slopes off in the northwesterly direction. Bob Faunce showed on his mapping the field area and the areas that are wooded. All, except for Lot 4, will be developed in fielded areas. Lot 4, because of the wetlands, will be around the wooded area. Bob Faunce then referred to Tab 2 and the third map in that section. This is titled, "Tax Map". To the rear of this site is the property on which the City has an option. As condition of approval one, basically before these lots are sold, this land has to be either transferred to the City or an abutter. Bob Faunce stated that the only condition that is of his concern was in regards to the street light. He said that this makes no sense to him.

Construction costs will be limited to the road and detention pond. The estimated cost of this work is about \$50,000. The Hodgkins will get a home equity loan that will be 125 percent. The Hodgkins will also obtain an irrevocable letter of credit from the bank to cover the cost of the infrastructure. John Cole then commented on a couple of threshold questions. He said that the Power of Attorney is needed. The letter needs to be to the satisfaction of Planning Staff. Another point he made was to cover the Performance Guarantee requirements. The requirements are listed in Section 12(a)(2). The Code is very specific about what the Performance Guarantee has to pay. He said the approval of a home equity loan is not sufficient to satisfy that requirement. There are four (4) means of what the Performance Guarantee can be satisfied. They are: 1. A certified check payable to the City of Lewiston; 2. A savings account passbook issued in the name of the City of Lewiston; 3. An irrevocable letter of credit from a financial institution acceptable to the Planning Board or 4. A faithful performance bond running to the City of Lewiston and issued by a surety company licensed to do business in the State of Maine. These are the four (4) thresholds. Bob Faunce stated that Item No. 2 above will be provided. John Cole stated that this would be fine.

The street light is a matter of the ordinance. A street light needs to be placed. This is in the Code and needs to be placed. David Hediger then referenced Article XII, Section 18, Sub-Section (7), Street Lighting. This contains improvement standards, which references both public and private streets. This is explained on Page CDA:139 of the Zoning and Land Use Code, which states, "*Any project involving the construction of a new public street or private road shall install street lighting at the developer's expense. This lighting shall conform to the standards of the Central Maine Power Company and the Department of Public Works.*" David Hediger then referenced Article XIII, Section 4, Sub-Section 4 (n), which references

Exterior lighting. This is located on Page CDA:156. At the minimum, Staff would like to see a street light at the intersection.

Rob Robbins referred to the landlocked property. It needs street frontage. Bob Faunce stated that something needs to be done with this property. Rob Robbins asked, "Are we creating an illegal lot right now?" David Hediger responded with, "Yes". David Hediger also said that is why they are looking at the condition. Rob Robbins stated that it does not say that approval is contingent upon a resolution of this issue. Basically, the other lots can be conveyed and only Lot No. 3 is held back. Bob Faunce stated that this is contingent upon the sale. Rob Robbins stated that this land is not part of those lots anymore. The clear intent is to separate these parcels. David Hediger stated that the sale is supposed to be going through within the next month. Bob Faunce said to accommodate the City, this has to be done. Hopefully, the City will decide to close on the sale. The remaining land cannot be conveyed separately from Lot No. 3. As long as the conditions of approval are met, this is not illegal. Rob Robbins stated that Plan approval should be contingent upon resolution of that remaining piece. David Hediger stated that this will need to come back to this Board with an amended Subdivision Plan. Rob Robbins stated that, with the exception of Lot No. 3, the Hodgkins could sell off all of the other lots and do nothing and then you have a legal lot. David Hediger said that it would still be in ownership of Hodgkin and this is going to be in ownership of Hodgkin. Rob Robbins stated that there is no provision for an easement. By leaving this out of the subdivision, it is another lot even though it is common ownership. John Cole asked if this would be solved, if you removed Lot No. 3 from the subdivision? Rob Robbins stated that this could be amended later and then add Lot No. 3. Lucy Bisson stated that her understanding is that Lot No. 3 now becomes the "other land", or "Remaining Land of Laura Hodgkins". In other words Lot No. 3 and the 70 acres becomes "Remaining Land". Then once the ownership has been transferred to the City or to an abutter, they come back. Rob Robbins asked, "How did this parcel become landlocked? Mrs. Hodgkins stated that this land was purchased from an abutter. Rob Robbins then stated that there was an intent that it become all part of one (1) parcel. This item could be blessed in the same manner as the item earlier this evening. Rob Robbins stated that all the work has been done on Lot No. 3. This would just be a matter of a simple amendment. Rob Robbins said that the driveway easement on Lot No. 2 can still be left on the plan. Rob Robbins stated that Lot No. 3 will be remaining land. If the City does not agree to a Purchase & Sale Agreement, than this property can be sold to an abutter. Bob Faunce stated that he would be satisfied to change Lot 3 to remaining land. David Hediger stated that we are creating a new lot. David Hediger said that it should be made clear to both the Hodgkins and the Planning Board with a note or condition that he can come back on this, so that there is no confusion later on. This item was then opened to the public.

