

**CITY OF LEWISTON  
PLANNING BOARD MEETING**  
Monday, November 14, 2011 – 5:30 P.M.  
City Council Chambers – First Floor  
Lewiston City Building  
27 Pine Street, Lewiston

**AGENDA**

**I. ROLL CALL**

**II. ADJUSTMENTS TO THE AGENDA**

**III. CORRESPONDENCE**

**IV. PUBLIC HEARINGS**

- a) Provide a recommendation to the City Council on a proposed amendment to the shoreland zoning district of Garcelon Bog per Article XII, Section 2(b) of the Zoning and Land Use Code of the City of Lewiston.
- b) Provide a recommendation to the City Council on a proposed amendment to Article V, Section 5. Administrative procedures of the Zoning and Land Use Code of the City of Lewiston to clarify when a building/use permit shall be required for all activities regulated by the aforementioned code.

**V. OTHER BUSINESS:**

- a) Streamside Subdivision – Extension of Approval
- b) Lincoln Street Hotel Project
- c) Discussion regarding proposed municipal tree ordinance
- d) Riverfront Master Plan update
- e) Any other business Planning Board Members may have relating to the duties of the Lewiston Planning Board.

**VI. READING OF THE MINUTES:** Motion to adopt the draft minutes from October 24, 2011.

**VII. ADJOURNMENT**



## CITY OF LEWISTON

### Department of Planning & Code Enforcement



**TO: Planning Board**  
**FROM: David Hediger, City Planner**  
**DATE: November 10, 2011**  
**RE: November 14, 2011 Planning Board Agenda Item IV(a)**

**Provide a recommendation to the City Council on a proposed amendment to the shoreland zoning district of Garcelon Bog per Article XII, Section 2(b) of the Zoning and Land Use Code of the City of Lewiston.**

Since 1974, the Mandatory Shoreland Zoning Act (MSZA) has required all municipalities to establish zoning and land use controls in areas located within 250 feet of the normal high water line of any great pond, river or saltwater body. In 1989, that requirement was expanded to also include areas within 250 feet of the upland edge of freshwater wetlands of 10 or more acres, and within 75 feet of the normal high water line of streams. City of Lewiston has regulated said wetlands by referencing those areas as identified on the Fresh-Water Wetland Maps prepared by the Maine Department of Environmental Protection, dated 1989.

Garcelon Bog is a wetland of at least 10 acres. Over the years, the accuracy of the map has been questioned by staff and property owners with obvious discrepancies between open emergent wetland areas, scrub-shrub wetland vegetation, forested wetland and the location of the "upland edge of a wetland". Specifically, areas that are forested wetland are not subject to shoreland zoning regulations (however, they may be subject to other DEP natural resource protections regulations).

The City has been provided updated wetland delineation from Jones Associates with respect to the specific shoreland boundary of Garcelon Bog. This delineation was arrived at by walking the boundary of the resource, resulting in more accurate data for purposes of mapping. The City has taken that data and has drafted an updated the shoreland zoning map for Garcelon Bog. The more accurate data has resulted in over 70 properties being removed areas previously subject to shoreland zoning requirements and no new properties have been added to the shoreland zoning area.

Staff held a neighborhood meeting on November 7, 2011 at which approximately 15 property owners attended. Roughly half of those in attendance were properties owners whose land is proposed to be removed from the Garcelon Bog shoreland zone. The meeting provided staff an opportunity to explain and answer questions about the changes and the shoreland zoning standards that remain in effect.

Amending the shoreland zoning district will not result in changes to underlying zoning districts. The underlying districts, Resource Conservations, Neighborhood Conservation “A”, and Suburban Residential will remain in place. However, those properties that were inaccurately mapped in the shoreland zone would now have greater ability to make improvements to their lots.

**ACTIONS NECESSARY:**

1. Make a motion to consider a proposed amendment to Article II, Section 2, Definitions and Article XII, Section 2(b) Shoreland Area Standards of the Zoning and Land Use Code of the City of Lewiston.
2. Obtain input on the proposed amendment;
3. Make a motion pursuant to Article XVII, Section 5 of the Zoning and Land Use Code of the City of Lewiston to send a favorable recommendation for the City Council’s consideration a proposal to amend Article II, Section 2, Definitions and Article XII, Section 2(b) Shoreland Area Standards of the Zoning and Land Use Code of the City of Lewiston to update the regulated shoreland zoning district of Garcelon Bog.

**AN ORDINANCE PERTAINING TO THE SHORELAND ZONING BOUNDARY OF  
GARCELON BOG**

**THE CITY OF LEWISTON HEREBY ORDAINS:**

Appendix A of the Code of Ordinances of the City of Lewiston, Maine is hereby amended as follows:

**APPENDIX A**

**ZONING AND LAND USE CODE**

**ARTICLE II. DEFINITIONS**

**Sec. 2. Definitions.**

Upland edge of a wetland means the boundary between upland and wetland. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20)foot) tall or taller.

