

**City of Lewiston
PLANNING BOARD MEETING
Minutes of March 25, 1997**

I. ROLL CALL

The meeting was called to order at 7:30 PM.

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

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

II. READING OF THE MINUTES OF March 11, 1997

Mr. Peters pointed out that he would like the minutes to reflect the following:
"Mr. Peters asked if there could be funding from another source and Jim Andrews said that he was going to look into it." This should be in the discussion regarding Hope Haven's family housing a/k/a Faith House.

MOTION: by D. Theriault, seconded by D. Jacques to accept the minutes of March 11, 1997 with the above modification.

VOTE: Passed 5-0

III. CORRESPONDENCE

1. A letter dated March 25, 1997 from Robert J. Mulready, City Administrator and James L. Lysen, Planning Director regarding Rules of Procedure with attachments.
2. Memo from City Councilor Barry J. Putnam to Robert Mulready dated March 18, 1997 regarding the Comprehensive Plan changes.
3. Memo from Peter Crichton, Assistant City Administrator dated March 24, 1997 regarding Mr. Putnam's memo on the Comprehensive Plan.
4. Memo from Peter Crichton, Assistant City Administrator dated March 25, 1997 regarding Councilor Paul Samson's comments on the Comprehensive Plan along with Mr. Samson's memo.

MOTION: by T. Peters, seconded by D. Jacques to accept the above correspondence. Correspondence #2, 3, & 4 were tabled until the next Planning Board meeting.

VOTE: Passed 5-0.

IV. PUBLIC HEARING

Proposed Amendment to the Zoning and Land Use Code. - RE: Proposal to amend the Urban Enterprise (UE) District where Option "A" would allow used car dealerships as a permitted use, and Option "B" would allow used car dealerships as a conditional use.

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G. Dycio sent a memo to the Planning Board with two options outlined. The two options for a proposed amendment to the Zoning and Land Use code is to allow for the establishment of used car dealerships in the Urban Enterprise (UE) Zone as either a permitted or conditional use. The Planning Staff recommended the Board to review Options "A" and "B" of the proposed amendment, receive input from staff, the petitioner, and the general public at this Public Hearing, and forward a recommendation to the City Council accordingly. The Board was shown a large scale map outlining the UE zones. After looking over the map, Mr. Peters thought the best safeguard for the City would be to go with conditional use. Mr. Milliken noted one sensitive piece of property off Lisbon Road. He also noted a lot of UE is along the river. Mr. Lysen wondered if the process should be a little tighter, i.e. performance standards. Mr. Milliken noted that the City wants to clean up the gateway. He also said that this particular project was not a problem to him but wanted to look at all of the UE District. Mr. Peters asked how all of this fit with the Comprehensive Plan. Mr. Lysen said he was more comfortable to go with a conditional use rather than change the whole UE. Mr. Lysen also noted that it was tough to deny conditional use with the way this zoning is written. T. Peters noted that the UE zone allowed new car dealerships and if this were a conditional use, then any intensification would require review of the entire parcel. Mr. Lysen said that new car dealerships could sell used cars as a matter of right. H. Milliken said he would hate to see the Downtown area open up to car dealerships and would almost recommend that the Board that a look at the whole UE District. T. Peters said he wanted to stimulate growth, but to keep it consistent with the natural environment and also suggested taking a look at the whole UE District. He expressed concerns with keeping growth in the UE zoning in line with the Comp Plan. Tim Ronan, Mr. Gendron's representative, said he was looking to start the business soon and didn't feel the Board's wanting to take a look at the whole UE Zone should interfere with his plans. H. Milliken asked staff to come up with two UE zones, a UE 1 and a UE 2. T. Peters said he wanted to see the corridor cleaned. Mr. Ronan said his firm was looking to have a half-dozen cars on the lot and was specifically looking for permitted use and not conditional use. He found the conditional use too restrictive. H. Milliken wants to look to see how it affects the whole City.

