

CITY OF LEWISTON
PLANNING BOARD MEETING
Monday, November 25, 2019 – 5:30 P.M.
City Council Chambers – First Floor
Lewiston City Building
27 Pine Street, Lewiston, ME

AGENDA

1. ROLL CALL

2. ADJUSTMENTS TO THE AGENDA

3. CORRESPONDENCE

4. PUBLIC HEARINGS:

- a. Saxon Partners, LLC (“Saxon”), has submitted a request to modify the existing contract zone for 10, 35 and 37 Avon Street to reduce the density standard for 10 Avon Street from 1,180 sf. to 1,000 sf. in order to consolidate all the residential units to 10 Avon Street.

5. OTHER BUSINESS:

- a. Design Lewiston- Update on the approval process and discussion of specific items needing further consideration.
- b. Election of Officers (Secretary)
- c. Planning Board Policies and Procedures

6. READING OF THE MINUTES: Motion to adopt the October 28, 2019 and November 4, 2019 draft minutes

7. ADJOURNMENT

The next scheduled Planning Board meeting is December 9, 2019.



CITY OF LEWISTON

Department of Planning & Code Enforcement

TO: Planning Board

FROM: Douglas Greene, City Planner

DATE: November 25, 2019

RE: Contract Zoning Amendment Request for 10, 35 and 37 Avon Street

The Amended Contract Zoning Request- Pursuant to Article XVII, Section 5, b, (4), and Section 5, g (1-4).of the Zoning and Land Use Code, Saxon Partners, LLC has submitted a request to amend the existing contract zone for 10, 35 and 37 Avon Street to reduce the net lot density standard for 10 Avon Street from 1,180 sf. to 1,000 sf. in order to consolidate all the approved residential units to 10 Avon Street.

The three properties at 10, 35 and 37 Avon Street were approved for a contract rezoning from Resource Conservation (RC), Urban Enterprise (UE) and Neighborhood Conservation B (NCB) to Centreville (CV) back in April of 2019. The three properties, totaling 6.8 acres, were approved for a maximum of 245 dwelling units at density of one dwelling unit per 1,180 sf. of net lot area. The development concept at that time was to build 210 apartment units at 10 Avon Street (5.71 ac.) and 35 units at 35 and 37 Avon Street (1.17 ac.). Now, Saxon Partners has re-evaluated their development plans and would like to locate all 245 units at 10 Avon Street, the largest of the three properties.

Preliminary Site Plan- The application from Saxon Partners, LLC includes a preliminary site plan that graphically depicts this amended contract zone request. The plan shows 2 large structures (buildings A and B) that are connected by an “amenity connector” building at 10 Avon Street. Building A is 5 stories tall with a 49 ground level parking spaces under the building. Building B is 4 stories tall with no parking underneath. There are a total of 295 parking spaces (246 surface and 49 space under Building A) at 10 Avon Street. 35 and 37 Avon Street, across the street, now shows an “overflow” parking area consisting of 3 covered parking garages and surface parking with total of 50 spaces. A continuation of the Riverside Greenway Path is shown along the Androscoggin River. This plan is preliminary and will be subject to a complete development review by the Planning Board at a later date.

Land Uses and Space and Bulk Standards: Back in April of this year the Avon Street properties were contract rezoned from RC, UE and NCB to Centreville (CV) in order to allow the construction of a total of 245 residential units.

The following land uses were approved:

- Multi-family dwellings and mixed use structures are permitted uses
- Business and professional offices, restaurants, drinking places, indoor amusement, arts and crafts, personal services, retail and neighborhood retail are permitted as part of a

mixed use structure

- Private or public facilities for non-intensive outdoor recreation and fitness and recreational sports centers are permitted as accessory uses

The following changes to the Space and Bulk table were approved:

- The minimum front setback is 25 feet for principle structures and 0 feet for accessory structures.
- The maximum height is 80 feet for principle structures and 20 feet for accessory structures

The applicant also had 3 changes to existing land use requirements approved:

- More than one building would be permitted on a lot
- A waiver of Shoreland zoning restriction for residential lots with 250 feet of the Androscoggin River
- Waiver of development standards for open space and personal storage.

In summary, this amended contract zoning amendment requests a reduction in the net lot density standard from 1,180 sf. to 1,000 sf. per in order to consolidate the maximum number of allowable dwelling units to 10 Avon Street.

Compliance with the Comprehensive Plan- The applicant has provided references to the 2017 Legacy Lewiston Comprehensive Plan citing, the need for new housing due to aging downtown housing stock, (pg. 120); increasing housing choices due to a need for up to 600 new housing units by 2020, (pg. 172) and the need to provide more employee housing, with Androscoggin County “looking to welcome 2,000 new jobs by 2020”. (pg. 179)

Planning Board Action- The Planning Board should make its recommendation to the City Council based on Article XVII, Section 5, b, (4), and Section 5, g (1-4) of the Zoning Ordinance. Section 5, b, (4) directs the Planning Board to limit its considerations with an application that is consistent with the Comprehensive Plan, that the proposal should contain a written statement of conditions that shall apply only to the requested properties, and contain a written contract with the city with conditions or restrictions that would only apply to the to the property requested for the contract zoning.

ACTION NECESSARY

Make a motion pursuant to Article VII, Section 4 (Planning Board- Powers and Duties) and Article XVII, Section 5 (Amendment and Other Legal Provisions) of the Zoning and Land Use Code to send a favorable recommendation to the City Council for the Contract Zoning request by Saxon Partners, LLC for properties located at 10, 35 and 37 Avon Street to reduce the density standard for 10 Avon Street from 1,180 sf. to 1,000 sf. in order to consolidate all the residential units to 10 Avon Street.

CHARLES C. SOLTAN
Managing Member
charles.soltan@soltanbass.com

JAMES BASS
Member
james.bass@soltanbass.com

November 5, 2019

Hon. Kristen S. Cloutier
Mayor
City of Lewiston
27 Pine Street
Lewiston, ME 04240-7201

RE: Modification of Existing Contract Zone for 10, 35, and 37 Avon Street

Dear Mayor Cloutier:

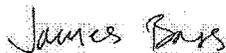
On behalf of Saxon Partners, LLC (“Saxon”), I submit the enclosed request to modify the existing contract zone for 10, 35, and 37 Avon Street (the “Property”) located in Lewiston, Maine. In the application, Saxon respectfully requests that the density standard for 10 Avon Street be reduced from 1,180 square feet to 1,000 square feet and the specific density caps for 10, 35, and 37 Avon Street be lifted. This will allow consolidation of all residential units on 10 Avon Street.

This is Saxon’s second contract rezone application concerning the Property. The first was approved on April 16, 2019, became effective on May 16, 2019, and is filed in the Androscoggin County Registry of Deeds, Book 10157, Pages 40 – 68. This request simply modifies two provisions in the previously approved rezoning.

The Property has been owned by Lewiston Waterfront Development, LLC and the majority of it originally housed Pineland Lumber for most of the twentieth century. Lewiston Waterfront Development, LLC has executed and extended a Purchase & Sale Agreement with Saxon.

Saxon respectfully requests support for its modification request. Along with members of the Saxon team, I will be present at the upcoming meetings to present this information and answer any questions posed by the Planning Board or City Council.

Sincerely,



James Bass, Esq.
Soltan Bass, LLC

THE CITY OF LEWISTON HEREBY ORDAINS

Saxon Partners, LLC (“Saxon”) requests to modify the existing contract zone for 10, 35, and 37 Avon Street (the “Property”) as recorded in the Androscoggin County Registry of Deeds, Book 10157, Page 40 – 68. Within the Property, all underlying standards, as they may be amended from time to time, continue to apply, except for the following:

- Space and Bulk Table; Book 10157, Page 46
 - Reduce the minimum net lot area per dwelling unit with public water from 1,180sf to 1,000sf; and
- Space and Bulk Table footnotes; Book 10157, Page 48
 - Remove footnote “c” (“The density for 10 Avon Street shall not exceed 210 dwelling units and the density for 35 and 37 Avon Street shall not exceed 35 dwelling units”).

REASONS FOR THE PROPOSED AMENDMENT

The reason for the proposed amendment is to allow consolidation of all units on 10 Avon Street. A conceptual site plan of the project, last revised and dated August 16, 2019, as proposed, is attached as Exhibit A. Saxon’s original Purchase and Sale Agreement, dated April 20, 2018, is attached as Exhibit B. An extension of the Purchase and Sale Agreement, dated October 29, 2019, extends the original Permitting Period deadline from October 19, 2019 to May 31, 2020 and is attached as Exhibit C.

Background

Saxon previously submitted a contract rezone application that was approved on April 16, 2019 and became effective on May 16, 2019 (see Exhibit D). In that application, City Council approved Saxon’s request to rezone the Property at 10, 35, and 37 Avon Street from the Resource Conservation, Urban Enterprise, and Neighborhood Conservation “B” Districts to the Centreville (CV) District and to lift certain incompatible land use requirements.

In that application, Saxon envisioned developing a modern residential housing complex built on the vacant Pineland Lumber property located at 10 Avon Street, shown on Tax Map 206 as Lot 19 (5.71 acres), and a neighboring property at 35 and 37 Avon Street, shown on Tax Map 206 as Lots 27 and 28 (1.17 acres).

Under that plan, Saxon proposed two four-story buildings on 10 Avon Street that each contained 105 residential units and one three-story building on 35 and 37 Avon Street that housed 35 residential units. In total, the plan included 245 units spread over two lots.

Due to that configuration, Saxon’s initially requested a density requirement for 10 Avon Street that could accommodate up to 210 residential units. Due to the size of the lot (5.71 acres), this resulted in a density base of 1,180sf per dwelling unit.

However, over the last few months as Saxon has fine-tuned and further developed this project, it became apparent that greater efficiencies and a better design could be addressed if all units were colocated on 10 Avon Street and not split between the two lots.

Under Saxon’s updated plan, the two buildings on 10 Avon Street have been connected and slightly enlarged, the 35 unit building on 35 and 37 Avon Street has been replaced with parking, and those units planned for that lot previously have been consolidated on 10 Avon Street. The overall number of units (245) has remained the same.

