

**CITY OF LEWISTON
PLANNING BOARD MEETING
MINUTES for October 10, 2000 - Page 1 of 6**

- I. ROLL CALL:** This meeting was called to order at 7:02 p.m. and chaired by Tom Peters.
- **Members In Attendance:** Muriel Minkowsky, Rob Robbins, John Cole, Tom Peters, Lewis Zidle, Mark Paradis, and Dennis Mason.
 - **Staff Present:** Gil Arsenault, Deputy Development Director; James Lysen, Planning Director; and Doreen Asselin, Administrative Secretary.

- II. READING OF THE MINUTES: Draft of the Minutes from the September 26, 2000 Planning Board Meeting.** The following changes were made to the minutes:

Rob Robbins and Lewis Zidle arrived at 7:04 p.m.

- On Page No. 2, first paragraph, add the following sentence on line 3, "*The Planning Board concurred with Chairman Tom Peters' finding that the issue will be considered on a case-by-case basis.*"
- On Page No. 7, third motion, change the motion made by "Dennis Mason" to read "Rob Robbins".
- On Page No. 8, second motion, the motion shall be deleted and re-worded as follow: "*by John Cole, seconded by Lewis Zidle that the Planning Board review the amendment concerning days of operation to the Conditional Rezoning Agreement for 780-782 Lisbon Street and schedule this item for a Public Hearing for the October 10, 2000 Planning Board Meeting.*"
- On Page No. 9, first and only paragraph, line 7, delete the word, "reception", and replace it with the words, "public perception"

MOTION: by **Dennis Mason**, seconded by **Mark Paradis** that the Planning Board approves and accepts the Planning Board Minutes for September 26, 2000, as amended.

VOTED: 6-0.

- III. CORRESPONDENCE:** The following items of correspondence included were:

- A. A letter from Charles Kellogg, State of Maine Department of Environmental Protection (DEP) dated October 5, 2000 in reference to the DEP not exercising jurisdiction over the application regarding a modification to the entrance onto Hammond Street for Central Maine Medical Center (CMMC);
- B. Staff Memorandum from James Fortune, Planning Coordinator, dated October 3, 2000 in regards to the Public Hearing on a proposal to amend the Conditional Rezoning Agreement for 780-782 Lisbon Street;
- C. Staff Memorandum from James Fortune, Planning Coordinator, dated October 3, 2000 in regards to the Determination of Completeness and Final Hearing concerning the Subdivision Plan for West View Bluffs Brook Pines Subdivision on College Road;
- D. Staff Memorandum from James Fortune, Planning Coordinator, dated October 6, 2000 in regards to the Proposal to conditionally rezone the Continental Mill Property at 2 Cedar Street, from the Riverfront (RF) District to the Mill (M) District;
- E. An Ordinance change to the Zoning and Land Use Code, Article IV, Establishment of Districts;
- F. Staff Memorandum from David Hediger, Land Use Inspection Officer, dated October 6, 2000 in regards to Group Care Facilities;
- G. An Ordinance change to the Zoning and Land Use Code, Article II, Definitions; and
- H. A Staff Memorandum from James Lysen, dated October 6, 2000 in regards to the Other Business - New Business Item on the Agenda for Item No. 3, Martel School Land Transfer to the Maine D.O.T. on East Avenue.

Gil Arsenault arrived at 7:06 p.m.

MOTION: by **Tom Peters** , seconded by **Dennis Mason** that the Planning Board accept the correspondence and place it on file to be read at the appropriate time.

VOTED: 6-0.

- IV. PUBLIC HEARING: Public Hearing on a Proposal to amend the Conditional Rezoning Agreement for 780-782 Lisbon Street.** Jim Lysen summarized the memorandum that James Fortune prepared and was dated for October 3, 2000. At the September 26, 2000 Planning Board Meeting, Allen Marin requested the Planning Board to initiate a proposal to amend the Conditional Rezoning Agreement for his property. In the proposed amendment, Allen Marin would like to amend Item B of the Conditional Rezoning Agreement to allow the business hours to run seven (7) days per week, instead of six (6). He has secured a tenant who would like to be open seven (7) days a week, primarily during peak retail seasons, i.e. Thanksgiving, Christmas, etc. The limitation on the actual hours would remain from 8:00 a.m. to 8:00 p.m.