**ARTICLE XII. PERFORMANCE STANDARDS**

**Sec. 2. Shoreland area standards.**

(b) *Applicability.* Unless otherwise specified, the standards of this section shall apply to:

- (1) All land areas within 250 feet, horizontal distance, of the normal high watermark of the Androscoggin River, No Name Pond, and to all areas included within the Resource Conservation District, as shown on the "Official Zoning Map of the City of Lewiston, Maine"; all land areas within 75 feet, horizontal distance, of the normal high-water line of No Name Brook, No Name Brook Tributary B, Stetson Brook and Salmon Brook (beginning at the confluence of Moody and Salmon Brook to the Androscoggin River).
- (2) All land areas within 250 feet, horizontal distance, of the defined upland edge of all ten acre or greater wetlands, located in the City of Lewiston, including Garcelon Bog, and those as shown on the City of Lewiston Fresh-Water Wetland Maps prepared by the Maine Department of Environmental Protection, dated 1989, and identified by the following wetland identification numbers: 567 through 62.
- (3) Any structure, existing or proposed, built on, over, or abutting a dock, wharf, or pier, or other structures extending beyond the normal high-water line of a water body or within a wetland.
- (4) All land areas within 25 feet, horizontal distance, of the normal high-water line of Salmon Brook, Moody Brook, No Name Brook Tributary A, Hart Brook and Jepson Brook.
- (5) The perimeters of the above referenced shoreland areas shall be superimposed over the underlying zoning districts. The provisions of the underlying zoning district shall be adhered to subject to compliance with the provisions of the shoreland area. Where

uncertainty exists as to the exact location of shoreland area boundary lines, the Board of Appeals shall be the final authority as to location.

### **Reasons for proposed amendment**

Since 1974, the Mandatory Shoreland Zoning Act (MSZA) has required all municipalities to establish zoning and land use controls in areas located within 250 feet of the normal high water line of any great pond, river or saltwater body. In 1989, that requirement was expanded to also include areas within 250 feet of the upland edge of freshwater wetlands of 10 or more acres, and within 75 feet of the normal high water line of streams. City of Lewiston has regulated said wetlands by referencing those areas as identified on the Fresh-Water Wetland Maps prepared by the Maine Department of Environmental Protection, dated 1989.

Garcelon Bog is a wetland of at least 10 acres. Over the years, the accuracy of the map has been questioned by staff and property owners with obvious discrepancies between open emergent wetland areas, scrub-shrub wetland vegetation, forested wetland and the location of the “upland edge of a wetland”. Specifically, areas that are forested wetland are not subject to shoreland zoning regulations (however, they may be subject to other DEP natural resource protections regulations).

The City has been provided updated wetland delineation from Jones Associates with respect to the specific shoreland boundary of Garcelon Bog. This delineation was arrived at by walking the boundary of the resource, resulting in more accurate data for purposes of mapping. The City has taken that data and has drafted an updated the shoreland zoning map for Garcelon Bog. The more accurate data has resulted in over 70 properties being removed areas previously subject to shoreland zoning requirements and no new properties have been added to the shoreland zoning area.

Amending the shoreland zoning district will not result in changes to underlying zoning districts. The underlying districts, Resource Conservations, Neighborhood Conservation “A”, and Suburban Residential will remain in place. However, those properties that were inaccurately mapped in the shoreland zone would now have greater ability to make improvements to their lots.

### **Conformance with the comprehensive plan**

1. Continue to protect the City’s natural resources from inappropriate land use activities (Long Range Planning, Policy 6, p. 135).
2. Continue strict administration of shoreland area performance standards through strict administration of existing City ordinances... (Long Range Planning, Policy 6, Strategies A, p. 135).
3. Continue to protect the City’s wetlands (Natural Resources, Policy 4, p. 78).





## CITY OF LEWISTON

### Department of Planning & Code Enforcement



**TO: Planning Board**  
**FROM: David Hediger, City Planner**  
**DATE: November 10, 2011**  
**RE: November 14, 2011 Planning Board Agenda Item IV(b)**

**Provide a recommendation to the City Council on a proposed amendment to Article V of the Zoning and Land Use Code of the City of Lewiston to clarify when a building/use permit shall be required for all activities regulated by the aforementioned code.**

It has come to staff's attention that the language in the Zoning and Land Use Code should be more specific with respect to the types of permits and fees required. The City currently requires permits for activities regulated through the Zoning and Land Use Code, such as fences, driveways, changes of use, etc. In addition, there are sections of the Code specific to permitting requirements:

- Article XIII references no permits or certificates of occupancy shall be issued until final development review approval is obtained and that fees may be charged for the review.
- Article XIV requires a flood hazard permit be obtained before any activity occurs in a 100-year flood zone.
- Article V requires that no permit shall be issued for the construction, addition, alteration, removal, demolition or change of use of any building, structure, or part thereof, or for the use of any premises unless the plans and intended use indicate that the building, structure, or premises is to conform in all respects to this Code and the land use laws of the State of Maine.

However, there is no specific language in the Code that references the overall requirement for a permit and associated fee with respect activities regulated by the Zoning and Land Use Code.

The proposed amendment provides clarification a permit shall be required for all activities regulated by this Code. It also clarifies the fees established by the City Council are applicable to said permitting. This language is consistent with permitting and fee related language found throughout Lewiston's Code of Ordinances, such as the Building and Plumbing Code and Business Licensing.

#### **ACTIONS NECESSARY:**

1. Make a motion to consider a proposed amendment to Article V, Administration and Enforcement of the Zoning and Land Use Code of the City of Lewiston.
2. Obtain input on the proposed amendment;

3. Make a motion pursuant to Article XVII, Section 5 of the Zoning and Land Use Code of the City of Lewiston to send a favorable recommendation for the City Council's consideration a proposal to amend Article V, Administration and Enforcement, Sections 5 and 6 of the Zoning and Land Use Code of the City of Lewiston to clarify when a building/use permit shall be required for all activities regulated by the aforementioned code.