Benefits to Lewiston

Injects Significant Investment into Local Economy	<ul style="list-style-type: none"> • During the construction period, the development will inject millions into the greater Lewiston/Auburn region.
Employment	<ul style="list-style-type: none"> • The project will most likely be staffed with 4 to 5 full and part-time employees.
Supports Local Vendors	<ul style="list-style-type: none"> • The project will need and use local vendors to help maintain the Property.
Key Demographic Located Downtown	<ul style="list-style-type: none"> • The development will have up to 245 market rate units composed of studios and one-bedroom apartments. These units are likely to appeal to singles and couples who will work and enjoy Downtown Lewiston’s restaurants and nightlife.
Replace Vacant, Underused Area	<ul style="list-style-type: none"> • Revitalize a blighted property along the Androscoggin River with much needed housing that supports Lewiston’s downtown businesses.
Improve Local Infrastructure	<ul style="list-style-type: none"> • Provide the City of Lewiston an easement on the north end of 10 Avon Street that is sufficient for the installation of a second water main feed from Lake Auburn. • Provide the City of Lewiston an easement on the west side of 10 Avon Street that the City can use to install an extension of the Riverside Greenway Trail (if the City can continue the trail on abutting properties).

Need for the Proposed Contract Zone Amendment

To allow all residents to be colocated on 10 Avon Street, Saxon respectfully requests that the density standard for 10 Avon Street be slightly lowered from 1,180 sq/ft to 1,000 sq/ft. Below is the relevant section of the proposed Space and Bulk Table incorporating this request.

Dimensional Requirements (13)	Centreville (CV)	Current density for 10 Avon St. (CV District)	Requested density for 10 Avon St. (CV District)
Min. net lot area per d.u. with public sewer			
Single family detached			
Single family attached			
Two-family dwellings			
Mixed single family residential development (14)			
Mixed residential development (14)			
Multi-family dwellings		1,180	1,000
Mixed use structures		1,180	1,000
All permitted residential uses	None		

Additionally, Saxon requests that the density caps be lifted for 10, 35, and 37 Avon Street. These are noted in footnote “c” in the existing contract zone’s Space and Bulk Table as recorded in the Androscoggin County Registry of Deeds, Book 10157, Page 48 (“The density for 10 Avon Street shall not exceed 210 dwelling units and the density for 35 and 37 Avon Street shall not exceed 35 dwelling units”). These caps were specifically fashioned around the previous plan’s residential split but with all units now proposed to be colocated, the 10 Avon Street cap would prevent this project.

CONFORMANCE WITH THE COMPREHENSIVE PLAN

The proposed request is in conformance with the City’s Comprehensive Plan, as demonstrated by the following excerpts from the 2017 Legacy Lewiston Comprehensive Plan:

- In the section laying out the City’s new framework for growth: *“With an aging downtown housing stock, the community lacks high-quality housing choices within the walkable downtown core, making it difficult for singles, young professionals, and retirees to find attractive and affordable places to live.”* (Conservation and Growth Map, p. 120).
- Regarding the need to increase the City’s housing choices: *“The Riverfront Island Master Plan estimates that Lewiston will require up to 600 new housing units by 2020...To better meet current and emerging needs, future development should focus on providing new, high-quality, multi-family residences and other housing types as opposed to the current trend of building single-family homes in areas not currently served by water and sewer.”* (Strengthen Neighborhoods & Expand Housing Choice, p. 172).
- The City needs to provide more employee housing:
With Androscoggin County looking to welcome 2,000 new jobs by 2020 according to the Riverfront Island Master Plan, Lewiston is bound to see growth among its prominent employers. With an already low vacancy rate citywide, large corporations based in

*Lewiston might begin to overwhelm the local housing stock, though vacancy rates are higher in the downtown. **A broad mix of high-quality new housing and short-term rentals, particularly for hospital employees, should be provided within proximity to these anticipated jobs.***" (Strengthen Neighborhoods & Expand Housing Choice, p. 179, emphasis mine).

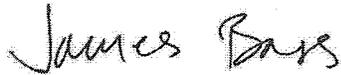
There is nothing in the City's Comprehensive Plan that is inconsistent with the proposed amendment from Saxon.

Thus, the project will be consistent with existing and permitted uses in the CV zoning district.

PROPOSED WRITTEN CONTRACT

Saxon requests that the City enter into the contract attached hereto as Exhibit E by which, in consideration of the contract zone amendment, certain conditions or restrictions not imposed on other similarly zoned properties will be imposed.

Saxon hereby submits this proposal as of the 5th day of November 2019.



Signature



Printed Name

PURCHASE AND SALE AGREEMENT

For \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller agree as follows, with this document being referred to herein as the "Agreement":

1. PARTIES.

SELLER: Lewiston Waterfront Development, LLC
c/o Fred Thurston @ Conifer Industries
Route 231 P.O. Box 500 New Gloucester, Maine 04260

with a copy to: John Doyon
Malone Commercial Broker
5 Moulton Street
Portland, ME 04101

And

Craig Rancourt
13 Crescent Street
Biddeford, Maine 04005

BUYER: Saxon Partners, LLC, a Massachusetts limited liability company,
or its nominee or assignee
Attention: Donald S. Smith, Manager
25 Recreation Park Drive, Suite 204
Hingham, MA 02043
Phone: 781-875-3304
Fax: 781-875-3044
E-mail: dsmith@saxon-partners.com

with a copy to: David L. Arons, Esq.
Saxon Partners LLC
25 Recreation Park Drive, Suite 204
Hingham, MA 02043
Phone: 781-875-3317
Fax: 781-875-3044
E-mail: darons@saxon-partners.com

2. PROPERTY. Those certain three lots or parcels of real estate in Lewiston, Maine, containing approximately 6.4 acres and identified as follows: 10 Avon Street, shown on Tax Map 206 as Lot 19 (5.47 acres, more or less); 35 Avon Street, shown on Tax Map 206 as Lot 28 (.18 acres, more or less); and 37 Avon Street, shown on Tax Map 206 as Lot 27 (.7 acres, more or less), together with the buildings and improvements thereon, if any and all rights, easements and other appurtenances thereto, and all rights in all permits and other benefits relating to the Property. (the "Property"). The Property is shown approximately on Exhibit A.

3. **PURCHASE PRICE.** [REDACTED] The Purchase Price, subject to any pro-rations or adjustments as provided below, shall be payable at the Closing by certified bank check or wire transfer.

4. **EFFECTIVE DATE.** The last date upon which both Parties have executed, dated and distributed this Agreement, shall be defined as the "Effective Date".

5. **DEPOSITS.** Within five (5) business days of the Effective Date, Buyer shall deposit in escrow with SVN Urbanek Group ("Escrow Agent"), the amount of: [REDACTED] ("Initial Deposit"). If Buyer elects to proceed to the Permitting Period, then Buyer shall increase the Deposit by depositing in escrow with Escrow Agent an additional [REDACTED]. The Initial Deposit and all subsequent deposits hereinafter shall be collectively referred to as the "Deposit". The entire Deposit shall be credited against the Purchase Price at the Closing and shall be refundable except as specifically set forth in this Agreement. Interest, if any, on the Deposit shall follow the Deposit. Escrow Agent, however, shall not be required to use an interest-bearing account.

6. **DUE DILIGENCE AND PERMITTING PERIODS.** Buyer shall have the Due Diligence Period and the Permitting Periods (each set forth below) during which Buyer, at Buyer's sole expense, shall have the right to conduct such due diligence as Buyer deems appropriate including, without limitation, review of title, survey, current environmental reports, utilities, topography, archeological and historical, reports and other due diligence items. Buyer shall have the right to enter onto the Property for the conduct of due diligence including, without limitation, inspection, testing, survey, engineering and permitting. Seller shall reasonably cooperate with Buyer's due diligence efforts (including the release of pertinent documents to the Buyer and Buyer's attorneys, engineers and surveyors, and consultants), provided that such cooperation shall not cause Seller to incur any expenditure (unless Buyer reimburses Seller for any such expenses). Buyer understands and agrees that any on-site inspections of the Property shall be conducted upon at least twenty-four (24) hours prior written e-mail notice to Seller and, at Seller's option, in the presence of Seller or its representative, provided such Seller right shall not result in a delay in Buyer's conduct of its due diligence. Inspections shall be conducted so as not to interfere unreasonably with use of the Property by Seller or its tenants, if any. After Buyer's inspections are completed, Buyer shall restore the Property, at Buyer's sole cost and expense, substantially to its condition immediately prior to any impact due to Buyer's inspections. Prior to Buyer or any such other party entering the Property in the exercise of the access rights hereunder, Buyer shall deliver to Seller a certificate of commercial public liability insurance naming Seller as an additional insured, and evidencing coverage with commercially reasonable limits. Buyer agrees to indemnify against and hold Seller harmless from any claim, liabilities, costs, expenses (including reasonable attorneys' fees actually incurred), damages or injuries to the extent arising out of or resulting from the inspection of the Property by Buyer or its agents or representatives, provided that the foregoing shall not be applicable to the discovery of existing conditions by Buyer. Notwithstanding anything to the contrary in this Agreement, Buyer's obligation to indemnify and hold harmless Seller and the other obligations of Buyer under this Section 6 shall survive any termination of this Agreement for a period of six (6) months.

(i) **Due Diligence Period:** The Due Diligence Period shall be a period of six (6) months from the Effective Date. Within five (5) business days after the Effective Date, Seller shall provide

Buyer with copies of all relevant due diligence information in its possession including any permits, environmental reports, geotechnical information, archeological and historical reports, plans, and the most recent title/survey information. The entire Deposit (plus accrued interest, if any) will be returned to Buyer if Buyer, at any time and in Buyer's sole discretion, is not satisfied with the results of Buyer's due diligence.

On or before the end of the Due Diligence Period, Buyer may elect to continue to the Initial Permitting Period by giving written notice to Seller, provided that if Buyer fails to give notice of Buyer's election to continue to the Initial Permitting Period by the end of the Due Diligence Period, then Buyer's right to elect to terminate or to continue to the Initial Permitting Period shall continue for three (3) business days after Buyer's receipt of notice from Seller that Buyer's election had not been received by the initial due date therefor.

Buyer agrees to within six (6) months of the Effective Date submit an application to the Planning Board for construction of a multi-family development including at least 150 apartment units. The Buyer's obligation to apply to the Planning Board shall not otherwise supersede the Buyer's rights under the Due Diligence Period and the Permitting Period as set forth in this Section 6.