H. Milliken then opened the meeting to the public. There were no other comments from the public.

Discussion followed with the Board Members and Staff to see when Staff could come up with a proposal for UE1 and UE2. J. Lysen thought that additional standards in the UE zone could be done in a couple of weeks, but it would basically be a "Band-Aid." Discussion again followed between Mr. Ronan and the Board. It was said that the whole procedure could probably take him until the beginning of June, but in the meantime by having a conditional use, he could be in business.

MOTION: by T. Peters, seconded by D. Theriault to table the proposed amendment to the Urban Enterprise (UE) District until April 8, 1997 where at that time staff will bring to the Board the conditional use option to the UE District with additional standards.

VOTE: Passed 5-0.

V. **REVIEW OF DEVELOPMENT PROPOSAL - FINAL HEARING**
Promenade Mall - Parts America - Chris Belanger of Sitelines, on behalf of Robert Rosenthal and

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the Lisbon Street Shopping Trust, submitted plans for a proposal to amend an approved plan where a 14,000 square foot, single story retail building is being proposed off Essex Street within the mall property. A total of 8,000 square feet has been allocated for a Parts America retail store while the remaining 6,000 square feet will be allocated to a future tenant. The project had its Pre Application conference at the March 11th Planning Board meeting where the Board also reviewed the project's application and determined it complete.

The Planning Staff has met with the applicant's representative to discuss revising the plans to eliminate the access to the mall parking lot from the proposed delivery area behind the proposed retail building. Copies of the revised plans have been forwarded to the Police, Fire and Public Works departments for their review and comments. As of the date of his memo, Staff has not received any comments. Due to the minor nature of the change to the delivery area, Staff does not anticipate any major concerns.

The Planning Staff has reviewed the final plans against the Approval Criteria listed under Article XIII, Section 4 (a u) and finds that, in our opinion, the plans meet all of the applicable criteria. Therefore, Staff recommends that the Board approve the final plans with the following conditions:

- 1) That any concerns raised by the Police, Fire or Public Works Departments be adequately addressed prior to the issuance of any permits, and;
- 2) That any concerns raised by the D.E.P. be adequately addressed prior to the issuance of any permits.

Subsequent to Mr. Dycio's memo, he stated that all Police, Fire, Public Works Departments and DEP concerns have been met. He also stated that DEP will not exert jurisdiction. Mr. Belanger pointed out the new entrance and painted island that was added. Vine Street has been approved by the City Council to be vacated. He also stated that the retention pond is now larger - 60 x 30 and still had one section that is three (3) feet deep - near the storm drain area. The retention pond slope varies from one to three feet. Mr. Theriault asked if there were any other concerns from the fire or police departments. Mr. Dycio said there were none.

MOTION: by T. Peters, seconded by D. Jacques that the Board find the application of Lisbon Street Shopping Trust to meet all of the approval criteria under Article XIII, Section 4 and further that the Board grant final approval to the project subject to two conditions: (1) that they meet any concerns with the police department, fire department and public works and that they be addressed prior to any issuance of the permits; and (2) that any concerns raised by the DEP be adequately addressed prior to the issuance of any permit.

VOTE: Passed 5-0.

VI. REVIEW OF DEVELOPMENT PROPOSALS - PRE-APPLICATION
Spare-time Recreation Subdivision - Second Revision

Arthur W. Montana of A.R.C.C. Land Surveyors, Inc., on behalf of Lewiston Raceways, Inc., has submitted plans for a proposal to amend an approved subdivision where Lot #8 will be divided

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into two (2) lots, and Falcon Road, a private way, will be extended approximately two hundred and fifty (250) feet.

The Planning Director, upon review of the project's application for an amendment to an approved plan, has determined the amendment to be a major amendment to a major development. Therefore, the project cannot be reviewed in one meeting and must proceed through the development review process as outlined under Article XIII, Section 3 (1)(3) of the Zoning and Land Use Code. The Planning Staff will also be reviewing the project under Lewiston's Expanded Review Authority and forwarding our findings to the Department of Environmental Protection for their review and approval.

