

**CITY OF LEWISTON**

**CITY COUNCIL**

**SEPTEMBER 7, 2004**

**REGULAR MEETING HELD IN THE COUNCIL ROOM AT 7:00 P.M.**

THE HONORABLE LIONEL C. GUAY, JR., MAYOR, PRESIDING.

PRESENT: Councilors Mendros, Bernier, O'Brien, Jean, Connors, Paradis, Rousseau, City Administrator James Bennett, and City Clerk Kathleen Montejo

Pledge of Allegiance to the Flag.

Moment of Silence.

**VOTE (292-2004)**

Motion by Councilor Jean, seconded by Councilor Paradis:

To dispense with the reading of the minutes of the April 6, May 4, July 20 and August 10, 2004, meetings and to accept and place them on file as prepared by the City Clerk.

Passed - Vote 7-0

**DISCONTINUANCE OF A PORTION OF FARWELL STREET**

**VOTE (293-2004)**

Motion by Councilor Jean, seconded by Councilor Rousseau:

That the Order discontinuing a portion of Farwell Street, be adopted. Passed - Vote 7-0

**STREET ACCEPTANCE OF MACADAMIA LANE**

**VOTE (294-2004)**

Motion by Councilor Jean, seconded by Councilor Rousseau:

ORDERED, That Macadamia Lane, with the boundaries and measurements of the same, as laid out and reported by the legal description, be hereby accepted, allowed and established as a public street or public way for the use of the City of Lewiston.

Passed - Vote 7-0

**STREET ACCEPTANCE OF CHELSEA LANE**

**VOTE (295-2004)**

Motion by Councilor Jean, seconded by Councilor Rousseau:

ORDERED, That Chelsea Lane, with the boundaries and measurements of the same, as laid out and reported by the legal description, be hereby accepted, allowed and established as a public street or public way for the use of the City of Lewiston. Passed - Vote 7-0

**STREET ACCEPTANCE AND DISCONTINUANCE OF PORTIONS OF  
DARCY DRIVE**

**VOTE (296-2004)**

Motion by Councilor Jean, seconded by Councilor Rousseau:

ORDERED, That a portion of Darcy Drive, with the boundaries and measurements of the same, as laid out and reported by the legal description, be hereby accepted, allowed and established as a public street or public way for the use of the City of Lewiston, and that the Order discontinuing a portion of Darcy Drive, be adopted. Passed - Vote 7-0

**APPROVAL OF CHANGE OF NAME OF PRIVATE ROADS IN  
STETSON BROOK ESTATES**

**VOTE (297-2004)**

Motion by Councilor Jean, seconded by Councilor Rousseau:

To approve the request to formally change the names of the following private streets in Stetson Brook Estates - Alpha Street and Lessard Street to Heather Drive (entire length), Delta Street to Sarah Avenue, Echo Street to Katie Avenue and Milo Street to Robyn Avenue. Passed - Vote 7-0

**AUTHORIZATION TO ACCEPT TRANSFER OF FORFEITURE FUNDS**

**VOTE (298-2004)**

Motion by Councilor Jean, seconded by Councilor Rousseau:

That pursuant to Title 15, Maine Revised Statutes Annotated, Section 5824(3) and Section 5822(4)(A), the City Council hereby acknowledges and approves of the transfer of \$500.00, or any portion thereof, in the case of the State of Maine vs. Luis Arroryo, CR-04-609 Court Records. Being funds forfeited pursuant to court process. It is further acknowledged that these funds shall be credited to the 'City of Lewiston Drug Enforcement Program', funds to be deposited in Account No. 590-3514050 at People's Heritage Bank. Passed - Vote 7-0

**ANDROSCOGGIN COUNTY BUDGET COMMITTEE APPOINTMENTS**

**VOTE (299-2004)**

Motion by Councilor Jean, seconded by Councilor Rousseau:

To approve the slate of Androscoggin County Budget Committee members for District 3 as presented on the county ballot, said candidates are Councilor Bernier, Paul Labrecque of 340 Grove Street and Dennis Roderick of 28 Reservoir Avenue. Passed - Vote 7-0

**AMENDMENT TO THE TRAFFIC SCHEDULE TO ADD STOP SIGNS AT  
DARCY DRIVE**

Motion by Councilor Jean, seconded by Councilor Paradis:

To approve amendments to the Traffic Schedule to add stop signs on Darcy Drive at Judith Street and at Mark Street:

Section 38 - Stop Signs, is hereby amended as follows:

DARCY DRIVE      1 sign at Judith Street  
                         1 sign at Mark Street

At this point, Councilor Connors stated that he believes the Police Department's recommendation identified the incorrect street, based upon the map submitted, and suggested that Chelsea Lane should be the cross street, rather than Mark Street.