(ii) *Permitting Period:* Buyer shall have up to twelve (12) months after the end of the Due Diligence Period, which amounts to eighteen (18) months from the Effective Date, at Buyer's sole expense, to apply for permits and obtain zoning relief for the Property for the construction of a multi-family development including at least 150 apartment units, and to defend against the appeal from the issuance of any permits and grant of zoning relief. If Buyer elects to terminate this Agreement on or before the end of the Permitting Period, then the entire Deposit plus accrued interest (if any) will be returned to the Buyer. After the completion of six (6) full months of the Permitting Period, [REDACTED] of the Deposit shall become non-refundable per month on the first day of each subsequent month of the Permitting Period (hereinafter collectively referred to as the "Released Funds") and shall remain as part of the Deposit held by the Escrow Agent. The Released Funds will be non-refundable but will in all circumstances be applicable to the Purchase Price. Notwithstanding the foregoing, in the event that the Buyer elects to terminate on account of a Seller default under this Agreement, the Released Funds shall be fully refundable together with the remainder of the Deposit.

(iii) *Extension:* If at the end of the initial Permitting Period (eighteen (18) months from the Effective Date), there are pending applications or appeal periods that have not expired or appeals have not been resolved, or there are other pending legal actions relating to the Property, then Buyer shall have the right to extend the Permitting Period for a period ending thirty (30) days after the final resolution of the last of the foregoing matters provided Buyer is seeking to address the matter(s) in question (including the exhaustion of all appeals). Buyer shall notify Seller of the election to extend on or before the expiration of the initial Permitting Period provided that if Buyer fails to give notice of Buyer's election to terminate or to continue with the Extension of the Permitting Period by the conclusion of the initial twelve (12) month Permitting Period, then Buyer's right to elect to continue to the Extension shall continue for three (3) business days after Buyer's receipt of notice from Seller that Buyer's election had not been received by the initial due date therefor.

Buyer reserves the right, at any time during the initial Permitting Period and any Extension of the Permitting Period to terminate this Agreement and all of the Deposit(s) plus interest, if any, shall be returned to Buyer.

If Buyer terminates this Agreement, Buyer will forward to Seller copies of any relevant reports or studies on the Property performed for Buyer, such copies to be provided without any representations or warranties from Buyer, and without liability to Buyer, and shall be subject to any terms, conditions and limitations required by the issuer of the applicable reports or studies.

During the Permitting Periods and Extension Periods (if any) Buyer Shall Pay the amount of \$1,333 per month for Seller to apply to the Real Estate Taxes for the Subject property. In the event of a Seller default, the Seller shall within seven calendar days refund to the Buyer all amounts paid by the Buyer for real estate tax payments.

7. TITLE COMPLIANCE. It is understood and agreed by the parties that the Property shall not be in conformity with title provisions of the Agreement unless:

(1) No building, structure or improvement of any kind belonging to any other person or entity shall encroach upon or under said Property;

(2) The Property shall abut a public way that is duly laid out or accepted as such by the municipality where the Property is located; and

(3) Purchaser's survey or plot plan indicates that no structure or improvement situated upon the Property violates the zoning ordinances or by-laws of the municipality in which the Property is located.

8. CLOSING. Seller shall deliver the Property free and clear of all tenants and encumbrances, and with good record and marketable title, with the state of the title satisfactory to the company providing title insurance to the Buyer at Closing, and Buyer shall deliver the balance of the Purchase Price due at the Closing which shall occur at the offices of the Escrow Agent (or such other location as is designated by Buyer at least seven (7) days prior to the Closing) at 11:00 am on the first business day that is sixty (60) days after the date on which Buyer has obtained all permits and approvals that Buyer determines are required to proceed, and all appeal periods having been exhausted, to the extent there has been an appeal, with the appeal(s) having been resolved to the satisfaction of Buyer in Buyer's sole discretion. Notwithstanding the foregoing, Buyer and Seller may mutually agree on an earlier Closing by written agreement in the sole discretion of each party. At Buyer's election, the Closing shall take place by the submission (via courier, other delivery system or with respect to funds, wire transfer) in advance of or on the date of the Closing of all documents and funds to Buyer's title company, which will conduct the Closing.

9. DEED. The Property shall be conveyed by a good and sufficient quitclaim deed ("Deed") with quitclaim covenants, which Deed shall convey good and clear record and marketable title to the Property, with the state of title satisfactory to the company providing title insurance to the Buyer, free from all liens and encumbrances, except for easements of record as of the close of the

Due Diligence Period to which the Buyer has not objected in the Title Objections Notice described below (except to the extent Seller has agreed to terminate such easement(s)), the Property to be in compliance at transfer with all applicable laws, ordinances and regulations relating thereto. If Buyer has any objections to title ("Title Objections Notice"), Buyer shall provide Seller with written notice regarding the Title Objections during the Due Diligence Period, and the Seller shall be obligated to cure the Title Objections prior to the Closing as a condition of the Buyer's obligation to purchase the Property. Seller shall not allow any changes in title after the title run-down date stated in the Buyer's submission of the Title Objections Notice, except to cure any of the Title Objections prior to the Closing; otherwise, in the absence of such Title Objections, Buyer shall accept and Seller shall deliver title to the Property at Closing in the condition in which title is in on the close of the Due Diligence Period, subject only to Seller's duty to discharge: (A) all mortgages, deeds of trust, and all other monetary and liens and encumbrances of record; and (B), any other matters of record that Seller has agreed to terminate.

10. **WITHHOLDING TAX.** Seller hereby is notified that Buyer will withhold two and one-half percent (2.5%) of the purchase price for transfer to the State of Maine Tax Assessor pursuant to 36 M.R.S.A. §5250-A unless (a) Seller furnishes a certificate to Buyer at the Closing, as hereinafter defined, stating, under penalty of perjury, that as of the date of the Closing, Seller is a resident of the State of Maine, or (b) Seller furnishes a certificate from the State of Maine Tax Assessor to Buyer at the Closing stating that no taxes are due on the gain from the transfer of the Property or that Seller has provided adequate security to the State of Maine Tax Assessor to cover the tax liability resulting from said transfer.

11. **CLOSING DOCUMENTS.** At the Closing, and in addition to any other documents referred to in this Agreement to be delivered to Buyer, Seller shall execute, acknowledge as necessary and deliver the following documents and such other documents as Buyer's attorneys or title company may reasonably require to complete the transaction contemplated herein:

(a) **Transfer Documents.** The Deed, a Maine Real Estate Transfer Tax Declaration of Value, and one or more assignments, as determined by Buyer, of all of Seller's right, title and interest in all permits, approvals, improvements and other property of Buyer relating to the Property;

(b) **Title Affidavits.** Such customary certificates, affidavits or indemnity agreements as the title insurance company issuing a policies of title insurance on the Property to Buyer and Buyer's lender shall require in order to issue such policies and to omit therefrom all standard exceptions including those relating to unfiled mechanic's, materialmen's or similar liens and for parties in possession;

(c) **Nonforeign Person Affidavit.** If applicable, such affidavits and certificates as Buyer shall deem necessary to relieve Buyer of any obligation to deduct and withhold any portion of the purchase price pursuant to §1445 of the Internal Revenue Code;

(d) **Maine Resident Affidavit.** If applicable, such affidavits and certificates as Buyer shall deem necessary to relieve Buyer of any obligation to deduct and withhold any portion of the purchase price pursuant to 36 M.R.S.A. §5250-A;

(e) **Underground Oil Storage Tank and Hazardous Waste Certification.** A written notice certifying either (i) that to Seller's knowledge there is no underground oil storage facility located on the Property, (ii), no deposits of hazardous waste substances or oil products stored or discharged on the Property (as defined under the law of the State of Maine and under applicable federal law) or (iii) pursuant to 38 M.R.S.A. §563(6), if there is an underground oil storage tank facility on the Property, that the facility exists and shall disclose its registration number or numbers, the exact location of the facility, whether or not it has been abandoned in place, and that the facility is subject to regulation by the Maine Board of Environmental Protection;

(f) **Authority of Seller and Buyer.** A certificate of good standing from the Maine Secretary of State and other documentation evidencing Seller's authority to enter into and complete the transaction contemplated by this Agreement as may be reasonably requested by Buyer's attorney and Buyer shall provide the same authority documents to Seller as may be reasonably requested by Seller's counsel; and.

(g) **Tax documents.** An IRS 1099S form and any other tax reporting forms required by State of Maine and federal government.

12. POSSESSION AND CONDITION OF PROPERTY. Full possession of the Property free of all tenants and occupants is to be delivered at the Closing; the Property to be then in the same condition as it is on the Effective Date (except to the extent Seller has agreed to make any changes to the Property), reasonable wear and tear excepted.

13. EXTENSION TO PERFECT TITLE OR MAKE PROPERTY CONFORM. If Seller shall be unable to give title or to make conveyance, or to deliver possession of the Property, all as herein stipulated, or, if at the time of the Closing the Property does not conform with the terms and conditions hereof, then Seller shall use due diligence and commercially reasonable efforts to remove any defects in title (including liens and encumbrances) or to deliver possession as provided herein, or to make the Property conform to the terms and conditions hereof, as the case may be, in which event the time for performance hereof shall be extended for a period of up to thirty (30) days, or such longer period as shall be determined by Buyer.

14. FAILURE TO PERFECT TITLE OR MAKE PROPERTY CONFORM. If at the expiration of such extended time(s) Seller shall have failed to remove any defects in title (including liens and encumbrances), deliver possession, or make the Property conform, as the case may be, all as herein agreed, then, at Buyer's option and subject to Buyer's other rights in this Agreement, the entire Deposit (including any portion thereof that would otherwise be non-refundable) promptly shall be refunded to Buyer, all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse of the parties hereto.

15. BUYER'S ELECTION TO ACCEPT TITLE AND CONDITION. In addition to such other remedies available to Buyer under this Agreement, Buyer shall have the election, at either the original or during or at the end of any extended time for performance, to accept such title to the Property in its then condition as Seller can deliver and to pay therefor the Purchase Price without deduction, in which case, Seller shall convey such title or deliver the Property in such

condition, except that, in the event of such conveyance in accordance with the provisions of this clause, the Property shall have been damaged by fire or casualty insured against, then Seller shall, unless Seller has previously restored the Property to its former condition, and at Buyer's express election, pay over or assign to Buyer, on delivery of the Deed, all amounts recovered or recoverable on account of such insurance, or which would have been recoverable had Seller maintained commercially reasonable insurance on the Property, less any amounts reasonably expended by Seller for any partial restoration.

16. **ACCEPTANCE OF DEED.** The acceptance of the Deed and other transfer documents by Buyer shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms and conditions hereof, to be performed after the delivery of said documents or to otherwise survive the Closing hereunder.

17. **USE OF PURCHASE MONEY TO CLEAR TITLE.** To enable Seller to make conveyance as herein provided, Seller may, at the time of delivery of the Deed and other transfer documents, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said Deed and other transfer documents.

