

City of Lewiston
PLANNING BOARD MEETING
Minutes of April 22, 1997

I. ROLL CALL

The meeting was called to order at 6:05 PM.

Members Present: H. Milliken, H. Skelton, D. Theriault, T. Peters, D. Jacques,
L. Zidle, M. Paradis

Staff Present: J. Lysen, G. Dycio, D. Ouellette

Also Present: City Attorney Robert Hark

II. WORK SHOP - Paper Streets

Attorney Hark gave a presentation of how the law changed in 1987 concerning paper streets. He said that a "paper street" was a proposed unaccepted street shown in a subdivision plan recorded at the Registry of Deeds. The legal significance of paper streets is two-fold: 1) There is an incipient dedication to public use. This means that the land under the paper street is formally dedicated to a public use-public access. 2) Owners of the lot of the plan obtain private right of the street - right of way. With respect to a paper street, there is no municipal obligation so what the City is doing when it vacates the street is really only saying they no longer want public dedication. He further stated that the statutory method of vacating public rights were complicated. He said that a lot owner could go before the City Council and then had to go to each land owner who had a public right of way over the "road" and ask them to sign a release deed which gave away their rights to this "road." This procedure also included getting the bank or credit union who held a mortgage on any of this property to sign over as well. He said that it was not 100% clear that as an abutter one owned to the center line of the street because there was a statute, 33 MRSA Sec. 460, which talks about private ways, county roads and highways, but did not mention specifically paper streets. In 1985 a very simple bill was passed, but then in 1987 a more comprehensive bill was passed.

The law was changed for future generations so that for subdivisions recorded after September 1987, instead of the private and public rights continuing forever on the paper streets, the new law said the public rights would continue only for twenty years unless the streets were accepted. With respect to private rights, unless the street is built in twenty years, the private rights will terminate. This law was basically for brand new subdivisions created after the 1987 law. This law was to avoid problems in the future. This does not apply to any of the old subdivision.

With respect to pre-existing subdivision, this 1987 legislation tried to solve the pre-existing problems in the following way. The City Council has the right to do away with the public right by deciding to vacate public dedication. They can't take away private rights without fair notice and right to be heard. Statute requires a list of everyone who owns land and mortgagee before the City Council acts. The order of vacation must be recorded in the Registry of Deeds which starts a "clock" for one year for anyone who has right of way on that street to first file a claim which will give them 180 day period to file suit. It shifts the burden of proof to the person vacating the street. The Court can determine if the street stays open or is vacated.

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Another thing that the statute did was to say that all paper streets that exist are going to be deemed to have been subject to an order of vacation ten years after the date of the statute (September 1987). Municipalities, however, can opt to extend this deadline with two 20 year extensions. These vacation of streets do away with public rights only, not private rights. A person would have to post notice and record it in order to vacate private right of way.

H. Milliken, asked should the City want to vacate a certain number of paper street if the City had to record these with the Registry. Mr. Hark answered that what the City would presumably do with respect to the streets they wanted to preserve as paper streets, they would describe those in notice of extension and vote to extend under the statutory provision an additional 20 years.

D. Theriault asked about a reverts clause. Mr. Hark said that this was different from the law he was speaking about this evening, that if the deed has an expressed reservation, title does not revert back to abutters.

The City does have a few alternatives. One would be to do nothing and all the paper streets that have not been previously vacated that are shown on pre-September 1982 plans will be deemed vacated. The public easement in the streets will cease to exist, not the private rights. 2) It can extend the period for deemed vacation for all paper street by 20 years and do nothing further - in other words, can put this issue off for twenty years. 3) City can extend by twenty years some streets and vacate others. He further noted that if all of the paper streets in the City become vacated, it does not automatically do away with the private rights of way over the streets. And also, if the City decides to extend all the streets for twenty years, it does not keep the City Council from acting on an appropriate petition or recommendation from the Planning Board to prohibit them from vacating a paper street during the next twenty years.