John Cole arrived at 7:08 p.m.

Jim Lysen requested that the Planning Board Members include in their recommendation that first and second readings be held at the next City Council Meeting scheduled for October 17, 2000, since this is such a minor amendment.

Allen Marin was present at this meeting. To secure this tenant, he needs to have the days of operation amended. The retail business, Candles, Etc., will be open Mondays only for appointments. The hours of operation will remain the same. She is currently open from 9:00-7:00 p.m.

There were no comments, questions, or concerns from the public, therefore, the public portion was closed. This item was then turned back to the Planning Board and the following motion was made.

MOTION: by **John Cole**, seconded by **Lewis Zidle** that the Planning Board send a favorable recommendation to the City Council on a proposal to amend the Conditional Rezoning Agreement for 780-782 Lisbon Street and to request that the City Council hold both first and final reading on the proposal at their October 17, 2000 City Council Meeting.

VOTED: 6-0-1 (Mason abstained.)

- V. FINAL HEARING: Determination of Completeness and Final Hearing concerning the Subdivision Plan for West View Bluffs, Revision 5 (tabled from the 09/12/00 Planning Board Meeting).** Jim Lysen gave a quick overview of the memorandum prepared by James Fortune dated October 3, 2000. At the September 12, 2000 Planning Board Meeting, the Planning Board tabled a decision and requested additional information before they make a Determination of Completeness and grant final approval for Revision 5. There are outstanding code enforcement issues with respect to the road construction and with storm water management and erosion control issues. This item is again being requested to be tabled until the October 24, 2000 Planning Board Meeting.

Gil Arsenault said that permits are being withheld at this time. This is not a clean, easy situation. There have been a number of issues over the years. He said that hopefully working with Mr. Chuck Starbird will achieve some solution. Staff (Mike Paradis, Gil Arsenault, and David Hediger) did meet with the association about three (3) to four (4) weeks ago. Promises were made to the association by the developer, some of which had nothing to do with the development from a Planning Board perspective. This may need to be taken off of the agenda and turned over to City Attorney Robert Hark. Tom Peters mentioned that a site visit was done two (2) years ago. Jim Lysen said that they are trying to resolve the drainage issue first. The water may be able to be diverted from this part of the subdivision and not impact areas downstream. This still may not solve the problem downstream. He said that there may be a compromise in that matter. Gil Arsenault said to make matters worse, there is a lot of ledge up there. The developer needs to come up with something acceptable.

Tom Peters mentioned that this has been around for a long time. He said his goal is to have the agenda cleaned up before his term is up in December. Tom Peters suggested that this gets tabled and that sometime before October 24, 2000 he would like a recommendation from Staff that this is going forward in some way. The following motion was made.

MOTION: by **Dennis Mason**, seconded by **Mark Paradis** that the decision concerning Revision 5 of the West View Bluffs Brook Pines Subdivision on College Road be tabled until the October 24, 2000 Planning Board Meeting.

VOTED: 7-0.

VI. OTHER BUSINESS:

A. New Business:

1. *Conditional Rezoning Proposal for the Continental Mill, 2 Cedar Street, to conditionally rezone the property from the Riverfront (RF) District to the Mill (M) District.* James Lysen summarized James Fortune's memorandum dated October 6, 2000. The new downtown zoning took effect on October 6, 2000. As a result of this new downtown rezoning, the Continental Mill was placed within the Riverfront (RF) District. This property is the only property within the proposed Riverfront (RF) District that had some manufacturing uses that were either looking to stay or expand. There were concerns as to where they would relocate to and what effect this would have on the mill. The owner stated that, in their opinion, the Continental Mill Complex would eventually transition to the type of uses that are envisioned in the Riverfront (RF) District and that this transition could take more than ten (10) years. James Lysen said the owner's representative, Len Tracy, stated that they are appreciative of the consideration for the transitional period. They are asking the City to conditionally rezone the Continental Mill so that uses that would have been non-conforming can expand at this location and that the owners of this complex can maintain and expand existing uses, while transitioning to uses that comply with the new zoning district.