18. **RISK OF LOSS.** Until delivery of possession of the Property from Seller to Buyer, risk or loss or damage to Property by fire, storm, accident, other casualty or otherwise shall be on Seller.

19. **ADJUSTMENTS.** Water and sewer use charges, if any, real estate taxes and any other municipal assessments for the then current municipal tax year shall be apportioned, as of the Closing, and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price payable by Buyer at the time of delivery of the Deed and other transfer documents. At Buyer's election, the Property shall be removed from any current use tax assessment program such as, by way of example, open space or tree growth classification, at or prior to the Closing, in which case any penalties or other fees resulting therefrom shall be paid by Seller at or prior to the Closing. Real estate transfer taxes due on the sale will be paid by Seller and Buyer in equal amounts in accordance with Maine law.

20. **ADJUSTMENT OF UNASSESSED AND ABATED TAXES.** If the amount of said real estate taxes and any other municipal assessments referred to in the preceding Paragraph is not known at the time of the Closing, they shall be apportioned on the basis of the real estate taxes assessed for the immediately preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained.

21. **DEFAULT/DAMAGES.** If Seller fails to fulfill Seller's obligations hereunder, and such failure continues for fifteen (15) days after Seller's receipt of written notice from Buyer, Buyer may elect to receive a refund of the entire Deposit (including any portion thereof that would otherwise be non-refundable) and to pursue all available remedies, pursuant to this Agreement, at law and in equity, including, without limitation, specific performance and reasonable attorneys' fees. If Buyer fails to fulfill Buyer's obligations hereunder, and such failure continues for fifteen (15) days after Buyer's receipt of written notice from Seller, then Seller shall retain the Deposit as

liquidated damages as Seller's sole and exclusive remedy at law or in equity for Buyer's default without further recourse to Buyer and Buyer shall be relieved of all obligations hereunder.

22. **ASSIGNMENT/DESIGNATION OF NOMINEE.** The rights and obligations of Buyer under this Agreement may be assigned by Buyer provided that such assignee agrees to assume all of Buyer's obligations hereunder. The Buyer may also designate a nominee to take title to the Property.

23. **MISCELLANEOUS.**

(a) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

(b) All paragraph headings in this Agreement are for convenience of reference only and are of no independent legal significance.

(c) This Agreement may not be modified, waived or amended except in a writing signed by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such a breach, and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise be prejudicial thereto.

(d) Any and all prior and contemporaneous discussions, undertakings, agreements and understandings of the parties are merged in this Agreement, which alone fully and completely expresses their entire agreement.

(e) This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall constitute one and the same instrument. This Agreement may be transmitted between the parties by facsimile machine and/or by email and signatures appearing on faxed or emailed instruments shall be treated as original signatures. Both a faxed or emailed version of this Agreement containing either original, faxed or emailed signatures of all parties, and multiple counterparts of the same Agreement each containing separate original, faxed or emailed signatures of the parties, shall be binding on them.

(f) If any term or provision of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which this Agreement is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(g) It is expressly understood and agreed that time is of the essence in respect of this Agreement.

(h) This Agreement shall be governed by and construed and enforced in accordance with the laws in effect in the State of Maine.

(i) Each party shall be responsible for its own legal, advisory and miscellaneous expenses associated with the completion of this transaction.

24. BROKERAGE COMMISSION. Buyer and Seller represent and warrant to each other that they have not dealt with any brokers regarding this transaction other than John Doyon of Malone Commercial ("Seller's Broker") and Tony Armstrong, SVN Urbanek Group (Buyer's Broker"). At Closing, Seller shall be responsible to pay a brokerage commission by a separate agreement between the Seller's Broker and Seller, and a brokerage commission by a separate agreement between the Buyer's Broker and Seller. The commission shall be due if and only the Deed is delivered and recorded, full consideration paid to the Seller, and not otherwise.

25. REPRESENTATIONS. Seller represents and warrants to Buyer that

(a) Seller is the owner in fee simple of the Property (subject to Seller's Mortgage, if any, and matters of record as of the Effective Date), and has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and the execution and delivery of this Agreement and the performance by Seller of its obligations hereunder will not conflict with any agreement to which Seller is a party or by which Seller is bound;

(b) Seller has good and marketable title to the Property, and there are no lawsuits or other proceedings currently pending, contemplated, or threatened by or against the Seller or the Property that would affect the ownership, future development, ability to finance or enjoyment of any of the Property, or which would result in delays in the Buyer's proposed development of the Property for the construction of a multi-family project with at least 125 units;

(c) Seller has received no notice of any eminent domain proceedings or any other adverse event affecting the Property, nor of any special or betterment assessments contemplated against the Property, nor of any actions that would hinder or delay the development of the Property, and Seller has no knowledge of any of the foregoing;

(d) Seller (including Seller's employees, agents, contractors, representatives, and invitees) has not generated, released, stored, disposed of, dumped, flushed or in any way introduced on to the Property oil, hazardous material, hazardous waste or hazardous substances (hereinafter collectively called "Hazardous Substances") as those terms are defined by any applicable federal, state or local law, rule or regulation (hereinafter referred to as "Applicable Environmental Laws"), and Seller has not received notice and is not otherwise aware of any incident which would have required the filing of notice or notification pursuant to any Applicable Environmental Laws applicable to the Property;

(e) Seller is not a "foreign person," as defined by the federal Foreign Investment in Real Property Tax Act (the "Act") and at the Closing, Seller shall execute and deliver to Buyer a "non-foreign certificate," in such form as is customary;

(f) There are no violations of any governmental laws, ordinances, rules, regulations or orders concerning the Property that relate to environmental, hazardous waste, safety, health, zoning, conservation, wetlands, or zoning matters;

(g) No person or entity has any right of first refusal or option to acquire the Property;

(h) There are no parties in possession or with any possessory rights, including licenses, with respect to the Property;

(i) There are not any non-monetary private restrictions affecting the Property that would hinder the development of the Property for the construction of multi-family housing with at least 125 units;

(j) As a material inducement to Purchaser to enter into this Agreement and consummate the transactions contemplated hereby, Seller hereby makes to Buyer the representations and warranties contained in this Section;

(k) Seller has full right, power, authority and capacity to enter into this Agreement and each agreement, document and instrument to be executed and delivered by such Seller pursuant to this Agreement and to carry out the transactions contemplated hereby. The execution, delivery and performance by Seller of this Agreement and each such other agreement, document and instrument require no consent, authorization, permission or filing with or from any other person, entity or agency, violate no contract, agreement, order, judgment or the like that is binding upon such Seller, and have been duly authorized by all necessary action of such Seller, and no other action on the part of Seller is required in connection therewith.

(l) This Agreement and each agreement, document and instrument executed and delivered by Seller pursuant to this Agreement constitutes, or when executed and delivered will constitute, valid and binding obligations of Seller enforceable in accordance with their terms.

(m) Seller represents that all federal, state, local and other taxes will be paid through the Closing, except for those taxes for which Buyer assumes responsibility under the Agreement.

(n) Seller represents that all documentation provided to the Buyer, is to the best of the Seller's knowledge, true, accurate and complete.

It shall be a condition of Buyer's obligation to close under this Agreement that all representations and warranties made by Seller hereunder are true, both as of the date hereof and as of the Closing, and Seller shall take all actions as are required to make the foregoing representations true.

26. CONDITIONS PRECEDENT TO BUYER'S PERFORMANCE. Buyer shall not be obligated to perform under this Agreement unless each of the following conditions shall have been fulfilled at Closing:

(a) Seller shall have timely performed its obligations under this Agreement in all material respects.

(b) As of the Closing Date, Seller's representations and warranties shall be true, correct and complete in all material respects.

(c) Seller has satisfied each of the conditions and obligations imposed on the Seller as set forth in this Purchase and Sale Agreement.

(d) The Property, consisting of land, shall be in the same condition as it is now, and specifically not subject to erosion, fire, flooding, sinkholes, or any other changes in the condition of the Property (on or below the surface).

(e) No suit shall be pending before any court, agency, regulatory or other body in which it will be or is sought to restrain, prohibit or obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby.

27. ASSUMPTION OF LIABILITIES. Buyer assumes none of Seller's liabilities, including, without limitation, (i) any obligations payable to officers, shareholders, members, affiliated companies or other parties related to Seller, and (ii) any liability of Seller for any employee benefit plans or contributions to said plans. Buyer shall also have no obligation to offer employment to employees of Seller.

28. SELLER INDEMNIFICATION. Seller shall agree to defend, indemnify and hold Buyer harmless from and against any damages, liabilities, losses and expenses (including reasonable attorney's fees) of any kind or nature whatsoever which may be sustained or suffered by Buyer based upon a breach of any representation, or covenant made by or obligation of Seller in this Agreement by reason of any claim, action or proceeding asserted or instituted or growing out of any matter covered by such representations, or covenants.

29. REMOVAL FROM MARKET. Upon the Effective Date of this Agreement and for the duration of this Agreement, Seller agrees to take the Property off the market and further agrees not to deal with any other prospective buyer.

30. NOTICES. All notices required or permitted to be given hereunder (except notices indicating the time for access to the Property, which may be verbal or by email) shall be in writing and sent by certified or registered mail, or by overnight courier, postage prepaid, or hand delivered or by facsimile transmission, addressed to the parties set forth below or to such other address or addresses as the parties may designate from time to time by notice provided in accordance with this provision. Any such notices shall be effective upon receipt or rejection of delivery by the party to which the notice is directed. Copies of all notices shall be send the counsel for each party.

Seller:
To the address first set forth above or
with respect to emails to: _____

Buyer:
To the address first set forth above or
with respect to emails to:
Donald Smith: dsmith@saxon-partners.com

and with respect to verbal notices to:

and with respect to verbal notices to:

Donald Smith: (781) 875-3304

To Counsel:

Seller's Counsel:

Craig J. Hancock
13 Crescent St
Bridgford, ME 04105
craig@craincourtllw.com
207-282-6949

Buyer's Counsel:

David L. Arons, Attorney at Law
25 Recreation Park Drive, Suite 204
Hingham, MA 02043
(781) 875-3317
darons@saxon-partners.com

In witness whereof, the parties have executed this Purchase and Sale Agreement under seal as of the date written below.

SELLER:

BUYER:

Lewiston Waterfront Development, LLC
a Maine corporation

Saxon Partners, LLC,
a Massachusetts limited liability company

	
Name: <u>Craig J. Hancock POA</u>	Name: <u>Donald L. Smith</u>
Title: <u>Authorized Agent for</u>	Title: <u>Manager</u>
<u>Lewiston Waterfront Development</u>	
Date: <u>April 20, 2018</u>	Date: <u>April 18, 2018</u>

(The last date upon which both Parties have executed, dated and distributed this Agreement, shall be defined as the "Effective Date".)