**AN ORDINANCE PERTAINING TO ZONING AND LAND USE PERMITTING  
THE CITY OF LEWISTON HEREBY ORDAINS:**

Appendix A of the Code of Ordinances of the City of Lewiston, Maine is hereby amended as follows:

**APPENDIX A**

**ZONING AND LAND USE CODE**

**Article V. Administration and Enforcement**

**Sec. 5 Administrative procedures**

- (a) A building/ use permit shall be required for all activities regulated by this code including, but not limited to the following:
  - 1.) The construction, alteration, relocation, demolition, placement, or removal of or the addition to any structure or building or part thereof;
  - 2.) The construction/ installation of a wall or fence 3.5 feet or greater in height in accordance with Article XII, Sec. 7;
  - 3.) The erection/ installation of a sign or the replacement of a sign face regulated in accordance with Article XII, Section 16 of this code;
  - 4.) The construction/ installation of a swimming pool regulated in accordance with Article XII, Section 6 of this code;
  - 5.) The construction of a driveway or parking lot;
  - 6.) The change of use or occupancy of a building, structure, or lot of land
  - 7.) Campgrounds

No permit shall be issued for the construction, addition, alteration, removal, demolition or change of use of any building, structure, or part thereof, or for the use of any premises unless the plans and intended use indicate that the building, structure, or premises is to conform in all respects to this Code and the land use laws of the State of Maine.

**Sec. 6 Fees.**

- (a) Payment of fees. A permit shall not be valid until the fees prescribed by the Policy Manual of the City of Lewiston have been paid, nor shall an amendment to a permit be released until the additional fee, if any, has been paid.
- (b) Belated fees. Any person who commences any work prior to obtaining a permit required by this code shall be subject to a double permit fee.

(c) Refunds. Upon request by the applicant and approval of the director of code enforcement, a permit fee may be refunded within 90 days of issuance of the permit.

Sec. 6 7 Certificate of Occupancy.

Sec. 7- 8 Violations.

Sec. 8 9 Violation abatement.

Sec. 9-10 Penalty.

#### **Reason for proposed amendment**

The proposed amendment provides clarification a permit shall be required for all activities regulated by the Zoning and Land Use Code. It also clarifies the fee's established by the City Council are applicable to said permitting. This language is consistent with permitting and fee related language found throughout Lewiston's Code of Ordinances, such as the Building and Plumbing Code and Business Licensing.

#### **Conformance with the comprehensive plan**

- Review permitting and licensing policies and protocols to see where they can be streamlined in order to better service the development community, (Economy, Policy 1, Strategy C).



# CITY OF LEWISTON

## Department of Planning & Code Enforcement



**TO: Planning Board**  
**FROM: David Hediger, City Planner**  
**DATE: November 10, 2011**  
**RE: November 14, 2011 Planning Board Agenda Item V(a)**

### **Streamside Subdivision – Request for Extension of Approval**

On November 29, 2009 the Planning Board granted approval for development of an 84 lot single family home subdivision, Streamside Subdivision at 222-228 Grove Street to Maine Source Homes, LLC. At this time, no construction activity of consequence has occurred and the project's development review approval is subject to expire this month. Therefore, the applicant is requesting an extension of approval pursuant to Article XIII, Section 11.

As the Board is aware, new language has been adopted with respect to expiration of approval since this project was initially approved. The new language states:

- If development has not occurred as defined within the scope of this Code within two years, development review approval shall expire. The applicant may not begin construction or operation of the development until a new approval is granted. An extension of development review approval must be made within two years of the initial granting of approval. The applicant must state the reasons why the development was not begun within two years from the granting of the initial approval and the reasons why the applicant will be able to begin the activity within two years from the granting of an extension, if granted. Extensions of approval may include information submitted in the initial application by reference. Only one extension of the initial approval shall be allowed under these provisions. If the approved development is not completed within five years from the date of the granting of approval or extension of approval, said approval shall expire and the applicant shall reapply for a new approval.

Since this project was approved under the old provisions, staff recommends an extension approval is granted, treating this request as the first request for an extension under the new provisions. However, if the entire development is not completed by November 29, 2016 said approval shall expire and the applicant must reapply for a new approval.

### **ACTIONS NECESSARY**

1. Make a motion to consider a request by Maine Source Homes, LLC for an extension of approval for Streamside Subdivision.
2. Obtain input on the request.

3. Make a motion to grant an extension of development review approval pursuant to Article XII, Section 11 of the Zoning and Land Use Code to Maine Source Homes LLC for Streamside Subdivision, an 84 lot single family home subdivision at 222-228 Grove Street in that if the entire development is not completed by November 29, 2016 said approval shall expire and the applicant must reapply for a new approval.

## MSH LLC

314 Center Street.  
Auburn, Me. 04210

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October 25, 2011

City of Lewiston  
37 Pine Street  
Lewiston ME 04240

Attn: David Hediger

Re: Stream Side Subdivision

We are requesting an extension of the November 29, 2009 approval received from the Planning Board. Specifically, the applicant is requesting an extension of approval for the construction of an 84 Lot residential subdivision at 222-228 Grove Street. At this time the entrance has been prepped for fill with a rock base; per the attached engineering recommendation, and the 5ft culverts for the initial wetlands crossing are on site. However, because the first phase of the project has not been completed, an extension of approval is being requested.

The major contributing factor for the delay in construction is the status of the residential housing market. MSH LLC is still committed to completing the project. However, embarking on a large capital project without significant project lot sales, to cover the interest expense of capital, would be unsustainable for a small family owned company.

Going forward our intension is to do as much of the preliminary ground work as we can to help offset the costs. As soon as the market picks up, we would hire a subcontractor to complete the road and storm water infrastructure.

Sincerely,



Mark W. Turner  
Maine Source Home Inc.

CC: Gil Arsenault



October 12, 2010  
SGS #10117

Mark Turner  
Maine Source Homes, Inc.  
384 Hardscrabble Road  
Poland, Maine 04274

Reference: Streamside Subdivision Roadway  
Lewiston, Maine

Dear Mark:

The following letter is a summary of our observations of the site conditions at the proposed roadway and recommendations for construction of the proposed roadway. This letter is specifically focused on the proposed roadway from Station 0+75 to 2+25.