**Michael Laliberte** (a resident residing across the street from Laura Hodgkin's home) stated that he is not happy about the placement of a light. He does not want this to happen and would like some relief on the light situation. John Cole said that all the Planning Board is advised to do is what is in the Code and that is satisfy the Public Works Department by placing a light somewhere in this vicinity. The Planning Board does not have anything to say about whether it is shaded or where it gets placed. David Hediger commented that this is not a waivable item. It is in the Code! **Mrs. Hodgkins** asked, "Does the City have specific design criteria?" John Cole responded that he does not think the Code goes that far. He said he is almost certain that a way could be found to mitigate the effect of the light, i.e. shading, etc. The Planning Board does not have that authority. David Hediger said that this will need to worked out with Dennis Caron as to what type of lighting they are looking for as a bare minimum from the Public Works Department. Michael Laliberte said he is an engineer and that he understands it is for safety reasons. He then asked if there were any deed covenants against mobile home? There are deed restrictions. In regards to the stormwater management pond, Michael Laliberte said that he does not want a fence. He then asked who will maintain the pond and what is the City's intention? Bob Faunce responded that this is not clear at this point.

Bob Faunce said there are two (2) conditions. One is to re-label Lot No. 3 as "Remaining Land" and the other is to revise the note on Condition 1. Robert Robbins asked if a Real Estate Lawyer has looked at

this application? Bob Faunce stated that Mike Gotto had spoken to Attorney John Crouch, who has looked at this application and he felt specifically that because it is was in common ownership you could pass over. This is not the creation of an illegal lot. In closing this discussion Rob Robbins said that another possibility would be to get an opinion from the City Attorney. He stated that he feels that this would otherwise create an illegal, non-conforming lot under the Code. The following motion was made.

**MOTION:** by **Lucy Bisson**, seconded by **Rob Robbins** that the Planning Board determine the application for the creation of a five- (5-) lot subdivision (Laura's Hilltop Subdivision) to be served by a private court located at 221 Ferry Road to be complete, except the Power of Attorney toward Doug Hodgkins that he will reflect a copy of his report to Staff; grant the modification/waiver checklist; find that this application meets all the necessary approval criteria contained under Article XIII, Sections 4 and 5 of the Zoning and Land Use Code; and that the Plan be granted approval subject to the condition that Lot No. 3 be re-labeled, "Remaining Land of Hodgkins", that the addition of Note 1 be reworded satisfactory to the Planning Staff to reflect the discussion this evening, and there be a proposal to post a bank account.

**VOTED:** 6-0.

**V. OTHER BUSINESS:** Any other business Planning Board Members may have relating to the duties of the City of Lewiston Planning Board. None.

**VII. READING OF THE MINUTES:** *Reading of the minutes from the July 21, 2003 Planning Board Meeting.* The following changes were made: On Page No. 1, first motion, add a "d" to the word, "dispense", and delete the word, "off" and replace it with the word, "with". On Page No. 2, third paragraph, delete the word, "on" and replace it with the word, "of". The following motion was made.

**MOTION:** by **Lucy Bisson**, seconded by **Tom Truchon** that the Planning Board accept the Planning Board Minutes for July 21, 2003, with the three (3) above listed minor changes.

**VOTED:** 5-0-1 (Rob Robbins Abstained).

Before adjournment, David Hediger briefly mentioned that the Oxford Networks project will be placed on the agenda for the September 15, 2003 Planning Board Meeting. There is only one (1) meeting this month, due to the Labor Day Holiday. John Cole commented that if the agenda is getting heavily loaded for the 15<sup>th</sup>, another meeting might be in order. John Cole requested that David Hediger inform him of this, so as to not create a long meeting for the 15<sup>th</sup>.

David Hediger also reminded Board Members that if they know of anyone who is interested in being on the Planning Board and who is more than qualified to contact either himself or Gil Arsenault.

**VIII. ADJOURNMENT:** No action was taken on adjournment, however, this meeting adjourned at 8:50 p.m. The next meeting is scheduled for September 15, 2003.

Respectfully submitted,

Lucy A. Bisson, Planning Board Member & Secretary  
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