EXHIBIT A

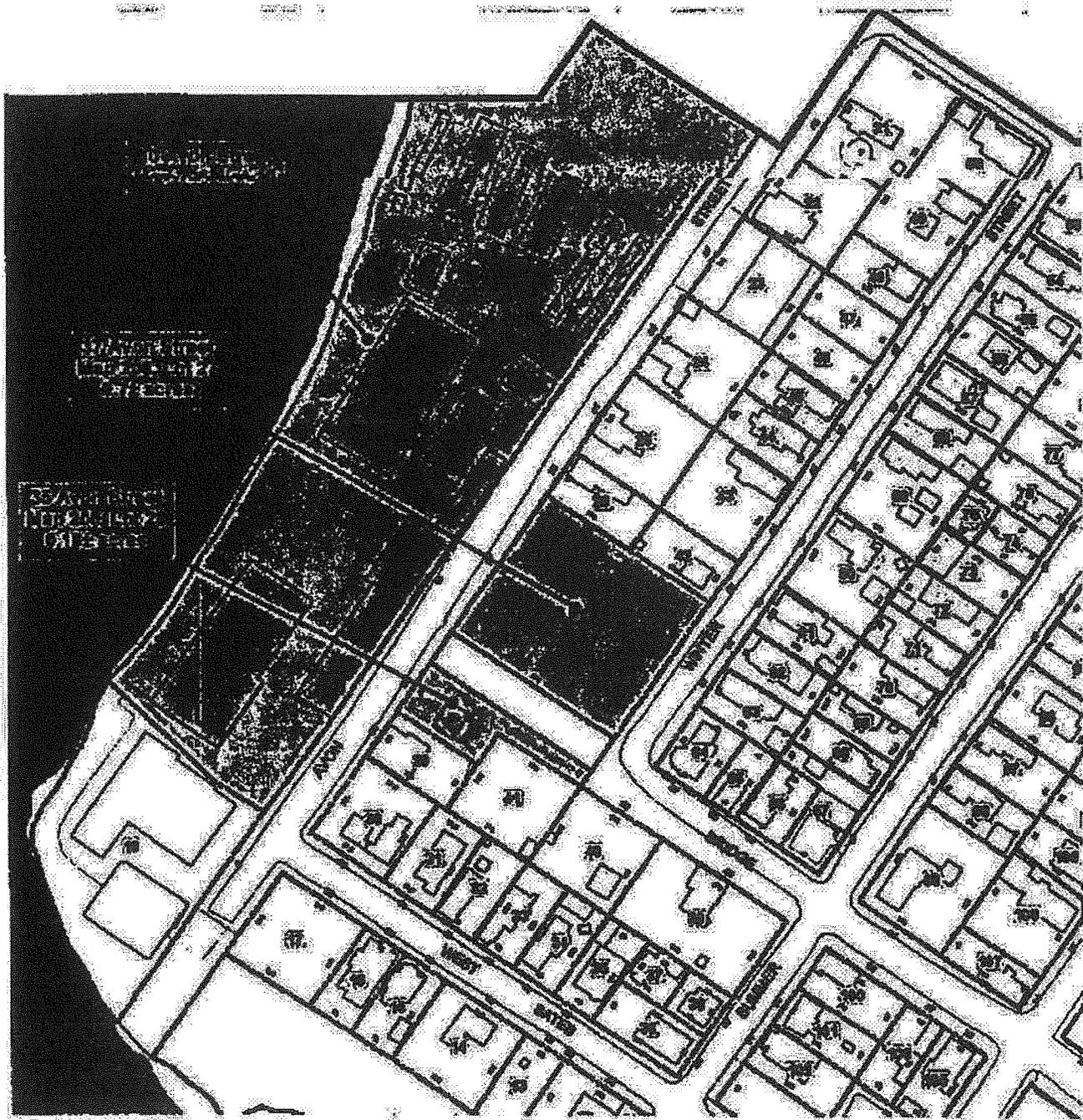
Exhibit B

TAX MAP

Source: City of Lewiston Tax Map 206, April 1, 2012.

Note: This is only a portion of tax map 206 with labels and shading added.

Copy of Map 206 is available electronically on request.



David L. Arons, Attorney at Law
Saxon Partners LLC
25 Recreation Park Drive, Suite 204
Hingham, MA 02043
Phone: 781-875-3317
E-mail: darons@saxon-partners.com

October 29, 2019

Via e-mail to craig@rancourtlaw.com

Craig J. Rancourt, Esq., as
Attorney for Lewiston Waterfront Development LLC
13 Crescent Street
Biddeford, Maine 04005

Re: Sale of those certain three lots or parcels of real estate in Lewiston, Maine, containing approximately 6.4 acres and identified as follows: 10 Avon Street, shown on Tax Map 206 as Lot 19 (5.47 acres, more or less); 35 Avon Street, shown on Tax Map 206 as Lot 28 (.18 acres, more or less); and 37 Avon Street, shown on Tax Map 206 as Lot 27 (.7 acres, more or less) (collectively, the "Property"), by Lewiston Waterfront Development LLC, as Seller, to Saxon Partners, LLC, as Buyer; pursuant to the Purchase and Sale Agreement with an "Effective Date" of April 20, 2018 (the "Agreement"); Extension Letter constituting the "First Amendment to Agreement"

Dear Attorney Rancourt:

This confirms that the Seller and Buyer have agreed as follows:

- (1) To amend Section 6(ii) [Permitting Period] of the Agreement to extend the original initial Permitting Period deadline from October 19, 2019 to Friday, May 31, 2020. There shall be no further extensions of the Permitting Period absent a written agreement by the two parties or their respective attorneys.
- (2) To amend Section 6(iii)[Extension] of the Agreement to provide that on October 30, 2019 the Buyer will make a one-time payment of [REDACTED] directly to the Seller by wire transfer (the "Additional Payment"), which amount will be deemed non-refundable but shall in all circumstances be applicable to the Purchase Price. The Additional Payment shall not be paid out of the Deposit. Notwithstanding the foregoing, in the event that the Buyer elects to terminate the Agreement on account of a Seller Default under the Agreement, as amended, the Additional Payment shall be fully refundable together with the Deposit (including, without limitation, the Released Funds).
- (3) To amend Section 6(ii) [Permitting Period] of the Agreement to provide that during the amended Permitting Period (continuing through May 31, 2020), there no longer will be [REDACTED] per month of the Deposit being deemed non-refundable (referred to in Section 6(ii) as "Released Funds").

CJR

Letter to Attorney Rancourt

(4) In the event that the Buyer elects to terminate the Agreement during the Permitting Period, and there is no default by the Seller, the Seller shall be entitled to retain the Additional Payment [redacted] plus the [redacted] in monthly payments (the "Released Funds") that the Seller received during the Permitting Period, collectively amounting to [redacted] in total. In addition, upon such a termination, the Escrow Agent shall be required to refund to the Buyer the remainder of the Deposit, amounting to [redacted]

(5) To amend Section 8 [Closing] of the Agreement so that the Closing shall be on Monday, July 1, 2020.

(6) The Buyer agrees to use due diligence during the Permitting Period, as extended, to secure all necessary permits and approvals and agrees to keep the Seller advised of status.

(7) The Buyer will continue to make monthly real estate tax payments of \$1,333.00 while the Agreement remains pending.

(8) All other terms of the Purchase and Sale Agreement shall remain in full force and effect.

Please counter-sign below to confirm the Seller's agreement to the above-referenced terms and conditions, and then e-mail me a scanned copy of the same. The counter-signed letter shall constitute the First Amendment to Agreement. Thank you for your cooperation.

Very truly yours,

David L. Arons, as Attorney for
Saxon Partners, LLC, Buyer

THE SELLER AGREES TO AND ACCEPTS THE ABOVE TERMS:



Craig J. Rancourt, as Attorney for
Lewiston Waterfront Development LLC, Seller

Date: 10/30/19



AN ORDINANCE PERTAINING TO ZONING BOUNDARIES

THE CITY OF LEWISTON HEREBY ORDAINS:

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

**OFFICIAL APPENDIX OFFICIAL
ZONING AND LAND USE CODE**

ARTICLE IV. ESTABLISHMENT OF DISTRICTS

Sec. 1. Zoning Map

The City of Lewiston hereby ordains that the Official Zoning Map of the City of Lewiston be amended by establishing a contract zone for the property at 10, 35 and 37 Avon Street as recorded in the Androscoggin Registry of Deeds Book 8979 Page 146 as described in Exhibit "A" and depicted on Exhibit "C", both of which are attached hereto as follows, to wit: said property be contractually rezoned from the Resource Conservation (RC), Urban Enterprise (UE), and Neighborhood Conservation "B" (NCB) Districts to the Centreville (CV) District and the lot use limitation in Art. V, Sec. 3(1), the minimum lot size requirement in Art. XII, Sec. 2(e)(2), and the additional development standards in Art. XIII, Sec. 8 not apply.

REASONS FOR THE PROPOSED AMENDMENT

The reason for the proposed amendment is to allow the development of a modern residential complex built on the vacant Pineland Lumber property. That property consists of three parcels of real estate: 10 Avon Street, shown on Tax Map 206 as Lot 19 (5.71 acres) and 35 and 37 Avon Street, shown on Tax Map 206 as Lots 27 and 28 (1.17 acres). (The land between 35 and 37 Avon Street was once an extension of Bridge Street but that portion of Bridge Street was vacated by the City of Lewiston on May 21, 1974 (see Exhibit B). It is owned by Lewiston Waterfront Development, LLC, the current owners of 10, 35 and 37 Avon Street). Because the property once housed Pineland Lumber's operations, it currently consists of both multiple large, vacant buildings and expansive areas of impervious surfaces.

The development proposed by Saxon Partners, LLC (Saxon) would include three residential buildings containing a total of 245 apartments. Saxon intends to construct two four-story buildings on 10 Avon Street, each containing 105 residential units, and one three-story building on 35 and 37 Avon Street housing 35 residential units.

Saxon has been active in real estate development for over twenty years, with a particular focus on retail and residential properties in the northeast. Saxon recently initiated a program of developing apartment buildings specifically targeting employees of major hospitals by providing efficient housing units in close proximity to their workplace. The program is currently being rolled out in a number of markets, with apartments designed for sites near hospitals in six different states.