The subject area is a wetland with a small stream running through it. The vegetation consists of cattails, alders, and other wetland species. The existing ground surface in this area is at or near elevation 205 feet. Construction drawings show a finished roadway grade at elevations ranging from approximately 218.4 to 217.1 feet, requiring fill of up to 13 feet.

The subsurface conditions were examined with the excavation of a test pit at approximately station 1+60. The test pit was excavated to a depth of 7 feet. The subsurface profile consisted of 6 to 12 inches of topsoil/swamp deposits over olive gray silty clay with a trace of fine sand. The silty clay was soft and wet and contained fine sand seams. A log of the test pit is attached.

We recommend the following road construction procedures be implemented for this section of roadway.

1. Cut the vegetation down to a maximum height of 4 inches and remove from the construction zone. Do not grub or otherwise remove the remaining vegetation mat. This will provide a natural ground reinforcement layer and will minimize the erosion potential of the otherwise exposed soil adjacent to the stream.
2. Place a minimum of 24 inches of angular stone having particle sizes ranging from 4 to 8 inches directly on the cut vegetation surface. The stone should be tracked with the excavator to lock the particles together.
3. Install a layer of geotextile, such as Mirafi 500X or equal, directly over the stone base.
4. Place the roadway fill over the geotextile and compact.

We recommend that the roadway fill soil, placed from the geotextile up to the road subbase gravel, meet the following gradation requirements for the portion of the material passing a 3" sieve.

<b>Granular Backfill</b>	
<b>Sieve Size</b>	<b>Percent finer</b>
3 inch	100
No. 40	0 to 70
No. 200	0 to 10

Reference: MDOT 703.19

The maximum particle size should be limited to 8 inches. We recommend that Granular Borrow be placed in 12 inch lifts and be compacted to a minimum of 95% of its maximum dry density in accordance with ASTM D1557. The initial lift thickness may be increased to 18 inches if necessary to achieve the soil "bridging" action required to obtain the 95% compaction requirement.

We recommend that the surface of the 1H:1V roadway side slopes be armored with rip rap. A recommended detail for the rip rap construction is attached.

We recommend that paving of the roadway surface be postponed for a minimum of 6 to 8 months to allow for localized shifting and settlement. Prior to paving we recommend that the roadway surface be fine graded and shimmed as necessary.

We appreciate the opportunity to assist you with this project. If there are any questions, please do not hesitate to contact me.

Sincerely,

**Summit Geoengineering Services, Inc.**



William M. Peterlein, P.E.  
President & Principle Engineer





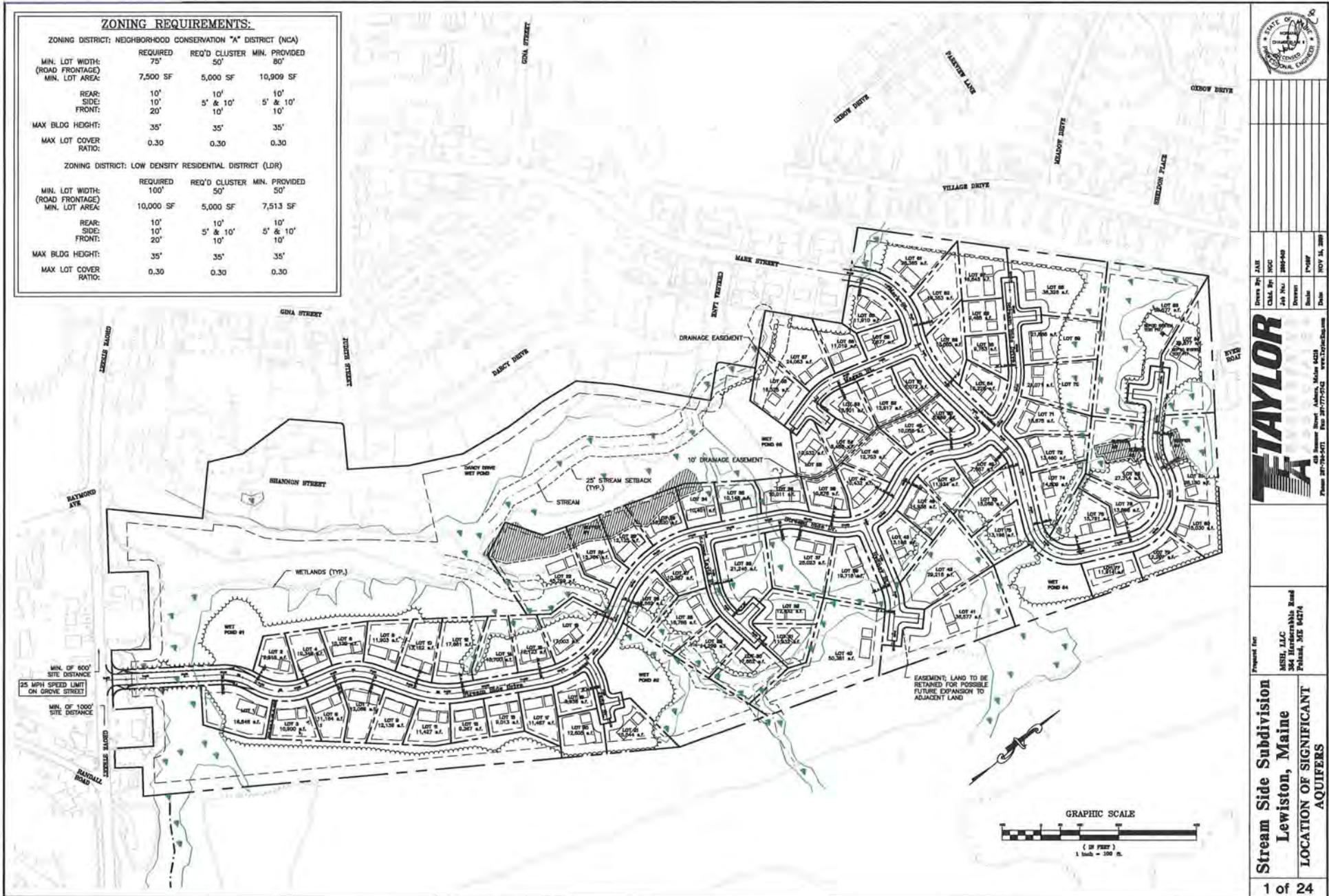
**ZONING REQUIREMENTS:**

ZONING DISTRICT: NEIGHBORHOOD CONSERVATION "A" DISTRICT (NCA)