The Planning Staff has conducted a preliminary review of the proposed plans and submits the following comments:

1) Since the applicant proposes to extend Falcon Road (a private way) approximately 250 feet to provide adequate frontage for the new lot (Lot #8A), the applicant must demonstrate to the Planning Board that the existing paved area to be designated as a "private road" meets all of the applicable Improvement Standards outlined under Article XII, Section 18 (2), *Private Roads*, of the Zoning and Land Use Code. If the area that is currently paved does not meet the standards, the applicant must submit revised construction drawings. These drawings must be designed by a professional engineer registered in the State of Maine, and must include typical cross sections, grades and profiles for the proposed "private way." Furthermore, Staff asks that the applicant add the following notes to the plan stating that:

a) "the roads shown on this plan as private roads shall not be maintained by the City of Lewiston," and;

b) "the owner (developer) and/or the Lot Owner's Association shall maintain, repair and replace any private infrastructure associated with this development, including roads, sanitary and storm sewer systems, and water supply systems."

2) The area proposed for the extension of Falcon Road is currently being used as an access aisle for the Spare Time Recreation Center. The Zoning and Land Use Code prohibits vehicles from backing onto a street, and the access aisle cannot function as both an aisle and private road. Therefore, the proposed location for the extension of Falcon Road presents some conflicts, as well as, concerns. Staff will be meeting with the applicant and his representative to discuss all possible options to the current proposal.

Copies of the plans have been submitted to the Police, Fire and Public Works Departments for their review and comments. Upon review of the plans each department has responded stating that they have no concerns.

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Pursuant to Article XIII, Section 3 (h)(5), of the Zoning and Land Use Code, the applicant is requesting two waivers, two modifications 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 has some concerns and offers the following comments:

- 1) Since the applicant proposes to extend Falcon Road approximately 250 feet, construction drawings must be submitted for Staff's review and recommendation. Staff asks that the Board not grant this request and direct the applicant to submit the necessary information (Section 3 (h)(4)(h,i).
- 2) The applicant will also have to submit a construction schedule for the proposed road extension, including anticipated beginning and completion dates. Staff asks that the Board not grant this request and direct the applicant to submit the necessary information (Section 3 (h)(3)(c)(10).

The applicant has also requested that the Planning Board consider both Pre Application and Determination of Completeness at the same meeting. Staff recommends that the Board review the information submitted to date, review Staff's comments and concerns, get input from the applicant and their representative about how they can meet staff's concerns, and vote on the applicant's request accordingly. Staff will continue working closely with the applicant and his representative to address Staff's concerns regarding the private road issues.

Subsequent to this memo, Staff has met with the applicant and his representative to discuss staff's issues, and explore possible solutions to these issues. Staff's main concerns deal with the proposed extension of Falcon Road, a private way, where the applicant proposes to extend this road approximately two hundred and fifty (250) feet, possibly more. Due to these concerns staff has requested that the Planning Board not grant some of the applicant's requests for non applicable status to the application submission requirements.

Discussions with the applicant regarding the proposed extension of Falcon Road indicate that the applicant had constructed this, and other "private ways" prior to creating the subdivision, and that the land area proposed for this extension would meet the private road standards outlined under Article XII, Section 18 of the Zoning and Land Use Code.

The applicant submitted typical road profiles and cross sections for all "private ways" as part of the initial review for the proposed subdivision. However, the plans did not indicate which of the "private ways" were already constructed. The applicant's representatives have indicated to staff that some of the "private ways" were constructed as the property was developed, and that the land area proposed for this road extension was constructed for truck traffic that accessed the existing building on Lot #8A. The drive leading to this lot was constructed as though it were a street to support the trucks using it for deliveries. Therefore, the applicant would now like to request a waiver from these requirements as outlined under Article XIII, Section 3 (h)(5), of the Zoning and Land Use Code.

The applicant feels that requiring this information would be an unnecessary burden for him, and granting a waiver would not adversely affect the abutting land owners or the general health, safety, and welfare of the city. Instead, the applicant proposes to place an additional note on the

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plans referencing the original construction drawings for the subdivision's private roads and further stating that, "The extension of Falcon Road will meet all of the standards for private roads, as outlined under Article XII, Section 18 (2), of the Zoning and Land Use Code."