N O T

The apartment units each include full kitchen and laundry facilities, but are designed with great efficiency in order to provide an attractive living space at an attractive monthly rental rate. Split between studios and one-bedroom units, the proposed apartments would offer a much needed housing option for employees of the nearby medical facilities as well as those working at other businesses in the area.

N O T

The three buildings will be laid out in a manner that provides convenient surface parking for residents while also providing significant open space. Proposed amenities for this project include common entertaining areas, shared library/work space areas, fitness areas, and outdoor barbeque and recreation spaces. Some covered parking structures may be offered and the parking lot design is intended to allow for additional parking based on resident demand.

To allow this project, Saxon respectfully requests that the property be contractually rezoned from the Resource Conservation (RC), Urban Enterprise (UE), and Neighborhood Conservation "B" (NCB) Districts to the Centreville (CV) District and that other incompatible land and use requirements be lifted.

Currently, the property is a combination of three separate zoning districts. The southern end of 10 Avon Street is zoned RC while the middle and northern end are zoned UE. The lot located at 35 and 37 Avon Street is zoned NCB. While both the UE and NCB districts allow multifamily dwellings, RC does not. Additionally, the front and side setback requirements in the RC and UE districts pose obstacles to this development. For these reasons, Saxon asks the property be contractually rezoned to the CV district which does fully allow multifamily dwellings and has no minimum front and side setback requirements. Supporting this request is the CV district's "statement of purpose" which seeks to "encourage a concentration of economic enterprises in the central business district that is convenient and attractive for...*appropriate residential uses* in a setting conducive to a high volume of pedestrian traffic" (Zoning and Land Use Code of the City of Lewiston, Maine, Art. XI, Sec. 13(a), *emphasis mine*). Not only does the Code envision high density residential uses in a busy, centrally located district but the actual CV district is geographically close to the property so the requested rezoning will not create an isolated district unrelated to adjacent districts.

In addition to the rezone request, Saxon notes that some other land and use requirements in the Code should be lifted, either because they are inconsistent with other sections in the Code or are incompatible with this project.

The first is the lot use limitation in Art. V, Sec. 3(l) of the Code. This provision prohibits more than one residential structure per lot; however, it is contradicted in Art. XIII, Sec. 8 which allows "[d]evelopments in which two or more principal residential structures are placed on one lot." Because of the uncertainty created by this inconsistency and because this project contains two residential buildings at 10 Avon Street, Saxon respectfully requests that this limitation in Art. V, Sec. 3(l) not apply.

The second is the minimum lot size requirement in Art. XII, Sec. 2(e)(2). This provision applies to all residential uses located in a shoreland area. (This project is located within a shoreland area as it is within 250 feet of the normal high watermark of the Androscoggin River). Under this section, the minimum lot size is 40,000 square feet per dwelling unit. As Saxon intends to build 210 units within this zone at 10 Avon Street, this provision would require a lot size of

approximately 193 acres. This is clearly impractical for a development like this and Saxon asks that this lot size requirement be lifted.

A N
O F F I C I A L O F F I C I A L
C O P Y C O P Y

The third and last incompatible requirement that Saxon requests be lifted involves the group of additional development standards in Art. XIII, Sec. 8. These standards incorporate specific mandates per dwelling unit such as private outdoor space, minimum storage space, and open space requirements that are ill-suited for modern, efficient, multifamily dwellings. These requirements are well-intentioned—and Saxon’s plan incorporates many of their design features such as indoor recreation facilities and outdoor barbeque areas—but their application would prohibit this development. As such, Saxon respectfully requests the additional developments standards not apply.

CONFORMANCE WITH THE COMPREHENSIVE PLAN

The City Council of the City of Lewiston hereby determines that the change to the Zoning Map is in conformance with the Comprehensive Plan for the following reasons:

- In the section laying out the City’s new framework for growth: *“With an aging downtown housing stock, the community lacks high-quality housing choices within the walkable downtown core, making it difficult for singles, young professionals, and retirees to find attractive and affordable places to live.”* (Conservation and Growth Map, p. 120).
- Regarding the need to increase the City’s housing choices: *“The Riverfront Island Master Plan estimates that Lewiston will require up to 600 new housing units by 2020...To better meet current and emerging needs, future development should focus on providing new, high-quality, multi-family residences and other housing types as opposed to the current trend of building single-family homes in areas not currently served by water and sewer.”* (Strengthen Neighborhoods & Expand Housing Choice, p. 172).
- The City needs to provide more employee housing:
With Androscoggin County looking to welcome 2,000 new jobs by 2020 according to the Riverfront Island Master Plan, Lewiston is bound to see growth among its prominent employers. With an already low vacancy rate citywide, large corporations based in Lewiston might begin to overwhelm the local housing stock, though vacancy rates are higher in the downtown. A broad mix of high-quality new housing and short-term rentals, particularly for hospital employees, should be provided within proximity to these anticipated jobs.” (Strengthen Neighborhoods & Expand Housing Choice, p. 179, emphasis mine).

No. 19-02
Effective: 5/16/2019

CONTRACT REZONING AGREEMENT

The proponent requests that the official zoning map for the City be amended by removing the subject property from the RC, UE, and NCB districts and contract-rezoning the subject premises CV district and lifting incompatible land and use requirements as described in this application and subject to the limitation more fully described below.

In compliance with the provisions of the Code, Art. XVII, Sec. 5(g), the proponent hereby proposes the following conditions:

- a. Land Use Table: Allowed uses of the property shall include those uses as listed below and subject to the conditions contained herein:

Land Use Table: All Zoning Districts 06.05.18	Urban Enterprise (UE)	Neighborhood Conservation "B" (NCB)	Centreville (CV) ⁽²⁶⁾	Requested Contract Zone (CV)
Accessory use or structure	P	P	P	P
Veterinary facilities excluding kennels and humane societies				
Veterinary facilities including kennels and humane societies	P			
Small day care facilities	P	P		
Day care centers	P		P	
Day care centers accessory to public schools, religious facilities, multifamily or mixed res. developments, and mobile home parks		C(22)		
Business and professional offices including research, experimental, testing laboratories, engineering, research, management and related services	P	C(31)	P(9)	P(8)(*)
Restaurants	P		P(1)	P(1)(*)
Drinking places			P	P(*)
Adult business establishments				
Hotels, motels, inns	P		P	
Movie theaters except drive-in theaters	P		P	
Places of indoor assembly, amusement or culture	P		P	P(*)
Art and crafts studios	P	C	P	P(*)
Personal Services	P	P	P	P(*)
Retail stores	P		P	P(*)
Neighborhood retail stores		P		P(*)
Lumber and building materials dealer	P			
Gasoline service stations	P			
Gasoline service stations which are a part of and subordinate to a retail use				
New and used car dealers	P(17)			
Recreational vehicle, mobile home dealers	P			
Equipment dealers and equipment repair	P			
Automotive services including repair	P			
Registered dispensary(27)	C			

No. 19-02
Effective: 5/16/2019

Land Use Table: All Zoning Districts 06.06.16	Urban Enterprise (UE)	Neighborhood Conservation "B" (NCB)	Centreville (CV) ⁽¹⁶⁾	Requested Contract Zone (CV)
Registered primary caregivers engaged in the cultivation of medical marijuana for two to five registered patients.	P	COPY		
Tattoo Establishments				
Light industrial uses	P		P(8,38)	
Industrial uses	C		P(18)	
Building and construction contractors	P(6,7)			
Fuel oil dealers and related facilities	P(6,7)			
Wholesale sales, warehousing and distribution facilities and self-storage facilities	P	COPY		
Self storage facilities	P			
Commercial solid waste disposal facilities				
Junkyards and auto graveyards				
Recycling and reprocessing facilities	C			
Private industrial/commercial developments(23)	P			
Airports or heliports				
Commercial parking facilities	P	C	P	
Transit and ground transportation facilities			P	
Transportation facilities	P			
Pumping stations, standpipes or other water supply uses involving facilities located on or above the ground surface and towers for municipal use	P	P	P	
Power transmission lines, substations, telephone exchanges, microwave towers or other public utility or communications use	C	C	C	
Municipal buildings and facilities	P	C	P	
Preservation of historic areas; emergency and fire protection activities; bridges and public roadways				
Dams				
Religious facilities	P	P	P	
Cemeteries		P		
Congregate care/assisted living facilities, institutions for the handicapped, nursing or convalescent homes, group care facilities	P	C	P	
Hospitals, medical clinics,	P	C	P	
Museums, libraries, and non-profit art galleries and theaters			P	
Academic institutions, including buildings or structures for classroom, administrative, laboratory, dormitories, art, theater, dining services, library, bookstores, athletic facilities and student recreational uses, together with buildings accessory to the foregoing permitted principal buildings or structures,	P	C(13)	P	
Civic and social organizations		C	P	
Public community meeting and civic function buildings including auditoriums			P	
Single-family detached dwellings on individual residential lots		P(2)		
Mobile homes on individual residential lots				
Two-family dwellings		P		
Multifamily dwellings in accordance with the standards of Article XIII	P	P	P	P
Single-Family attached dwelling in accordance with the standards of Article XIII		P		
Mixed single-family residential developments in accordance with the standards of Article XIII		P		
Mixed residential developments in accordance with the standards of Article XIII		P		
Mixed use structures	P	P	P	P

No. 19-02
Effective: 5/16/2019

Land Use Table: All Zoning Districts 05.06.16	Urban Enterprise (UE)	Neighborhood Conservation "B" (NCB)	Centreville (CV) ⁽⁹⁾	Requested Contract Zone (CV)
Lodging houses		P		
Home occupations	COPY	COPY		
Bed and breakfast establishments as a home occupation	P	P	P	
In-law apartments in accordance with the standards of Article XII		P	P	
Single family cluster development				
Family day care home	O F F I C I A L	O F F I C I A L	P	
Shelters				
Dormitories	COPY	COPY		
Proposed uses on Natural Resources				
Agriculture				
Farm Stands				
Forest management and timber harvesting activities in accordance with the standards of Article XIII	P	P		
Earth material removal				
Community gardens ⁽²⁰⁾	P	P	P	P
Water dependent uses, e.g. docks and marinas				P
Non-residential structures for educational, scientific or nature interpretation purposes, containing a maximum floor area of not more than ten thousand (10,000) square feet				
Proposed uses on Recreation				
Campgrounds				
Public or private facilities for nonintensive outdoor recreation		C		P ^(^)
Commercial outdoor recreation and drive-in theaters				
Fitness and recreational sports centers as listed under NAICS Code 713940	P		P	P ^(^)