	REQUIRED	REQ'D CLUSTER	MIN. PROVIDED
MIN. LOT WIDTH: (ROAD FRONTAGE)	75'	50'	80'
MIN. LOT AREA:	7,500 SF	5,000 SF	10,909 SF
REAR:	10'	10'	10'
SIDE:	10'	5' & 10'	5' & 10'
FRONT:	20'	10'	10'
MAX BLDG HEIGHT:	35'	35'	35'
MAX LOT COVER RATIO:	0.30	0.30	0.30

ZONING DISTRICT: LOW DENSITY RESIDENTIAL DISTRICT (LDR)

	REQUIRED	REQ'D CLUSTER	MIN. PROVIDED
MIN. LOT WIDTH: (ROAD FRONTAGE)	100'	50'	50'
MIN. LOT AREA:	10,000 SF	5,000 SF	7,513 SF
REAR:	10'	10'	10'
SIDE:	10'	5' & 10'	5' & 10'
FRONT:	20'	10'	10'
MAX BLDG HEIGHT:	35'	35'	35'
MAX LOT COVER RATIO:	0.30	0.30	0.30



Drawn By:	JAE
Check By:	BOC
Job No.:	2009-00
Project:	
Scale:	1"=50'
Date:	NOV 24, 2009

**TAYLOR**

418 Sherman Street, Auburn, Maine 04213  
Phone: 207-788-0471 Fax: 207-777-9142 www.taylor-engineers.com

Prepared For:

MSH, LLC  
304 Bordenhall Lane  
Lewiston, ME 04274

**Stream Side Subdivision  
Lewiston, Maine  
LOCATION OF SIGNIFICANT  
AQUIFERS**



## CITY OF LEWISTON

### Department of Planning & Code Enforcement



**TO: Planning Board**  
**FROM: David Hediger, City Planner**  
**DATE: November 10, 2011**  
**RE: November 24 2011 Planning Board Agenda Item V(b)**

#### **Discussion regarding proposed hotel at 15 Lincoln Street**

Chris Thompson President, Parallax Partners, Inc. has provided updated conceptual site plan for the construction a +/-100 room hotel at 15 Lincoln Street. Staff has met with the developer to share thoughts and concerns with development of the site. At this time, the developer is interested in obtaining thought and ideas from the Board on this project. Some items the Board may want to discuss include: placement of the hotel with respect to streetscape; parking and accessibility; appearance of the structure; linkages to existing pedestrian trail to Simard Payne Park.

There is no action required to be taken by the Planning Board regarding this proposal at this time. This is simply an opportunity to provide the developer feedback and direction on the future development of this site.

**NO ACTIONS NECESSARY**

November 1, 2011

David Hediger  
City Planner & Deputy Director  
Planning and Code Enforcement  
City of Lewiston  
27 Pine Street  
Lewiston, ME 04240-7201

RE: Proposed Lincoln Street Hotel Project

Dear David,

As you are aware, we have entered into an agreement with the City to acquire the subject properties on Lincoln Street for the purpose of developing a +/- 100 room hotel with related parking and improvements, which will include utilizing a portion of the CSO site for an expansion of the riverfront park area.

We have targeted a minimum of LEED Silver certification for the project.

We are pleased to provide this updated conceptual site plan for distribution to the Planning Board in anticipation of our upcoming meeting on November 15, 2011.

The current version of the plan takes into account feedback received from the City at our October 3, 2011, as well as abutter input, in an effort to clarify and improve the ingress and egress to the hotel for vehicular and pedestrian traffic.