Jim Lysen then referred to Page No. 2 of the Conditional Rezoning Agreement. Dennis Mason mentioned that the reference under Item (A.) to Article XII, Use Regulations, should be changed to Article XI. Article XII is Performance Standards. Jim Lysen agreed and said that this change will be made. Dennis Mason also requested that Planning Board Members receive a copy of the revised Conditional Rezoning Agreement. Jim Lysen went on to say that Item (C.) is the most critical item. This item is the reason for this Conditional Rezoning Agreement. Item (C.) is "*When manufacturing and all other non-conforming uses within the mill complex are abandoned in accordance with Article VI, Non-Conformance, Section 4(c) of the Zoning and Land Use Code, the zoning shall revert to the Riverfront (RF) District.*" When something is abandoned for one (1) year, it is presumed to be abandoned. You then have an opportunity to re-examine that within the second year. You can go to the Board Of Appeals and make your case that you really did not mean to abandon it, you can then re-establish that non-conforming use. After a two (2) year period of time, it is officially abandoned and therefore in this case the mill complex will automatically revert to the RF District. Items (A.), (B.), and (C.) are the three (3) special conditions that have been added. Jim Lysen said to note there are no limitations being placed on uses, typical of Conditional Rezoning Agreements. One condition calls for when an expansion project is proposed, people need to think about where they are locating for potential impact so the uses within the building and abutting properties are protected. Finally, the automatic transition to the Riverfront zone will occur when the non-conforming uses are abandoned.

Dennis Mason requested that non-conforming use by assumption be spelled out and described in more detail and again for the Planning Board Members to receive a copy of the Conditional Rezoning Agreement. The following motion was made.

MOTION: by **Dennis Mason**, seconded by **Rob Robbins** that the Planning Board schedule a Public Hearing for

the Continental Mill property located at 2 Cedar Street from the Riverfront (RF) District to the Mill (M) District on October 24, 2000.

VOTED: 7-0.

2. ***Proposal to amend Article II, Definitions, of the Zoning and Land Use Code, by amending the definition of single-family dwelling to comply with Federal Fair Housing Laws and State Law.*** Gil Arsenault presented this item. He said that this item came before the Planning Board about ten (10) years ago. In the memorandum dated October 6, 2000 from David Hediger, Land Use Inspection Officer, it states that the City's ordinance is not consistent with the provisions of the Federal Fair Housing Act (FHA) or the Maine State law. There have been discussions with City Attorney Robert Hark, the Department of Human Services, and local providers of existing group care facilities. The proposed defines a group care facility as a boarding care facility for more than eight (8) individuals wherein children under 18 years of age or adults over 16 years of age and not legally related to the operator are provided personal care, supervision, and social or rehabilitative services. Included in the Planning Board packets along with this memorandum were revisions to Appendix A, Article II, Section 2, Article XI, and Article XII, Section 10 of the aforementioned code. The reason for the proposed amendments is to make Lewiston's standards more consistent with the FHA and Maine State law.

Gil Arsenault said that this essentially will do away with Types A and B Group Care Facilities. A Type "A" Group Care Facility is currently defined as a facility providing residential care for individuals including, but not limited to, the aged, the dying, the physically handicapped, children, the mentally ill, the mentally retarded, or adults with or without dependent children who are unable to remain at home but not including offenders, ex-offenders, or alcohol or drug abusers. A Type "B" group Care Facility is currently defined as a facility providing residential care for offenders, ex-offenders, or alcohol or drug abusers. According to the AIA, alcoholism is a disability. Gil Arsenault then went through the ordinance, page-by-page, showing where Group Care Facilities (Types A and B) were deleted (see amendment provided in the Planning Board packets). These deletions are depicted with an overstrike in the document. In Section 7. Office Residential District (OR), hospitals are included as a permitted use. Also, Gil Arsenault said that appropriate references in Article XII, Performance Standards is overstruck and is being deleted.