Applicable Land Use Table Footnotes:

- (1) Excludes drive-in restaurants.
- (9) Must be fully enclosed with no exterior storage.
- (15) Buildings, structures and uses accessory to permitted or conditional uses are allowed in all districts.
- (33) The performance standards of Article XII shall apply, unless otherwise specified.
- (*) Permitted in mixed use structures only.
- (^) Permitted as accessory use.

b. Space and Bulk Table: Allowed space and bulk standards on the property shall include those standards as listed below and subject to the conditions contained herein:

Dimensional Requirements (13)	Urban Enterprise (UE)	Neighborhood Conservation "B" (NCB)	Centreville (CV)	Requested Contract Zone (CV)
Minimum lot size with public sewer				
Single family detached (24)				
Single family attached				
Two-family dwellings				
Single family cluster development				
Mixed single family residential development (14)				
Mixed residential development (14)				
Multifamily dwellings	5,000 sf			5,000 sf

No. 19-02
Effective: 5/16/2019

Dimensional Requirements (13)	Urban Enterprise (UE)	Neighborhood Conservation "B" (NCB)	Centreville (CV)	Requested Contract Zone (CV)
Mixed use structures				5,000 sf
Agriculture				
Religious facilities				
Veterinary facilities				
Other uses				
All permitted uses	5,000 sf	None	None	
Minimum lot size without public sewer (2) (3) (4)				
Single family detached, mobile homes on individual lots (24)				
Single family attached				
Two-family dwellings				
Single family cluster development (1)				
Mixed single family residential development (14)				
Mixed residential development (14)				
Multifamily dwellings	20,000 sf			
Mixed use structures				
Agriculture				
Religious facilities				
Veterinary facilities				
Other uses	20,000 sf			
Minimum lot size for area ponds with public sewer				
Single family detached				
Single family attached				
Two-family dwellings				
Mixed single family residential development (14)				
Mixed residential development (14)				
Multifamily dwellings	1,500			1,180
Mixed use structures	1,500			1,180
All permitted residential uses		(26)	None	
Minimum lot size for area ponds without public sewer				
Single family detached, mobile homes on individual lots				
Single family attached				
Two-family dwellings				
Mixed single family residential development (14)				
Mixed residential development (14)				
Multifamily dwellings	1,500 sf			
Mixed use structures	1,500 sf			
All permitted residential uses				
Minimum frontage				
Single family detached, mobile homes				
Single family attached				
Two-family dwellings				
Single family cluster development (with multiple vehicular accesses)				
Mixed single family residential development (with multiple vehicular access)				
Mixed residential development (with multiple vehicular accesses) (14)				
Multifamily dwellings (with multiple vehicular accesses)				100 ft
Mixed use structures				100 ft
Agriculture				
Religious facilities				
Veterinary facilities				
Other uses				
All permitted uses	100 ft	50 ft	25 ft	
Minimum front setback				
Single family detached, mobile homes on individual lots				
Single family attached				
Two-family dwellings				
Single family cluster development				
Mixed single family residential development (14)				
Mixed residential development (14)				
Multifamily dwellings				25 ft for principal structures, none for accessory structures

No. 19-02
Effective: 5/16/2019

NOT Dimensional Requirements (13) OFFICIAL	Urban Enterprise (UE) OFFICIAL	NOT Neighborhood Conservation "B" (NCB) OFFICIAL	Centreville (CV)	Requested Contract Zone (CV)
Mixed use structures COPY		COPY		25R for principal structures, none for accessory structures
Agriculture				
Religious facilities				
Veterinary facilities	NOT	NOT		
Other uses				
All permitted uses A N	25R (22)	A N (21,22)	none (22)	
Minimum front yard setback	10 ft	10 ft (21,22)	none (22)	25R for principal structures, none for accessory structures
Single family detached, mobile homes on individual lots				
Single family attached COPY		COPY		
Two-family dwellings				
Single family cluster development				
Mixed single family residential development (14)				
Mixed residential development (14)				
Multifamily dwellings				None
Mixed use structures				None
Religious facilities				
Veterinary facilities				
Other uses				
All permitted uses	10 ft	10 ft (21,22)	none (22)	
Minimum side and rear setback	10 ft	10 ft (21,22)	none (22)	25R for principal structures, none for accessory structures
Single family detached, mobile homes on individual lots				
Single family attached				
Two-family dwellings				
Single family cluster development				
Mixed single family residential development (14)				
Mixed residential development (14)				
Multifamily dwellings				10 ft
Religious facilities				
Mixed use structures				10 ft
Veterinary facilities				
Farm structures for keeping of animals				
Other uses				
All permitted uses	20 ft	5 ft	none	
Minimum side and rear yard setback	10 ft	5 ft	none	25R for principal structures, none for accessory structures
Single family detached, mobile homes on individual lots				
Single family attached				
Two-family dwellings				
Single family cluster development				
Mixed single family residential development (14)				
Mixed residential development (14)				
Multifamily dwellings				None
Mixed use structures				None
Religious facilities				
Veterinary facilities				
Farm structures for keeping of animals				
Other uses				
All permitted uses	10 ft (10,16)	5 ft (16, 21)	None	
Maximum height	80 ft	65 ft	No less than 20 ft, no greater than 150 feet (25)	90R for principal structures, 20R for accessory structures
Agriculture				
Other permitted uses	80 ft	65 ft	No less than 20 ft, no greater than 150 feet (25)	90R for principal structures, 20R for accessory structures
Hospital, nursing homes and medical offices				
Maximum lot coverage	0.60	0.65	1.00	0.60
Maximum lot coverage	0.60	0.65	1.00	0.60
Maximum impervious coverage	0.80	0.65	1.00	0.80

No. 19-02
Effective: 5/16/2019

Applicable Space and Bulk Table Footnotes: N O T
A N A N

(13) Modifications (i.e. relaxation of standards) of setbacks, yards, maximum lot coverage ratios, maximum impervious surface ratios, minimum open space ratios, and maximum building height as contained in the district space and bulk standard may be granted by the board of appeals, planning board, staff review committee and the code enforcement officer pursuant to Articles V, VII, VIII, IX, and XIII of this Code.

C O P Y C O P Y

- c. The density for 10 Avon Street shall not exceed 210 dwelling units and the density for 35 and 37 Avon Street shall not exceed 35 dwelling units.
- d. The lot use limitation in Art. V, Sec. 3(l) shall not apply. Two or more principal residential structures on one lot are permitted in accordance with Art. XIII, Sec. 8.
- e. The minimum lot size requirement in Art. XII, Sec. 2(e)(2) shall not apply.
- f. The additional standards for multi-unit residential development contained in Art. XIII, Sec. 8 shall not apply.
- g. Violations of any of the conditions herein will constitute a violation of the Code
- h. The conditions described herein shall bind the proponent, its successors and assigns, any person in possession or occupant of the subject premises, or any portion thereof, and shall inure to the benefit of and be enforceable by the City.
- i. The proponent shall, at their own expense, record in the Androscoggin County Registry of Deeds a copy of the conditions within thirty (30) days following final approval of this proposal by the City. Such form of recording is to be in a form satisfactory to the City.
- j. The conditions described herein shall run with the subject premises.
- k. In addition to other remedies to which the City may be entitled under applicable provisions of statute or ordinance, if any party in possession of use of the subject premises fails or refuses to comply with any of the conditions imposed, any rezoning approved by the City in accordance with the conditions shall be of no force or effect. In that event, any use of the subject premises and any building or structures developed pursuant to the rezoning shall be immediately abated and brought into compliance with all applicable provisions of the Code with the same effect as if the rezoning had never occurred.
- l. If any of the conditions are found by a court of competent jurisdiction to be invalid, such determination shall not invalidate any of the other conditions.
- m. Any rezoning approved by the City contractually shall be of no force or effect if the proponent fails or refuses to comply with conditions imposed.

No. 19-02
Effective: 5/16/2019

n. Any allowed proposed use, addition, or expansion of the property deemed applicable to Article XIII, Section 2 of the Zoning and Land Use Code shall be subject to the applicable sections of Article XIII of the Zoning and Land Use Code, Development Review and Standards. Y C O P Y

o. By submitting this proposal, the proponent agrees in writing to the conditions described herein. A N A N
O F F I C I A L O F F I C I A L
C O P Y C O P Y

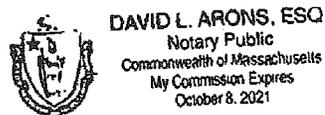
No. 19-02
Effective: 5/16/2019

The Proponent of this request hereby respectively submits this Proposal as of the 13 day of ~~January~~ ^{February} 2019.
NOT AN OFFICIAL COPY NOT AN OFFICIAL COPY

Proponent: Saxon Partners, LLC
~~Donald S. Smith, Notary Public~~
Donald S. Smith, Notary Public
Androscoggin, SS ~~Plymouth County~~ ^{Plymouth County}
Lewiston, Maine ~~Massachusetts~~
NOT AN OFFICIAL COPY
February 13, 2019

Personally appeared the above named Donald S. Smith and acknowledged their foregoing to be free and deed.

Notary Public
Commission Expires: David L. Arons
DAVID L ARONS ESQ



The Owner of 10, 35 and 37 Avon Street acknowledges and supports this request.

Property Owner: Lewiston Waterfront Development, LLC
Frederick Thurston
~~Franklin~~ ^{MEMBER}
~~Androscoggin, SS~~
~~Lewiston, Maine~~
~~EUSTIS~~
February 9, 2019

Personally appeared the above named Frederick Thurston and acknowledged their foregoing to be free and deed.

~~Attorney at Law~~ ^{Before me.} Craig J. Rancourt
Notary Public
Commission Expires: MA Craig J. Rancourt Bar # 868

Exhibit A

N O T
A N N O T
A N

3. PURCHASE PRICE. [REDACTED] The Purchase Price, subject to any pro-rations or adjustments as provided below, shall be payable at the Closing by certified bank check or wire transfer.

4. EFFECTIVE DATE. The last date upon which both Parties have executed, dated and distributed this Agreement, shall be defined as the "Effective Date".

O F F I C I A L O F F I C I A L

5. DEPOSITS. Within five (5) business days of the Effective Date, Buyer shall deposit in escrow with SVN Urbanek Group ("Escrow Agent"), the amount of: [REDACTED] ("Initial Deposit"). If Buyer elects to proceed to the Permitting Period, then Buyer shall increase the Deposit by depositing in escrow with Escrow Agent an additional [REDACTED]. The Initial Deposit and all subsequent deposits hereinafter shall be collectively referred to as the "Deposit". The entire Deposit shall be credited against the Purchase Price at the Closing and shall be refundable except as specifically set forth in this Agreement. Interest, if any, on the Deposit shall follow the Deposit. Escrow Agent, however, shall not be required to use an interest-bearing account.