**VOTE (300-2004)**

Motion by Councilor Connors, seconded by Councilor O'Brien:

To amend the motion to state "Chelsea Lane" instead of "Mark Street". Passed - Vote 7-0

Vote on original motion, as amended:

**VOTE (301-2004)**

Motion by Councilor Jean, seconded by Councilor Paradis:

To approve amendments to the Traffic Schedule to add stop signs on Darcy Drive at Judith Street and at Chelsea Lane:

Section 38 - Stop Signs, is hereby amended as follows:

DARCY DRIVE      1 sign at Judith Street  
                         1 sign at Chelsea Lane

Passed - Vote 7-0

**CONDEMNATION HEARING FOR THE BUILDINGS LOCATED AT  
299-305 LISBON STREET**

Councilor Rousseau recused himself at this time, citing a conflict of interest with this item.

The Mayor announced this item is continued from the July 20 Council meeting, and noted the item on the floor now before Council is to continue to conduct a hearing to determine if the buildings located at 299-305 Lisbon Street meet the dangerous building statutes as defined in Title 17, sec. 2851 et all.

City Attorney Kevin Beal reviewed the background of this item that was discussed during the July 20 Council meeting. Councilor Jean asked how much work has been done to the building since the last Council meeting and Gil Arsenault, Director of Planning and Code Enforcement, stated that no work, to his knowledge, has been done. Stephen Beale, attorney for Mr. Paradis, president of Builders Resource Development Corporation, which owns the property, stated that a plan has been submitted for this meeting, as requested from the previous meeting. He discussed the July 2003 list prepared by City Land Use Inspector Eric Cousens, which contained a list of work that needed to be done in order to bring the building into compliance. Councilor Paradis noted that the Council voted on July 20 to postpone action on this item to allow time for Mr. Paradis to prepare a full action plan for addressing the issues about the property, and he said a full plan has not been presented. Attorney Stephen Beale noted the statutes do not require that a full plan be prepared, and noted that some of the items on the City's list are aesthetic items about the building, as well as structural details. He noted the Order deeming the building unsafe should deal with structural issues and not aesthetic issues. Attorney Beale also stated his client is currently working to get a contractor and once he is able to secure one, the structural work on the building will begin. Mr. Paradis commented that he applied for a facade improvement grant from the City, and said he received approval for the grant, yet before he received the funds the program was changed and he did not receive the funds.

Community Development Director Jim Andrews stated the City is not required to loan money to fix Code violations, and noted the facade program is still in effect. He said Mr. Paradis submitted his application on January 4, 2004. Attorney Stephen Beale said the issue tonight is to discuss the structural issues of the property, which Mr. Paradis is willing to move forward to correct, and noted the appearance issues should not be considered this evening. The City Administrator stated the issue before the Council is not whether or not the building looks nice, but is it structurally sound and is safe. He said whether or not the City provides funds for the owner to fix the property, the owner is still responsible for the building to be structurally sound. Attorney Kevin Beal reviewed the timeline of this issue, stating that in November 2002, the City inspected the property and found numerous Code violations; in the winter of 2003, it was re-inspected and no corrections were done; in June 2003 a Notice of Violation was issued, the owner did not fix problems and a court consent decree was approved; and on October 17, 2003 a four week extension was granted for the facade work. Mr. Arsenault stated that July 25, 2003 was the court action in which Mr. Paradis agreed to the court ordered consent decree, and the condition of the building has deteriorated since that point. He noted it is a very dangerous building currently and is not sound. Councilor O'Brien noted the owner needs to correct the problems or the building will deteriorate, and the owner did not follow the court order and there are still violations in the building.

At this time, the Mayor closed the hearing.