In closing, Tom Peters requested that a copy of the revised amendment be provided to the Planning Board Members. The following motion was made.

MOTION: by **Dennis Mason**, seconded by **Muriel Minkowsky** that the Planning Board schedule a Public Hearing to amend various articles regarding the Zoning and Land Use Code in order to comply with Federal Fair Housing laws and Maine State law, including amending the definition of *Single-Family Homes* for the October 24, 2000 Planning Board Meeting.

VOTED: 7-0.

3. ***Martel School land transfer to the Maine D.O.T., East Avenue.*** This issue is described in detail in the memorandum prepared by James Lysen dated October 6, 2000. This issue was brought to the Board's attention by a citizen indicating that there was a transfer of land that was going to occur and the Planning Board had not approved it and it went directly to the City Council. There have been a number of these kinds of transfers that have occurred, maybe even hundreds. The Code says that the Planning Board is to review these sales and acquisitions. This was before the School Board for approval and was raised by a citizen at that meeting. This had gone to the City Council and they approved it and then sent it on to the Planning Board to look at it. Tom Peters went on to say that the question before the Planning Board tonight is how to deal with this issue. This should have come before the Planning Board and then on to the City Council. Tom Peters said that he would take responsibility for this project, saying that it was already in the pipeline and he said that rather than holding this project up, they would deal with the first instead of the entire issue. He

reiterated that this issue was approved by the City Council and now it is before the Planning Board.

In the future they should first come before the Planning Board and then on to the City Council.

In the past Tom Peters said that the City has been functioning under the idea that land transfers such as right-of-ways, transfers, Maine D.O.T. , and in this case the School Dept. does not have to get approved by the Planning Board. Tom Peters said he thinks that that is incorrect. He does not see anything in the Code that says they do not have to be reviewed by the Planning Board. In James Lysen's memorandum dated October 6, 2000 he stated that research into the issue indicates that such acquisitions/dispositions have never been brought through the regular process. What is before the Planning Board at this meeting is how to deal with this particular issue and then does the Planning Board want to make it clear that in the future that they do need to come before the Planning Board regardless of how diminimus it may be or does the Planning Board need to make a Code change so that it does not need to deal with this.

Denis Theriault, a citizen residing on Marguerette Street and former Planning Board Member, said that he was kind of upset and that this is a repeat performance. He said that Chris Branch, the Public Works Director, did a presentation to the School Department at their meeting. According to Denis Theriault, a School Board Member asked him what would be the process after this? Chris Branch told the School Board Member that it would go on to the City Council. Chris Branch also told City Councilor Paul Samson that this does not fall under Planning Board's review. Also, Denis Theriault said that Chris Branch told him that this has been done many times before. Denis Theriault said that he saw this item on the City Council agenda posted on the Internet. Denis Theriault went on to say that he the called Kathy Montejo, the City Clerk, who indicated that there was no recommendation from the Planning Board. Denis Theriault then told her about the long, on-going process with the Planning Board. Kathy Montejo then said she was going to look into this and he believes that she spoke to Gregory Mitchell, the Director of Development. Denis Theriault stated that this is not the appropriate procedure. There was plenty of time to have this brought to the Planning Board. Denis Theriault said that he had no problems with the project, but that he did with the system of how we get there. There is a check and balance system and there is a law in place that says that the Planning Board shall review and make recommendations on acquisition/disposition of City property other than tax foreclosures. He said that Staff knows full well that this is supposed to be brought before the Planning Board. Tom Peters thanked Denis Theriault for bringing this to the Planning Board's attention.