H. Milliken asked when public rights start. Mr. Hark said it started when the subdivision was recorded. It doesn't mean that the City has any obligation to maintain that street, not until it is an accepted street. D. Theriault asked what happens if the City uses a portion of a paper street for another use. Mr. Hark said it was not clear and gave an example of where the City ran a sewer under a paper street. T. Peters and Mr. Hark had a discussion regarding specific statutes--30 M.R.S.A. Section 31 and Section 32. Plans after 1987 are governed by 30 M.R.S.A. 31.

H. Milliken opened the meeting to the public: **David Fontaine** said he owned all other lots in a subdivision other than the first one that has access to the paper street. He asked about his private rights to the road. Mr. Harks told him he should ask the City Council to preserve the paper street. T. Peters said that getting rid of the public right may be to his benefit. Private rights do not dissolve.

H. Milliken noted that he had received a notice from Public Works that they were going to be reviewing paper streets as well as Planning Staff. There will be several other workshops before the Planning Board makes any recommendation to the City Council. Mr. Fontaine said he received a letter from Public Works saying that they will stop plowing their street because it is a paper street and not accepted by the City. He noted that they have been plowing for the last twenty years.

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Connie Roy said her paper street was never built, but there was a gas line under it. Now her driveway over this street is going to have be torn up because another person uses natural gas at the end of her street. Mr. Hark did not know the answer to her question.

Arthur Chamberlain owns lots on Elm Street for over thirty years. He wants a private drive down to his lots of about 300' or so, but says the cost is extremely expensive. He said he was not asking the city to build the street, but merely wanted the right to build the private drive. He is concerned with not being able to have access after September 1997 if he does not build a road before then. Mr. Hark said it only affects public right of way, not the private right of way. Mr. Chamberlain asked if he could be personally notified when the Planning Board had a meeting regarding paper streets. T. Peters said it is impossible for Staff to notify all the abutters of paper street, and that there is always a notice in the paper. J. Lysen said that if he and others in the audience wanted, they could leave their name and address and Staff would notify them personally when there was another workshop.

Surveyor **Kevin Cullenberg** said he has attended other seminars regarding paper streets, and it was their understanding that the private rights would be terminated as well.

Recessed for 25 minutes.

Meeting called to order at 7:30 PM

II. READING OF THE MINUTES OF March 20, 1997, March 25, 1997, and March 27, 1997.

MOTION: by H. Skelton, seconded by T. Peters to accept the minutes of March 20, 25, and 27, 1997 as written.

VOTE: Passed 7-0.

III. CORRESPONDENCE

1. Memorandum and attachments from Steven Johnson, City Engineer regarding paper streets.
2. Letter from Tim Rich, Project coordinator for the Lewiston Church of the Nazarene regarding pavement deadline of April 30th being extended to the first week of May or as soon as material is made available.

MOTION: by T. Peters, seconded by H. Skelton to accept the above correspondence.

VOTE: Passed 7-0.

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IV. REQUEST FROM CITY COUNCIL FOR REVIEW OF CDBG RECOMMENDATIONS AND POSSIBLE AMENDMENTS

Robert Mulready, City Administrator and James Andrews, Community Development Director appeared before the Board. Mr. Mulready said the City Council wanted to bring this item back to the Planning Board for further review. He thanked the Board for their efforts and explained that there was a downtown business group working together with the City (Leighton Cooney and Normand Rousseau). He suggested taking \$20,000 from the Bates Mill Redevelopment fund and allocated it to the Downtown project. He also said that the City would now be offering downtown loans at 3% rate instead of 5%. J. Andrews explained that there was money left over in the housing rehab and saw no problem with the proposal as set before the Board. Mr. Mulready's memo to the Board explained that the \$50,000 recommendation by Staff and the Planning Board for the Housing Rehab Loan Program is not necessary. He said that currently there are adequate funds in the CDBG budget to cover this program. He also explained that they were taking \$5,000 from CD Administration to use for other purposes. This would add \$25,000 to the 50/50 Commercial Rehab and \$25,000 to the Downtown Improvement Program as well as \$3,000 to L/A Arts and \$2,000 to the Androscoggin Head Start. In addition, with a deletion of \$12,000 for the Lewiston School Department, \$2,000 for the Historic Preservation Review board and \$1,000 for Androscoggin Home Health, \$7,500 is being requested for the Hope Haven Family Shelter and \$7,500 for St. Martin de Porres. He further wrote that with regards to the downtown, these additions will then have a total of \$205,000 towards the City's efforts to revitalize the downtown.