The Planning Staff finds that, in our opinion, the granting of the requested waivers will not impact the city or any of the abutters in a negative manner. The majority of lots gain their frontage and access from Mollison Way, which is a city accepted street. However, the burden for maintenance and repair of these private roads falls upon the developer and the members of the Lot Owners Association. It is in their best interest that these private roads be adequately maintained and repaired, when necessary, as the businesses located within this subdivision that gain their frontage and access off these private roads depend on them to bring customers to their locations in a safe and convenient manner. Since the City of Lewiston will not maintain or repair any of these private roads, granting the requested waivers will not place any burden upon the tax payer should the roads themselves fall into a state of disrepair.

Therefore, the Planning Staff asks that the Board consider the applicant's request, review the proposed notes staff has recommended for reference to the original plans, and consider the project's application for completeness and scheduling of a Final Hearing.

James Day of Lewiston Raceway, Inc. stated that the private road currently extends to the new lot which was serviced by this private road prior to the subdivision. He further stated that the existing two buildings were supposed to be for Medaphis, but it didn't happen. Bob Gagnon, a surveyor accompanied Mr. Day. He said Mr. Day would make minor amendments - he will remove seventeen parking stalls and plant grass in its place. Mr. Dycio explained that the plan would simply have a stamp on the original to reference the detail sheet. He also said that Mollison Street is a City street and that this project would not be a burden to the taxpayer.

MOTION: by Mr. Theriault, seconded by Mr. Zidle that the requested waivers of submission requirements by James Day on behalf of Spare-Time Recreation 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 5-0.

MOTION: by D. Theriault, seconded by T. Peters that the application of James Day be determined to be complete and further moved that review of the completed application be scheduled on April 8th, 1997 at 7:00 PM.

VOTE: Passed 5-0.

VII. OTHER BUSINESS

1. Lessard Street:

Mr. Lysen said Staff was looking for guidance from the Board regarding this issue. He explained that there was a mobile home overlay that was added to have access to the mobile

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home park. The issue is the code requires frontage to build a house on Lessard Street. This road does not meet private road standards, only mobile home road standards. The code currently says that if this road services a development that is outside the original development, you would not be allowed to create a private road. The interpretation of Staff was that since this road services a mobile home park and land beyond that, it could not meet private road standards.

Debbie May, a lot owner on Lessard Street, explained that she could not build on her lot because Lessard Street was a mobile home road. Mr. Lysen explained that there is a difference between a private road and a mobile home park road. He said that Ms. May had gone before the Board of Appeals and it was narrowly defeated. He further explained that at one time Lessard Street was a paper street that was not accepted by the City. Mr. Foss then made it into a private mobile home road to gain access to his mobile home park in the back. Mr. Lysen also said that the mobile home park overlay applied to the road only and not the land that borders it. Mr. Theriault asked for a map. Ms. May and an unidentified woman provided a map for the Board to study.

Mr. Dycio said that the code change in 1988 prohibited people from building on paper streets. Ms. May said that when she purchased the property in 1989 she was under the impression that she could build on that road. Mr. Lysen also said that frontage is to make sure the fire and police can get to the homes. Mr. Foss said he built this access road to his mobile homes. He said that this was in the SR Zone which requires 40,000 square feet and that all of the lots on Lessard Street are non-conforming. He also said he sent a letter to all the abutters asking to join him in building a private road, but got no support. The woman accompanying Ms. May said she never got the letter and checked with other abutters who said the same. Mr. Theriault asked if Ms. May was notified of a meeting back when Lessard Street was created as a mobile home park road. She said that she had been notified and that her husband attended that meeting. Mr. Theriault asked if there were any appeals regarding this within the 30 day process of appeals. Mr. Dycio said there was no appeal.