Tom Peters said that the Planning Board does have this reviewing authority before it goes on to the City Council. Acquisition/disposition involves real estate, buildings, etc. Jim Lysen said that this is set up as a notice of taking. M.D.O.T. projects usually involve a small piece or strip of land along roadways. There are different situations that involve properties. The Code is very clear, it is all in how you interpret it. A code amendment may be initiated to exempt them. In a lot of cases, it does not go before the Planning Board. Rob Robbins asked Dennis Mason if there may be a provision. Dennis Mason to read the Code under Article 7, Planning Board, Section 4, Powers and Duties, which says that the Planning Board shall review and make recommendations to City Council in regards to the acquisition/except through tax lien foreclosure (36 M.R.S.A. Section 942 as amended), and disposition of all public ways, lands, buildings, and other municipal facilities. Mark Paradis said that there is no fine line. James Lysen said often these are parts of projects approved during the LCIP process. Dennis Mason asked, "Why does the Planning Board have to go make a recommendation to the City Council on every small piece of parcel?" He said, "Does the Planning Board really have the time to review everything?" Tom Peters said that maybe the Code should be set up with a change. The Planning Board or prior Planning Board should address the issue right up front and decide whether or not they want to review it. If this does not come before the Planning Board, then it is left to someone else. John Cole suggested that a recommendation be made on this issue and then discuss what to do with the acquisition/disposition process.

The following motion was made.

MOTION: by **John Cole**, seconded by **Rob Robbins** that the Planning Board send a favorable recommendation to the City Council on the Martel School Land Transfer to the Maine D.O.T. on East Avenue.

Dennis Mason had a question in regards to the Section Plan. Dennis Mason said that the Section Plan included in the Planning Board packets is not clear. Jim Lysen said he thought the Section Plan was done from a old aerial photograph. This project is for a widening of the curb on the East Avenue side. Gil Arsenault suggested that Public Works furnish the Planning Board with a new Section Plan. As a result of this conservation John Cole withdrew his previous motion and the following motion was made.

MOTION: by **John Cole**, seconded by **Dennis Mason** that the Martel School Land Transfer to the Maine D.O.T. on East Avenue be tabled to the October 24, 2000 Planning Board Meeting pending receiving from the Public Works Department a plan of what the intersection will look like.

VOTED: 7-0.

After this motion was made, it was discussed that Staff could develop language to amend the ordinance. Rob Robbins commented that the City is not complying with the code. The Planning Board relies on Staff and he said he feels confident with Staff. He went on to say that each and every property may not receive the intense review and he then suggested that the ordinance be amended.

Tom Peters feels that the Planning Board should deal with all properties. He feels that a time-frame needs to be set where Staff will look at the language to define diminimus and come before the Planning Board as one.

John Cole suggested seeing these on an on-going basis maybe six- (6-) months until 2001. Staff memos should be written. Activity will be monitored for the next six months and the Planning Board may recommend an ordinance change, if warranted.

Tom Peters requested that either Gil Arsenault or James Lysen draft a memo which involves everyone involved in the process, i.e., Public Works, Fire, etc. as to what the Planning Board is doing. Tom Peters will then review the memo and sign it. Typically these requests do not go the City Council either. The Planning Board does not know when this is happening. This memorandum shall state that any sale or acquisition of property, regardless of size, requires Planning Board recommendation. This memo shall also refer to Appendix A, Article VII, Section 4(h), which states that the Planning Board shall review and make a recommendation to the City Council with regard to the acquisition, except through tax lien foreclosure, and disposition of all public ways, lands, buildings, and other municipal facilities, as stated above in these minutes. Also the Planning Board is aware that it may not be necessary to review the acquisition or sale of all property associated with highway and related improvements. Tom Peters requested that this memorandum be drafted as soon as possible for his review.

VII. ADJOURNMENT: The following motion was made to adjourn.

MOTION: by **Mark Paradis**, seconded by **Dennis Mason** to adjourn this meeting at 8:20 p.m.

VOTED: 7-0.

Respectfully submitted,

Mark Paradis, Secretary

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