H. Milliken asked about the downtown improvement facade and J. Andrews said that this program was going well, that a downtown facade improvement could cost \$10,000 and would qualify for a maximum rebate of \$5,000. This benefits not only the business owner, but the City as well.

T. Peters agreed with Mr. Mulready regarding the appropriation of funds and suggested the Board pass it as written. D. Theriault asked how many more years CDBG would have to fund the Bates Mill. Mr. Mulready said that if the City of Lewiston were to receive a grant along with Auburn of approximately \$2-3 million dollars per year for ten years, then the Bates Mill would not need any monies from the general fund nor from CDBG. He said he felt that Lewiston had a good chance at obtaining this money. He further stated that short of that happening, he would predict asking for funds for two more years. Peoples Bank and other tenants were going to be an asset to the Mill. He sincerely hopes to downsize the mill's request for money.

| PUBLIC SERVICE | Staff's 1st Recommendation | Planning Bd's 1st Recommendation | Staff's 2nd Recommendation | Planning Bd's 2nd Recommendation |
|-----------------------|----------------------------|----------------------------------|----------------------------|----------------------------------|
| Andros. Head Start | \$ 55,878.00 | \$ 64,878.00 | \$ 66,878.00 | \$ 66,878.00 |
| Andros Home Health | \$ 20,000.00 | \$ 23,000.00 | \$ 22,000.00 | \$ 22,000.00 |
| Kid's Korner | \$ 2,000.00 | \$ 2,625.00 | \$ 2,625.00 | \$ 2,625.00 |
| Hope Haven Bldg | \$ 0.00 | \$ 0.00 | \$ 7,500.00 | \$ 7,500.00 |

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|--|---------------|---------------|---------------------|---------------|
| LA Arts | \$ 6,000.00 | \$ 6,000.00 | \$ 9,000.00 | \$ 9,000.00 |
| Lewiston School | \$ 12,000.00 | \$ 12,000.00 | \$ 0.00 | \$ 0.00 |
| St. Martin de Porres | \$ 0.00 | \$ 0.00 | \$ 2,500.00 | \$ 2,500.00 |
| | | | NEW SUBTOTAL | \$ 219,653.00 |
| ADMINISTRATION & PLANNING | | | | |
| CD Administration | \$ 184,400.00 | \$ 184,400.00 | \$ 179,400.00 | \$ 179,400.00 |
| ECONOMIC DEVELOPMENT | | | | |
| 50/50 Commercial Rehab | \$ 25,000.00 | \$ 25,000.00 | \$ 50,000.00 | \$ 50,000.00 |
| Downtown Improvement | \$ 120,000.00 | \$ 110,000.00 | \$ 135,000.00 | \$ 135,000.00 |
| Historic Preservation Review Boar | \$ 2,500.00 | \$ 2,500.00 | \$ 500.00 | \$ 500.00 |
| Bates Mill Redevelop | \$ 400,000.00 | \$ 400,000.00 | \$ 380,000.00 | \$ 380,000.00 |
| | | | NEW SUBTOTAL | \$ 635,000.00 |
| HOUSING REHAB | | | | |
| Housing Rehab Loan Program | \$ 50,000.00 | \$ 50,000.00 | \$ 0.00 | \$ 0.00 |
| | | | NEW SUBTOTAL | \$ 120,894.00 |
| NEIGHBORHOOD IMPROVEMENTS | | | | |
| Residential Rehab | \$ 0.00 | \$ 0.00 | \$ 20,000.00 | \$ 20,000.00 |
| | | | NEW SUBTOTAL | \$ 113,000.00 |

H. Milliken said he would like to start the CDBG process earlier. J. Lysen invited the Board to a bus trip to Lowell Massachusetts for May 21st to see a success story of a mill like the Bates Mill.