Mr. Milliken said it was his understanding that in order for Ms. May to build on this lot, the road would have to be brought up to private road standards. Mr. Peters asked who owned the road. Mr. Foss said he did. Ms. May disagreed with Mr. Foss and does not feel he owns the road. The unidentified woman said that there were laws saying that if the developer doesn't reserve title to the road or doesn't record notice of intent to reserve title, then title goes to the center line and the owners of the abutting lots. She further stated that no notice was ever recorded and the developer never reserved title to the road so when Mr. Foss said he holds a warranty deed to this it was specifically subject to the rights of other owners of lots along Lessard Street. Mr. Milliken suggested that the Board do nothing until they get a legal opinion on the road. Mr. Lysen said they had right of passage and asked if the Planning Board supported an amendment to the code that would allow a private road to be built. Mr. Peters said that this was a legal issue between the parties.

The unidentified woman said that part of the problem was that in 1991 the Planning Board allowed Mr. Foss or his company to develop that road to substandard conditions and now the Planning Board is saying because its substandard, Mr. and Mrs. May don't have frontage. Mr. Milliken pointed out that if Mr. Foss had not developed the road to bring it this far, there would be no road at all and the Mays would have to build a complete road. The woman said her only

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option now is to build it to public road standards. Mr. Peters asked who was going to pay for this, and if they were going to have a coalition or association. Mr. Lysen noted that they couldn't demand a property owner to join this and Mr. Peters agreed. The woman asked if the City could put that as a condition for issuing a building permit. She further stated that those lots were now rendered useless if left this way. Mr. Peters explained that all parties should get together and said it was quite possible that it could be changed so that they could have the private road and that might be acceptable, but it would still require either the merging of some lots along with bringing in water and sewerage. It also requires an association among all of the owners for the maintenance of that road. Mr. Peters said he would be willing to entertain it as a private road if it had the water and sewer and also an agreement, but explained that the Planning Board could not look at that until it was presented to them - which meant all of the owners had to work this out.

The woman said the City was not blameless because it allowed Mr. Foss to develop that road with substandard conditions and said that that was the reason they could not build on the road today. The woman admitted that she honestly didn't know how much the difference would be to build a private road versus a public road. Mr. Peters said that if Mr. Foss had not built a road that it would essentially cost Ms. May substantially more money in the long run. The woman said that this brought her back to the legal issue of Mr. Foss not having a right to build the road. Mr. Lysen said that Mr. Foss had access rights to his property and Lessard Street was the logical place for him to put the road. Ms. May said that before the code change, she could have built on a paper street. The woman said the only way now to get a building permit under code is to improve that road to public road standards. Mr. Peters again said that it would be good to get all of the people together and get one person who knows about the land development and work with the City and Mr. Foss to see what the Planning Board can do to assist Ms. May. Ms. May said she has tried to work with the City for over year, has tried to work with Mr. Foss but he was not cooperative. Mr. Milliken suggested that the parties could set up a meeting between Councilman Scott Lynch, Staff, Mr. Foss and the abutters and come up with some sort of proposal. Mr. Peters said that this was a complicated issue. Ms. May said that some of the property owners lived out of state and could not come up for meetings. Mr. Peters said in other cases like this, a group hires counsel to assist them who knows about land development, the people don't have to be present at every meeting, minutes are kept, and decisions are made on how to approach the situation. He further suggested that Ms. May get all of the land owners to contribute to hire someone who knows about land development and has legal information, then work with the City and Mr. Foss and his lawyer to do whatever it takes to build on it. The unidentified woman said that court is the only forum left if the City won't help because Mr. Foss and his lawyer are not cooperating. She said Mr. Foss has opposed everything they have worked toward. Mr. Peters said that if she came back before the Board with something that the Board would be willing to work with them to make it happen, but at this point the Board could not take any particular sides at this time. Mr. Foss said he would like to see this area rezoned so that he could develop his lots. Mr. Peters said that if this group had someone speak for them, know their rights, what they need, what the City requires, see what Mr. Foss's needs are and hopefully find a mediator be it Mr. Lynch as your Ward Councilor or someone to help bring it together, then come back to the Planning Board with a proposal. The woman said this is what she thought the Board was going to do tonight. Mr. Lysen explained that tonight was simply to explore options. Mr. Theriault pointed out that there was no proposal before the Board tonight, he also said he would want to get an opinion from the City Attorney, see the minutes from the Board of Appeals before he