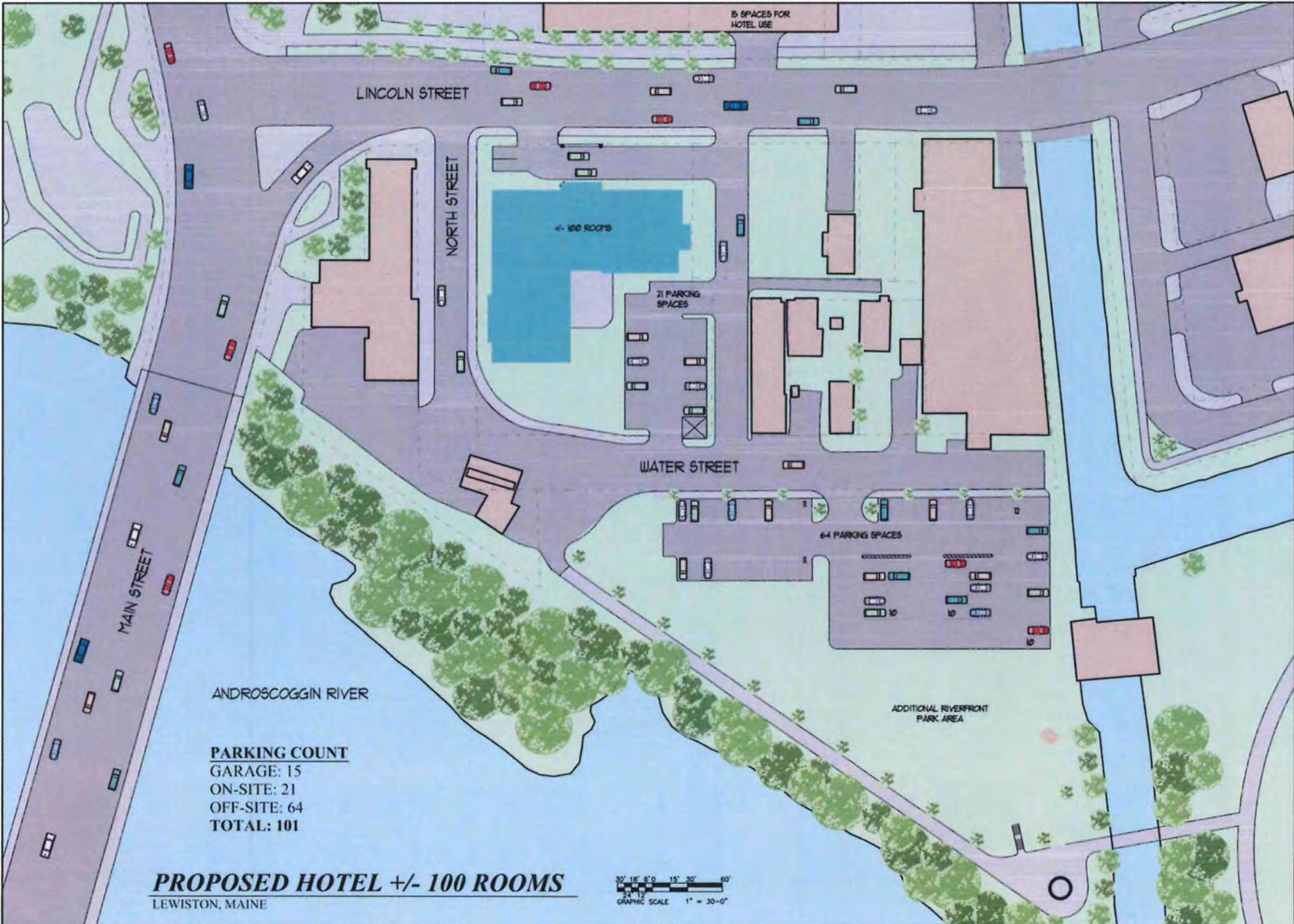
We are looking forward to continuing to work with the City to make this project a reality.

Yours sincerely,



Chris Thompson  
President, Parallax Partners, Inc.

Cc: Lincoln Jeffers





## CITY OF LEWISTON

### Department of Planning & Code Enforcement



**TO:** Planning Board  
**FROM:** David Hediger, City Planner  
**DATE:** November 10, 2011  
**RE:** November 14, 2011 Planning Board Agenda Item V(c)

#### **Discussing regard proposed municipal tree ordinance**

Bruce Damon on behalf of the Planning Board serves on the Lewiston/Auburn Community Forest Board. They have been working on municipal tree ordinance. This ordinance would not be included in the Zoning and Land Use Code of which the Planning Board has jurisdiction. Rather, it would be adopted by the Council as part of the Code of Ordinances. However, given the duties of the Board and it's familiarity with ordinances, a draft is being provided for the Boards review and consideration.

No formal action to provide a recommendation is required. However, if desired, the Board may make a motion for the City Council's consideration to adopt a municipal tree ordinance.

**No Actions Necessary**

Article III  
COMMUNITY FOREST

78-40 Findings

The City Council finds the community forest is important in advancing the economic and ecological health of the community and in protecting and enhancing its historic and esthetic characteristics. The City Council also finds that public trees beautify our streets and neighborhoods and also serve important environmental and economic purposes in that they release oxygen into the air, absorb carbon dioxide, reduce stormwater runoff, and reduce energy costs by providing shade in warm weather and protection from cold winter winds.

78-41 Purpose

The purpose of this ordinance is to promote these values and to provide for the public health and safety by regulating the planting, maintenance, removal, and harvesting of trees and shrubs which are part of the community forest.

78-42 Authority

*Need to draft up something for this paragraph. The following are some potential citations:*

*MRSA 30-A §3261. Conservation commissions authorizes municipalities to establish Conservation Commissions or Forestry Boards and establishes authority.*

*MRSA 30-A §3201. Municipal forests states “Under its home rule authority, a municipality may acquire lands for the purpose of forestation or for reclaiming and planting forest trees on such lands.”*

*Additionally, MRSA 30-A §3252. Preservation of trees along public ways and water states: All trees and shrubs growing on the land abutting any public way or located on uplands adjoining any river or other body of water shall be held as for park purposes.*

*Suggestion for a paragraph or section to establish authority and jurisdiction of the City to implement this. See 74-302 for example.*

78-43 Definitions

- (a.) Board: The Lewiston-Auburn Community Forest Board as described in § 78-52 of this ordinance.

- (b.) Community forest: includes all trees growing on public property as well as all trees growing within the limits of any public way located within the Urban Compact Zone.
- (c.) Pruning: systematic trimming or cutting of branches throughout a tree or plant to enhance its health.
- (d.) Public tree: any tree or other woody vegetation which is located within the limits of any public way situated within the Urban Compact Zone.
- (e.) Shrub: any woody vegetation likely to grow to a mature height of fifteen (15) feet or less.
- (f.) Topping: the severe cutting back of tree limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree as to reduce the height of the tree by removing or substantially diminishing the normal canopy and disfiguring the tree.
- (g.) Trimming: includes pruning

#### 78-44 Management

- (a.) The broad objectives stated in Section 1, "Findings and Purpose", will be achieved by the active management of the community forest, using best known practices and, within the guidelines of a forest management plan, to promote public safety, forest health, species diversity, and environmental benefit to the community. Harvesting trees may be part of the overall management objectives of this plan.