**VOTE (302-2004)**

Motion by Councilor Jean, second by Councilor Paradis:

To accept the Findings of Fact regarding the buildings at 299-305 Lisbon Street to be a dangerous building as defined by state statutes, to adopt the Order of Condemnation and to

order the corrective action for the property owner which establishes the time frame in which the corrective action must be completed, and to authorize the City Administrator to take necessary actions to implement the corrective action as determined by the Municipal Officers, should the property owner fail to comply with the Council abatement order:

**ORDER OF CONDEMNATION**

Pursuant to 17 M.R.S.A. § 2851

I. WHEREAS the Municipal Officers of the City of Lewiston, after receiving testimony and other evidence from City officials and other interested parties, have determined and hereby find that:

A. The owner and all other parties of record claiming an interest in the premises at 299-305 Lisbon Street, Lewiston, Maine, have received notice of these proceedings in accordance with the requirements of 17 MR.S.A. § 2851. Said premises are more particularly described as a certain parcel of land, with the buildings thereon, bounded and described as follows:

PARCEL NO. 1: A certain lot or parcel of land with the buildings thereon situated on the Westerly side of Lisbon Street in said Lewiston, bounded and described as follows, to wit:

Beginning at a point on the Westerly side of Lisbon Street, at the center of the Southerly wall of Centennial Block, so-called, formerly owned by one Herbert; thence Westerly at a right angle to Lisbon Street one hundred (100') feet to Canal Alley, so-called; thence Southerly, by said Canal Alley, twenty five (25') feet and ten inches (10''); thence Easterly at a right angle one hundred (100') feet to Lisbon Street; thence Northerly by said Lisbon Street to the point of beginning.

Together with such rights to the use of the walls on the North and South sides of said building as are necessary for the proper support of said building in its present form; and reserving and excepting said rights in and to those parts of the North and South walls herein conveyed as are necessary for the proper support of the buildings now standing on the lots adjacent to the lot hereby conveyed, on the North and South sides thereof.

PARCEL NO. 2: A certain lot or parcel of land, with the buildings thereon situated in said Lewiston and bounded and described as follows, to wit:

Beginning on the Westerly side of Lisbon Street two hundred (200') feet Southerly from Chestnut Street; thence Northerly on the Westerly line of Lisbon Street twenty four (24') feet two (2'') inches to the Southerly line of land conveyed by Herbert to Daniel E. Cain; thence at right angles Westerly one hundred (100') feet to the East line of a passageway; thence at right angles Southerly twenty four (24') feet two (2'') inches on said passageway; thence at right angles Easterly to Lisbon Street and the point of beginning; subject to the reservations and carrying the rights as to party walls specifically reserved and granted in deed from Herbert to Daniel E. Cain dated March 26, 1898 recorded in the Androscoggin County Registry of Deeds, Book 175, Page 535, so far as the same refer to the premises hereby conveyed;

B. A true and correct copy of the notice of these proceedings was filed with the Androscoggin Registry of Deeds in accordance with the requirements of 17 MR.S.A. §§ 2851, et seq., in Book 5947, Pages 300 – 313; and that

C. Based upon the findings enumerated below, the building(s) on the premises at 299-305 Lisbon Street (the “Building”) is a dangerous building or structure as defined in 17 M.R.S.A. § 2851:

The Building is unsafe, having:

- a. leaking roofs, both as a result of damage and deterioration, and by the owner’s failure and refusal to complete repairs begun in 2003 pursuant to the owner’s agreement with the City, and the Maine District Court’s July 25, 2003, Consent Order;
- b. internal water damage;
- c. damaged and deteriorated interior walls;
- d. damaged and deteriorated floors;
- e. fire-damaged and unrepaired support beams;
- f. inadequate or absent fire safety equipment;
- g. unsafe handrails on interior stairs;
- h. improperly exposed fuel line to the burner; and
- i. deteriorated façade elements that pose a danger to pedestrians if not repaired or removed;

The Building is unsanitary, lacking adequate plumbing fixtures for human occupancy, and having an accumulation of debris and trash throughout; and

The owner of the Building has no intent to rehabilitate the Building and to bring it into compliance with applicable property maintenance code(s) in the absence of this Order of Condemnation, having heretofore failed to maintain the property in compliance with applicable codes, and to comply with the Maine District Court’s July 25, 2003, Consent Order.

II. NOW, THEREFORE, IT IS HEREBY ORDERED by the Municipal Officers of the City of Lewiston that the owner of the Building, Builders Resource Development Corporation, shall abate the dangerous conditions of the Building in accordance with the City’s Building, Life Safety, and Property Maintenance, and other applicable codes and regulations, to the satisfaction of the City of Lewiston’s code enforcement officials, or shall demolish the Building, within thirty (30) days of service of this Order of Condemnation.