MOTION: by T. Peters, seconded by H. Skelton to send a favorable recommendation to the City Council as outlined above.

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VOTE: Passed 7-0

V. REVIEW OF DEVELOPMENT PROPOSALS - FINAL HEARING

Pleasant Street Acres - Revision I

Bob Boucher submitted plans for a proposal to amend an approved subdivision where eleven (11) existing lots will be reconfigured into two (2) larger lots with all of their frontage on Ashmount Street. As outlined under Article XIII, Section 3 (1)(7) of the Zoning and Land Use Code the amendment is defined as a minor amendment and therefore only requires one meeting before the Planning Board.

The area under consideration is located in the Neighborhood Conservation "A" (NCA) District where the minimum lot size for newly created lots is 7,500 square feet with a minimum of 75 feet of frontage. Upon review of the proposed lots, Staff found that they meet the minimum requirements of the district.

Pursuant to Article XIII, Section 3 (h)(5), the applicant requested a modification and a number of non applicable status requests to the application requirements listed under Section 3 (h)(1 4). Upon review of the requests Staff found that the requests were justified due to the minor nature of the project, and recommended that the Board grant them.

Copies of the plans were forwarded to the Police, Fire and Public Works Departments for review and comments. Upon review of the plans, neither department had any concerns. The Planning Staff reviewed the plans against the Approval Criteria listed under Section 4 (a u), and the Coordination with State Subdivision Law section (Section 5, 1 14) of the Zoning and Land Use Code and finds that the project met all of the applicable criteria. Therefore, Staff recommended that the Planning Board grant final approval to the project.

H. Skelton asked if the set back requirements were met. G. Dycio said they were. Kevin Cullenberg pointed out that there was a paper street next to it and that this was basically being split up because of a paper street.

MOTION: by H. Skelton, seconded by L. Zidle that the requested waivers of submission requirements by Bob Boucher be granted because of the size of the project and the circumstances of the site; such requirements would not be applicable or would be an unnecessary burden upon the applicant and that such waivers do not adversely affect the abutting landowners or the general health, safety, and welfare of the city.

VOTE: Passed 7-0.

MOTION: by H. Skelton, seconded by L. Zidle that the Board find that the application of Bob Boucher meets all of the approval criteria under Article XIII, Section 4 and Section 5 and further that the Board grant final approval to the project.

VOTE: Passed 7-0

VI. PUBLIC HEARINGS

A. Proposed Amendment to the Zoning and Land Use Code

J. Lysen explained his memo to request an amendment to the conditional zoning agreement with the Lisbon Street

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Shopping Trust concerning warehousing on the upper floor of the Promenade Mall. Included was a letter from North Atlantic Storage Company to the abutters of the Mall. The requested amendment extends the date from April 30 to June 30, 1997; with a condition limiting hours of operation to 7:00 AM to 9:30 PM.

Present were Richard Roy, Karla Roy, president of North Atlantic Storage, and Attorney Richard Trafton who represents the Roys. Attorney Trafton said the Roys were seeking an extension of sixty days (from April 30th to June 30) to remove the materials from the warehouse. They have voluntarily placed a restriction upon themselves of limiting the activity from 7 AM to 9 PM. North Atlantic rents the property from Lisbon Street Shopping Trust and it was Lisbon Street Shopping Trust who negotiated the date of April 30th. Attorney Trafton said it was physically impossible to have all of the materials out of the warehouse by the 30th of April. T. Peters said that the neighbors have complained about noise and smell from the diesel engines. Mrs. Roy said she instructed the truckers to turn off their engines while waiting. Attorney Trafton read a letter from Burger King and Roy and Jane Beaudoin, neighbors of the Mall, who both expressed no objections to the extension. Mr. Roy said that the warehouse was 1/3 empty at the moment, over 1/2 will be empty by middle of May and the rest will be out by the middle of June. He said he had no place to put 450 loads in this town and did not have a choice at this time but to ask for this extension. H. Milliken asked if he would add new materials to the warehouse during this time. Mr. Roy assured the Board that no new materials would come into the warehouse. Mrs. Roy said the product is a wet product and cannot be moved just anywhere. Mr. Roy said that he approached the Planning Board ahead of time and did not wait until the lease expired and force the City to take them to court. He said he wanted to do things ethically.