#### 78-45 Harvest Revenues

If and when revenues generated from any timber harvests exceed the expense of conducting that harvest, the surplus revenues will be distributed as outlined below:

- (a.) 80% to municipal general fund
- (b.) 20% to a designated account established for the purpose of protecting and enhancing the community forest.

#### 78-46 Administration

The Municipal Arborist shall administer the management plan in coordination with such other municipal agencies/departments that now or may in the future share in the responsibility of caring for and maintaining the community forest.

78-47 Municipal Arborist

The Municipal Arborist shall hold a degree in forestry, arboriculture, or urban forestry from an accredited college or university or have equivalent field experience. The Municipal Arborist shall at all times during his or her employment hold a valid arborist's license issued by the State of Maine.

78-48 Duties of the Municipal Arborist

- (a.) The Municipal Arborist shall have responsibility for planting, maintaining, preserving, and removing trees and plants which are part of the community forest in order to promote public safety and to protect and preserve the symmetry, health, and beauty of the community forest and the places where public trees and shrubs are located. The Municipal Arborist shall maintain a list that includes trees and shrubs which are suitable for planting as well as those which are unsuitable in general or under specific circumstances. This list shall be made readily available to members of the public
- (b.) The Municipal Arborist may order the trimming or removal of trees or shrubs which are located within the public right of way to provide for public safety or prevent the spread of disease or insects to public trees or shrubs or to public places. The Arborist may also order the trimming or removal of trees or shrubs located on private property outside the right of way for similar reasons by notifying the owner of the property in writing of the required action. In the event that a property owner does not initiate the requested action within 10 business days of receiving notice to do so, the Municipal Arborist may cause such action to be taken at the expense of the property owner.
- (c.) The Municipal Arborist shall develop rules and regulations as well as standards of practice governing the planting, placement, maintenance, removal, fertilization, pruning, and bracing of trees in public rights of way and other public sites. These rules shall be reviewed by the Lewiston-Auburn Community Forest Board which may recommend changes and additions for the Arborist and the City Council to consider. Once adopted by the City Council, these rules and regulations shall have the force of law and violators of any such rules and regulations shall be subject to the penalties established by Section 78-53. Copies of such rules and regulations shall be available from the City Clerk and from the Municipal Arborist and shall be posted on the city's website. The Municipal Arborist shall be responsible for initiating proceedings to enforce such rules and regulations.

78-49 Requests to the Arborist; Written Permits or Oral Permission Required; Appeals

- (a) No person shall plant, prune, remove, or otherwise disturb, above or below ground, any public tree or shrub without first filing an application with and obtaining a permit from the City Arborist. Any permit granted shall contain a definite date of expiration and may contain conditions attached thereto by the Arborist. Any violation of this article or the terms of the permit shall be grounds for revocation of the permit, after notice and hearing. In emergency situations, such as storm damage to trees requiring immediate pruning or removal, the work may be performed without permits; however, the Arborist shall be notified as soon as possible.
- (b) It is the intent of this article to preserve public trees. The Arborist may issue a permit to cut down, remove, or destroy a public tree under one or more of the following circumstances:
- (1) The tree is diseased, injured, in danger of falling too close to existing or proposed structures, interferes with existing utility services, creates unsafe vision clearance or other traffic hazard, or is otherwise dangerous to people or property.
  - (2) The tree is located in an area where a structure or other improvements will be placed in accordance with plans approved under the Land Use Ordinance.
- (c) Requests for Tree Removal, Pruning, or Trimming. Persons owning or occupying property abutting a public way or their authorized representatives may request the Municipal Arborist to remove or prune trees located within the limits of the public way or, alternatively, for a permit authorizing them to do the work on their own. If the Municipal Arborist concludes that the request is not urgent, he may decline to do the work and issue a written permit allowing the property owner or his or her representative to undertake the work on their own and at their own expense. The permit may specify conditions and shall establish an expiration date. Failure to comply with the conditions specified in the permit will subject the property owner and his or her representatives to the penalties established by this ordinance. In lieu of initiating enforcement proceedings when the conditions imposed by the permit are violated, the Municipal Arborist may cause any necessary corrective work to be done at the expense of the property owner or his or her representatives.
- (d) Requests to Plant Trees or Shrubs. Persons owning land abutting a public way or their representatives may request the Municipal Arborist to issue a written permit to plant trees or shrubs within the limits of the public way. The Municipal Arborist shall issue a permit if he or she determines that the proposed planting will not be harmful to public health or safety, will not damage or encroach upon existing public trees, shrubs, or utility lines, will not damage the public street, sidewalk, or public or private utilities located in the right of way, and that suitable arrangements have been made

to provide for future maintenance of the proposed tree or shrub. The Municipal Arborist may specify reasonable conditions in the permit which the property owner or his or her representatives must follow in carrying out the work. Failure to comply with the conditions in the permit will subject the property owner to the penalties established by this ordinance. In lieu of initiating proceedings to enforce the conditions stated in the permit, the Municipal Arborist may cause any necessary corrective work to be done at the expense of the abutting owner.

- (e) Appeals. Any person who is denied permission by the Municipal Arborist to act under subsection 6(c) or 6(d) or who disagrees with a restriction or condition imposed on the action to be taken may appeal the same by filing a notice of appeal to the Board within ten (10) days from the date the action appealed from was taken. The notice of appeal shall contain the name and address of the person filing the appeal, the date and nature of the action from which the appeal is being taken, and a brief description of the basis for the appeal. The notice of appeal shall be filed with the Municipal Arborist who shall promptly forward it, as well as a response to the appeal, to the Chair and Secretary of the Board. The Board shall hear and decide the appeal within thirty (30) days from the date that the appeal was taken. A majority of the members of the Board shall constitute a quorum for purposes of hearing an appeal. The Board shall develop procedures governing the processing of such appeals, such procedures to be made available to the public.