This Order may be appealed to the Superior Court as provided under Rule 80B of the Maine Rules of Civil Procedure.

In the event that the dangerous condition of the Building has not been abated on or before the aforementioned deadline, and no timely appeal has been filed, the Municipal Officers hereby direct the City Administrator to take such actions as he deems necessary (which may include the demolition of the Building) to abate the dangerous condition of the Building at City expense, and to recover all such expenses, including attorneys’ fees, as provided under 17 M.R.S.A. § 2853.

III. IT IS FURTHER ORDERED that the City Clerk shall cause a copy of this Order to be recorded in the Androscoggin County Registry of Deeds, and shall cause attested copies of this Order to be served on the owner of the premises and all of the parties-in-interest as provided in 17 M.R.S.A. § 2851.

Passed - Vote 5-1 (Councilor Mendros opposed and Councilor Rousseau recused himself.)

**PUBLIC HEARING ON A NEW LIQUOR LICENSE AND SPECIAL AMUSEMENT PERMIT FOR DANCING AND ENTERTAINMENT FOR THE CUSHY LOUNGE**

Mayor Guay opened the public hearing to receive citizen input and comments. The Mayor stated the item before the Council is to conduct a public hearing to receive input and to decide if the Council wishes to authorize the City Clerk's Office to approve a new liquor license application and special amusement permit for The Cushy Lounge, 37 Park Street.

Police Chief Bill Welch addressed the Council and stated he is recommending that these licenses be denied, citing the character of the applicant as a result of the background investigation on the applicant, Mark Judd. Chief Welch said that Mr. Judd has five convictions in the past five years, ranging from using a disabling chemical as a weapon to forgery to criminal mischief, as well as a domestic violence assault for which he is currently on probation. Mr. Judd addressed the Council to explain the previous convictions, noting the disabling chemical was mace that he used after a patron followed him home from a bar where he was working as a bouncer. He said the forgery was a family dispute regarding a car loan when he was 17 years old and forged his mother's signature as a co-signer for the loan. He said the criminal mischief was a result of a high school prank that had gone wrong. He noted that the domestic violence charge was plead down to an assault and he is now off probation, saying that at the time he filled out his liquor application, he was on probation, but he is currently not on probation anymore. He said the assault was a fight he got into with the boyfriend of his ex-wife, who was supplying her with drugs. He said she was doing drugs while watching their child, and he became upset and got into a fight. Mr. Judd stated that DHS is currently granting him custody rights to the child, and noted DHS would not do that if they felt his character was in question. He therefore asked the Council for permission to have the liquor license, noting that DHS has viewed him as a fit and responsible person for child custody purposes, and this should be sufficient for purposes of holding a liquor license.

Current business owner Augustine Russo stated the Mr. Judd is purchasing the business and that he is trying to sell the business and leave the City. The City Administrator asked if a Purchase and Sale Agreement for the business had been executed. Mr. Russo said they were waiting to sign the paperwork once the new liquor license had been issued. The City Administrator asked if Mr. Russo can sub-lease the property to Mr. Judd, under Mr. Russo's lease agreement, or if the building owner will be leasing the space directly to Mr. Judd. Mr. Russo said that he has been in contact with the building owner who is aware of the proposed business sale.

The City Administrator asked Mr. Russo what his involvement with the business will be, once it is sold to Mr. Judd. Mr. Russo stated he will have a small consultant role until

December to advise Mr. Judd on various business activities and related paperwork. The City Administrator asked Mr. Judd about his previous experience in operating a bar/nightclub. Mr. Judd stated that he has run security for many bars in Portland for most of his career. Councilor Paradis commented that trouble seems to follow Mr. Judd and he does not want to see a repeat of what has happened at this establishment in the past. Councilor O'Brien asked Mr. Judd if he had a business plan and financial backing. Mr. Judd said he plans to operate the business as a restaurant and a sports bar, rather than a nightclub. Councilor O'Brien reminded Mr. Judd about the residential units across the street from the business location.

The Mayor then closed the public hearing.