Meeting open to the public.

Larry Fox said he watched the trucks yesterday afternoon and they were still unloading materials. He said he was insulted by Mrs. Roy's letter and that the Roys had plenty of time to move out. He said they should not be allowed any extra time and that the neighbors suffered with this problem since last summer.

Robert Lambert of 94 Summit Avenue said that if they allow the Roys to continue until June 30th, that they would probably ask for another extension. He also stated that they were still bringing in materials at this time and that the trucking is not limited to 9:30 at night. He noted that when the Roys asked for an extension the first time, that the noise was supposed to stop, and it didn't. He said the Roys brought this problem upon themselves and agreed they have a serious problem. He said that the City had to make absolutely sure that no materials will be allowed in and that the activity will only be from 7 AM to 7 PM, not 9 PM. He also said that the Roys were in the back of the building and will create the same problems for those neighbors. Mr. Roy said he only had 8,000 square feet out back and was not the only tenant there. He also said that he as requested the truckers to turn off their engines and that he has the trucks pre-loaded during first and second shifts only. T. Peters asked if there were any complaints registered in Code Enforcement regarding the noise problems. J. Lysen said that he saw four to six, typically with noise and diesel smell. T. Peters said it would be good in this situation to have a legal document from the Roys, but Mr. Trafton said he could not recommend this to his clients and said that they would stand behind their word.

MOTION: by T. Peters, seconded by L. Zidle to send a favorable recommendation to the City Council to amend the conditional zoning agreement adopted on November 14, 1996 between the City of Lewiston and the Lisbon Street Shopping Trust in order to extend the April 30, 1997 deadline for storage in the upper level of the property at the Promenade Mall to June 30, 1997, subject to the following conditions:

- 1) No trucks shall be operated nor loading occur except during the hours of 7:00 AM to 9:30 PM.

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- 2) That truck engines shall be turned off while waiting to be loaded.
- 3) That North Atlantic Storage Company shall not accept any new materials for storage in the upper level of the property.
- 4) Except as amended, the Ordinance as adopted on November 14, 1996 shall remain as adopted by the Council.

VOTE: Passed 6-1 (H. Skelton).

H. Skelton said that some of his concerns have been met at this meeting, however, he said he felt it was up to the Roys and the Rosenthals to learn about the zoning laws in that area before moving in. He said he was concerned that voting in the affirmative would send a message to the public that if a person had enough money at stake, then the law could be amended. He felt it was a disservice to the public and therefore voted against the extension. T. Peters said it was Mr. Rosenthal who gave the Board the assurance that the Roys would be out by April 30th. He also said that because the Roys were here this evening speaks for itself. H. Milliken said that this time the Board was dealing with the actual tenant and not with the land-lord. D. Theriault said his largest concern was for the neighbors and the only reason he voted affirmatively was because the neighbors were in agreement and although he agreed with H. Skelton, he would take Mr. and Mrs. Roy at their word.

Mr. Lambert made a verbal agreement with Mr. Roy to call him directly if he continued to have problems with the noise.

VI. OTHER BUSINESS-Old Business

1. Discussion of proposed policy on Application Fees with respect to both City Council and Planning Board Initiating Land Use Code amendments. (3/25/97)

J. Lysen said that so far the policy is if one party is specifically benefiting, all fees would be paid by that party and that the City Council said if there were any doubts, that fees should be charged.

2. Discussion Regarding the Urban Enterprise (UE) District (3/11/97)

Nothing to report at this time.

VII. EXECUTIVE SESSION

MOTION: by D. Theriault, seconded by M. Paradis to move into executive session.

VOTE: 7-0

VIII. ADJOURNMENT

MOTION: by D. Jacques seconded by L. Zidle to adjourn the meeting.

VOTE: 7-0.

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Meeting adjourned 9:55 PM

Respectfully submitted,

Dennis Theriault
Planning Board Secretary