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would consider this. Mr. Peters said that if she could think of something that could work and wanted to present it as a petitioner, he and other members of the Board would be willing to listen to her and reassured her that the Board was not closing the door on her but needed something before them to respond to. The unidentified woman said she was frustrated because she feels the City created this problem and feels court is her only alternative. The woman accompanying Ms. May then identified herself as an attorney, but never gave her name.

2. Review of proposal to conditionally rezone property at 218-226 River Road from Industrial (I) District to Urban Enterprise (UE) District.

David R. Thibodeau has submitted a proposal to amend the "Official Zoning Map, City of Lewiston" where the property located at 218 226 River Road would be conditionally rezoned from an Industrial (I) District to an Urban Enterprise (UE) District in order to establish an Auto Repair Garage.

Mr. Thibodeau initiated the rezoning process by submitting a citizens petition, as outlined under Article XVII, Section 5 (b)(1)(a) of the Zoning and Land Use Code. The petition form was submitted to the City Clerk's office for review and confirmation of the signatures. The petition was returned verifying that all ten (10) signatures were valid. The Planning Board also reviewed the proposed Conditional Rezoning Agreement, found it to be in proper form, and scheduled a Public Hearing to review the proposal on April 8, 1997.

The Planning Staff recommended the Board to review the Conditional Rezoning Agreement and the attached site plan, receive input from the general public and Staff at the Public Hearing, recommend changes to the agreement and site plan where necessary, and forward a recommendation to the City Council accordingly.

Mr. Dycio said that this was ready to schedule for a public hearing. Mr. Lysen stated that this was for a conditional use. Mr. Thibodeau wants to run a transmission shop at the River Road address. Mr. Peters asked about noise. Mr. Thibodeau said that he runs air compressors, but that his building was well insulated. Mr. Lysen said Mr. Thibodeau imposed some restrictions of his own such as no junk cars and his operating hours. Mr. Peters asked who the closest neighbor was. Mr. Thibodeau answered L & A Awning. Mr. Peters asked if the nearest residential neighbor was 200 feet. Mr. Thibodeau said not much further and that Mr. Chasse, the residential neighbor, did not sign because he was in the hospital suffering from a heart attack. Mr. Lysen said Mr. Thibodeau was asking for this partial site only.

MOTION: by D. Theriault, seconded by L. Zidle that the application of Mr. Thibodeau be determined to be complete and that he further moved the review of the completed application be scheduled on April 8, 1997 at 7:00 PM.

VOTE: Passed 5-0.

OLD BUSINESS

1. Review of proposed amendments to, and adoption of, the Planning Board Member's Handbook.

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MOTION: by T. Peters, seconded by D. Jacques to accept Robert Mulready and James Lysen's letter regarding the Amendments to the Planning Board's Rules of Procedure.

VOTE: Passed 5-0.

Mr. Lysen said regarding the postings of public hearing, a code amendment will have to be made because on page 9A it states it needs to be posted 14 days and it should be changed to 10 days.

2. Discussion of proposed policy on Application Fees with respect to both City Council and Planning Board initiated Zoning and land Use Code amendments.

Tabled until next meeting.

3. Request to Chris Branch, Public Works Director, concerning street lighting on Essex Street near the Promenade Mall. Mr. Lysen said that Chris called and feels the lighting is adequate and will eventually be updated. G. Dycio said that originally Chris thought the Planning Board's memo referred to a traffic light, and not a street light.

VIII. ADJOURNMENT

MOTION: by D. Theriault, seconded by D. Jacques to adjourn.

VOTE: Passed 5-0.

Meeting adjourned at 8:40 PM

Respectfully submitted,

Denis Theriault
Planning Board Secretary

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