**VOTE (303-2004)**

Motion by Councilor Paradis, second by Councilor Rousseau:

To authorize the City Clerk's Office to approve a new liquor license application and special amusement permit for The Cushy Lounge, 37 Park Street and to attach the following conditions to the licenses: 1) the applicant shall present a Purchase and Sale Agreement showing the purchase of the business from the current owner (financial information can be blacked out), 2) the applicant shall present a copy of the lease agreement with the building owner and 3) the Police Department shall report back to the Council in six months regarding the activity of this business.

Did Not Pass - Vote 3-4 (Councilors Mendros, Paradis and Rousseau in favor; Councilors Bernier, O'Brien, Jean and Connors opposed.)

Councilor Bernier asked Mr. Judd how long he has been involved with the business he is purchasing, currently known as Boondoggles. Mr. Judd said that he has worked at this establishment, on and off, for the past five years.

**VOTE (304-2004)**

Motion by Councilor Jean, seconded by Councilor Paradis:

To authorize the City Clerk's Office to approve a new liquor license application and special amusement permit for The Cushy Lounge, 37 Park Street.

Did Not Pass - Vote 1-6 (Councilor Mendros in favor, others opposed.)

**VOTE (305-2004)**

Motion by Councilor Connors, seconded by Councilor Bernier:

To direct City staff to prepare a Findings of Fact for the denial of the licenses and to report back at the next City Council meeting.

Passed - Vote 6-0-1 (Councilor Mendros abstained.)



**PUBLIC HEARING ON A LIQUOR LICENSE FOR THE CARRIAGE HOUSE**

Mayor Guay opened the public hearing to receive citizen input and comments. No members of the public spoke for or against this item. Mayor Guay then closed the hearing.

**VOTE (306-2004)**

Motion by Councilor Connors, seconded by Councilor Jean:

To authorize the City Clerk's Office to approve the change in classification for the liquor license for The Carriage House Plus, d/b/a Jacob Shaines Cards & Gifts, Inc., 1119 Lisbon Street. Passed - Vote 7-0

**SPECIAL AMUSEMENT PERMIT FOR THE CHALET MOTEL**

Mayor Guay opened the public hearing to receive citizen input and comments. No members of the public spoke for or against this item. Mayor Guay then closed the hearing.

**VOTE (307-2004)**

Motion by Councilor Jean, seconded by Councilor Rousseau:

To grant a special amusement permit for dancing and entertainment to The Chalet Motel, 1243 Lisbon Street. Passed - Vote 7-0

**AMENDMENT TO THE POLICY MANUAL REGARDING CHANGES IN TAXICAB RATES**

It was noted the taxi cab rates have not been increased since 1999 and the current high cost of gasoline and insurance is a justified reason for increasing the fees.

**VOTE (308-2004)**

Motion by Councilor Jean, seconded by Councilor Connors:

To approve the proposed amendments to the City Policy Manual, Policy Number 60 - Operation of Taxicabs, to increase the schedule of rates by 25 cents per zone, to be effective October 1, 2004. Passed - Vote 7-0

**VOTE (309-2004)**

Motion by Councilor Connors, seconded by Councilor Jean:

To approve the proposed amendment to the City Policy Manual, Policy Number 60 - Operation of Taxicabs, to add a night time trip surcharge of 25 cents during the hours of 9pm to 5am, to be effective October 1, 2004. Passed - Vote 7-0

**DELEGATES TO THE MAINE MUNICIPAL ASSOCIATION ANNUAL MEETING**

**VOTE (310-2004)**

Motion by Councilor Bernier, seconded by Councilor O'Brien:

To nominate and select James Bennett as the city representative to serve as the City's delegate to the Maine Municipal Association Annual Meeting in October 2004, and to select Kathleen Montejo as the city representative to serve as the alternate delegate.

Passed - Vote 7-0

**REPORTS AND UPDATES**

No reports were presented at this time.

**OTHER BUSINESS**

Councilor Mendros recused himself from this issue citing a conflict of interest.

**VOTE (311-2004)**

Motion by Councilor Bernier, seconded by Councilor Connors:

To grant approval for the Holy Trinity Greek Orthodox Church to place a sign promoting their Greek Festival on the traffic island on Main Street from September 10 - 11.

Passed - Vote 6-0-1 (Councilor Mendros abstained.)

**VOTE (312-2004)**

Motion by Councilor Bernier, seconded by Councilor O'Brien:

To adjourn at 9:30 P.M. Passed - Vote 7-0

A true record, Attest:

Kathleen M. Montejo, CMC  
City Clerk  
Lewiston, Maine