#### 78-50 Notice by Municipal Arborist of Proposed Tree Work; Appeals

- (a.) Notice Except in the case of an emergency, the Municipal Arborist shall notify any abutting property owner at least ten (10) days before removing, topping, or spraying any public tree. In the case of an abutting property owner who does not occupy the property, notice may be given to any occupant of suitable age and discretion. Notice may be given by mail, by telephone, by electronic transmission, by leaving written notice attached to the person's door, or in person. The notice shall describe the work to be done, when it is scheduled to begin, the process by which an appeal may be taken, and how to contact the Municipal Arborist. With respect to pruning and trimming public trees, no formal notice is required, but the Municipal Arborist shall make a good faith effort when feasible to advise abutting property owners of the work to be done and to provide them with an opportunity to express any objections they may have.
- (b.) Appeals From Proposed Actions by the Municipal Arborist Within ten (10) days of the date when notice of the Municipal Arborist's intention to remove, top, or spray a tree is given, an abutting owner or his or her representative may give notice to the Municipal Arborist that he or she is

appealing the decision to the Board. Such notice of appeal may be given in person, by telephone, mail, or electronic communication. The procedure with respect to appeals under this section shall be the same as that for appeals under section 6(e) of this ordinance except that the proposed action shall be held in abeyance until the appeal has been heard and the Board has rendered a decision.

78-51 Notice of Tree Work by Utilities

- (a.) At least thirty (30) days before initiating any trimming, cutting, or removal of public trees, a utility company must notify the Municipal Arborist who may request the City Council to hold a public hearing to discuss the request.
- (b.) At least thirty (30) days before initiating any trimming, cutting, or removal of public trees, a utility company shall publish notice of its proposal on its website and in at least one newspaper which has daily circulation in the area in which the work is to be done. The notice shall describe the work which is proposed, the streets on which the work is scheduled to be carried out, and the dates on which the work is to be done. The notice shall be published in a display advertisement format which is easily readable and sufficiently prominent so that it is likely to come to the attention of persons whose property will be affected by the proposed tree work. The published notice shall also advise the members of the public of their right pursuant to state law to be added to a list of persons who must be consulted by the utility company before it trims, cuts, or removes trees in which they have a legal interest.

78-52 Lewiston-Auburn Community Forest Board

- (a.) Statement of purpose. The existence of the Lewiston-Auburn Community Forest Board is formally recognized. The Board shall develop and implement a community forest program which promotes the economic, environmental, and esthetic values of the community forest.
- (b.) Members. The Board shall consist of nine members appointed by the respective mayors.
- (c.) Qualifications of members. Members must be residents of Lewiston or Auburn or own property in either city and be interested in developing and preserving a healthy community forest. There shall be a minimum of four members from each city, although five members shall constitute a quorum and may act regardless of whether there are vacant positions on the Board.
- (d.) Ex officio members. There shall be six (6) ex officio members of the Board consisting of the Director (or Superintendent) of the Parks

Department in Auburn and the Public Works Director in Lewiston, a member of each city's Planning Board to be chosen by the respective Mayors, and the Municipal Arborist from each city. The Board may adopt a by-law regarding the election of associate members of the Board who may participate in the affairs of the Board except that they will not be eligible to vote.

- (e.) Members' terms of office. Each member shall serve for a term of three (3) years and may be reappointed by their respective mayors. Members currently serving may complete their current terms of office and may be reappointed for additional three-year terms. Terms of office will continue to be staggered to provide for continuity in the Board's program and activities.
- (f.) Vacancies. When vacancies occur, the Board shall take appropriate steps to recruit applicants to fill the vacant positions. Members appointed to fill vacant positions on the Board shall serve out the terms of the persons they are replacing.
- (g.) Compensation. Members of the Board shall serve without compensation.
- (h.) Duties and responsibilities. The Board shall:
  - (1) Develop a plan for and provide advice to city staff and agencies regarding the management of the community forest including the anticipated impact of proposed development;
  - (2) Raise community awareness regarding the importance of the community forest;
  - (3) Raise funds to establish a community forest trust fund;
  - (4) Hear appeals filed pursuant to this ordinance;
  - (5) Adopt by-laws to govern the internal affairs of the Board; and
  - (6) Perform such other functions as are permitted by this ordinance.
- (i.) Administration The Board shall elect a Chair, Vice Chair, Secretary, and Treasurer. Except for the Chair, the officers shall serve for renewable one-year terms. The Chair shall be elected for a renewable two-year term. The Board may allow the duties of the Secretary and Treasurer to be performed by the same person.

#### 78-53 Violations and Penalties

- (a.) Notwithstanding § 284-8 of this article, a violator of any provision of this article shall be subject to a civil penalty of not less than \$100 nor more than \$500. Each act of violation shall constitute a separate offense. Any such penalty shall inure to the benefit of the town; and
- (b.) Should any public tree be destroyed, the person causing the destruction shall also make restitution to the City in an amount equal to the cost to the City to remove the destroyed tree plus its replacement value. Replacement value shall be calculated as follows:
  - 1. For a tree up to and including 2 inches in diameter measured at a distance of 4.5 feet from the ground, the replacement value shall be \$200;
  - 2. The replacement value of a tree in excess of 2 inches in diameter as measured at a distance of 4.5 feet from the ground shall be calculated by using the following formula:  $\text{restitution} = (\$200) + (d^2 \times \$40)$  not to exceed \$2,500, where d equals the diameter of the trunk as measured in inches.
- (c.) The court may also order the violator to reimburse the city for the cost of any action which was necessary to correct violations of the ordinance. If the city is the prevailing party in an enforcement action, it shall be awarded reasonable attorney's fees and costs.