6. DUE DILIGENCE AND PERMITTING PERIODS. Buyer shall have the Due Diligence Period and the Permitting Periods (each set forth below) during which Buyer, at Buyer's sole expense, shall have the right to conduct such due diligence as Buyer deems appropriate including, without limitation, review of title, survey, current environmental reports, utilities, topography, archeological and historical, reports and other due diligence items. Buyer shall have the right to enter onto the Property for the conduct of due diligence including, without limitation, inspection, testing, survey, engineering and permitting. Seller shall reasonably cooperate with Buyer's due diligence efforts (including the release of pertinent documents to the Buyer and Buyer's attorneys, engineers and surveyors, and consultants), provided that such cooperation shall not cause Seller to incur any expenditure (unless Buyer reimburses Seller for any such expenses). Buyer understands and agrees that any on-site inspections of the Property shall be conducted upon at least twenty-four (24) hours prior written e-mail notice to Seller and, at Seller's option, in the presence of Seller or its representative, provided such Seller right shall not result in a delay in Buyer's conduct of its due diligence. Inspections shall be conducted so as not to interfere unreasonably with use of the Property by Seller or its tenants, if any. After Buyer's inspections are completed, Buyer shall restore the Property, at Buyer's sole cost and expense, substantially to its condition immediately prior to any impact due to Buyer's inspections. Prior to Buyer or any such other party entering the Property in the exercise of the access rights hereunder, Buyer shall deliver to Seller a certificate of commercial public liability insurance naming Seller as an additional insured, and evidencing coverage with commercially reasonable limits. Buyer agrees to indemnify against and hold Seller harmless from any claim, liabilities, costs, expenses (including reasonable attorneys' fees actually incurred), damages or injuries to the extent arising out of or resulting from the inspection of the Property by Buyer or its agents or representatives, provided that the foregoing shall not be applicable to the discovery of existing conditions by Buyer. Notwithstanding anything to the contrary in this Agreement, Buyer's obligation to indemnify and hold harmless Seller and the other obligations of Buyer under this Section 6 shall survive any termination of this Agreement for a period of six (6) months.

(i) *Due Diligence Period:* The Due Diligence Period shall be a period of six (6) months from the Effective Date. Within five (5) business days after the Effective Date, Seller shall provide

Exhibit A

N O T

N O T

Buyer with copies of all relevant due diligence information in its possession including any permits, environmental reports, geotechnical information, archeological and historical reports, plans, and the most recent title survey information. The entire Deposit (plus accrued interest, if any) will be returned to Buyer if Buyer, at any time and in Buyer's sole discretion, is not satisfied with the results of Buyer's due diligence.

N O T

On or before the end of the Due Diligence Period, Buyer may elect to continue to the Initial Permitting Period by giving written notice to Seller, provided that if Buyer fails to give notice of Buyer's election to continue to the Initial Permitting Period by the end of the Due Diligence Period, then Buyer's right to elect to terminate or to continue to the Initial Permitting Period shall continue for three (3) business days after Buyer's receipt of notice from Seller that Buyer's election had not been received by the initial due date therefor.

Buyer agrees to within six (6) months of the Effective Date submit an application to the Planning Board for construction of a multi-family development including at least 150 apartment units. The Buyer's obligation to apply to the Planning Board shall not otherwise supersede the Buyer's rights under the Due Diligence Period and the Permitting Period as set forth in this Section 6.

(ii) *Permitting Period:* Buyer shall have up to twelve (12) months after the end of the Due Diligence Period, which amounts to eighteen (18) months from the Effective Date, at Buyer's sole expense, to apply for permits and obtain zoning relief for the Property for the construction of a multi-family development including at least 150 apartment units, and to defend against the appeal from the issuance of any permits and grant of zoning relief. If Buyer elects to terminate this Agreement on or before the end of the Permitting Period, then the entire Deposit plus accrued interest (if any) will be returned to the Buyer. After the completion of six (6) full months of the Permitting Period, if the Deposit shall become non-refundable per month on the first day of each subsequent month of the Permitting Period (hereinafter collectively referred to as the "Released Funds") and shall remain as part of the Deposit held by the Escrow Agent. The Released Funds will be non-refundable but will in all circumstances be applicable to the Purchase Price. Notwithstanding the foregoing, in the event that the Buyer elects to terminate on account of a Seller default under this Agreement, the Released Funds shall be fully refundable together with the remainder of the Deposit.

(iii) *Extension:* If at the end of the initial Permitting Period (eighteen (18) months from the Effective Date), there are pending applications or appeal periods that have not expired or appeals have not been resolved, or there are other pending legal actions relating to the Property, then Buyer shall have the right to extend the Permitting Period for a period ending thirty (30) days after the final resolution of the last of the foregoing matters provided Buyer is seeking to address the matter(s) in question (including the exhaustion of all appeals). Buyer shall notify Seller of the election to extend on or before the expiration of the initial Permitting Period provided that if Buyer fails to give notice of Buyer's election to terminate or to continue with the Extension of the Permitting Period by the conclusion of the initial twelve (12) month Permitting Period, then Buyer's right to elect to continue to the Extension shall continue for three (3) business days after Buyer's receipt of notice from Seller that Buyer's election had not been received by the initial due date therefor.

Exhibit A

N O T

N O T

Due Diligence Period to which the Buyer has not objected in the Title Objections Notice described below (except to the extent Seller has agreed to terminate such easement(s)), the Property to be in compliance at transfer with all applicable laws, ordinances and regulations relating thereto if Buyer has any objections to title ("Title Objections Notice"), Buyer shall provide Seller with written notice regarding the Title Objections during the Due Diligence Period, and the Seller shall be obligated to cure the Title Objections prior to the Closing as a condition of the Buyer's obligation to purchase the Property. Seller shall not allow any changes in title after the title run-down date stated in the Buyer's submission of the Title Objections Notice, except to cure any of the Title Objections prior to the Closing; otherwise, in the absence of such Title Objections, Buyer shall accept and Seller shall deliver title to the Property at Closing in the condition in which title is in on the close of the Due Diligence Period, subject only to Seller's duty to discharge: (A) all mortgages, deeds of trust, and all other monetary and liens and encumbrances of record; and (B), any other matters of record that Seller has agreed to terminate.

10. **WITHHOLDING TAX.** Seller hereby is notified that Buyer will withhold two and one-half percent (2.5%) of the purchase price for transfer to the State of Maine Tax Assessor pursuant to 36 M.R.S.A. §5250-A unless (a) Seller furnishes a certificate to Buyer at the Closing, as hereinafter defined, stating, under penalty of perjury, that as of the date of the Closing, Seller is a resident of the State of Maine, or (b) Seller furnishes a certificate from the State of Maine Tax Assessor to Buyer at the Closing stating that no taxes are due on the gain from the transfer of the Property or that Seller has provided adequate security to the State of Maine Tax Assessor to cover the tax liability resulting from said transfer.

11. **CLOSING DOCUMENTS.** At the Closing, and in addition to any other documents referred to in this Agreement to be delivered to Buyer, Seller shall execute, acknowledge as necessary and deliver the following documents and such other documents as Buyer's attorneys or title company may reasonably require to complete the transaction contemplated herein:

(a) **Transfer Documents.** The Deed, a Maine Real Estate Transfer Tax Declaration of Value, and one or more assignments, as determined by Buyer, of all of Seller's right, title and interest in all permits, approvals, improvements and other property of Buyer relating to the Property;

(b) **Title Affidavits.** Such customary certificates, affidavits or indemnity agreements as the title insurance company issuing a policies of title insurance on the Property to Buyer and Buyer's lender shall require in order to issue such policies and to omit therefrom all standard exceptions including those relating to unfiled mechanic's, materialmen's or similar liens and for parties in possession;

(c) **Nonforeign Person Affidavit.** If applicable, such affidavits and certificates as Buyer shall deem necessary to relieve Buyer of any obligation to deduct and withhold any portion of the purchase price pursuant to §1445 of the Internal Revenue Code;

(d) **Maine Resident Affidavit.** If applicable, such affidavits and certificates as Buyer shall deem necessary to relieve Buyer of any obligation to deduct and withhold any portion of the purchase price pursuant to 36 M.R.S.A. §5250-A;

Exhibit A

NOT
AN
OFFICIAL

NOT
AN
OFFICIAL

(e) Underground Oil Storage Tank and Hazardous Waste Certification. A written notice certifying either (i) that to Seller's knowledge there is no underground oil storage facility located on the Property, (ii), no deposits of hazardous waste substances or oil products stored or discharged on the Property (as defined under the law of the State of Maine and under applicable federal law) or (iii) pursuant to 38 M.R.S.A. §563(6), if there is an underground oil storage tank facility on the Property, that the facility exists and shall disclose its registration number or numbers, the exact location of the facility, whether or not it has been abandoned in place, and that the facility is subject to regulation by the Maine Board of Environmental Protection;

(f) Authority of Seller and Buyer. A certificate of good standing from the Maine Secretary of State and other documentation evidencing Seller's authority to enter into and complete the transaction contemplated by this Agreement as may be reasonably requested by Buyer's attorney and Buyer shall provide the same authority documents to Seller as may be reasonably requested by Seller's counsel; and.

(g) Tax documents. An IRS 1099S form and any other tax reporting forms required by State of Maine and federal government.

12. POSSESSION AND CONDITION OF PROPERTY. Full possession of the Property free of all tenants and occupants is to be delivered at the Closing; the Property to be then in the same condition as it is on the Effective Date (except to the extent Seller has agreed to make any changes to the Property), reasonable wear and tear excepted.

13. EXTENSION TO PERFECT TITLE OR MAKE PROPERTY CONFORM. If Seller shall be unable to give title or to make conveyance, or to deliver possession of the Property, all as herein stipulated, or, if at the time of the Closing the Property does not conform with the terms and conditions hereof, then Seller shall use due diligence and commercially reasonable efforts to remove any defects in title (including liens and encumbrances) or to deliver possession as provided herein, or to make the Property conform to the terms and conditions hereof, as the case may be, in which event the time for performance hereof shall be extended for a period of up to thirty (30) days, or such longer period as shall be determined by Buyer.

14. FAILURE TO PERFECT TITLE OR MAKE PROPERTY CONFORM. If at the expiration of such extended time(s) Seller shall have failed to remove any defects in title (including liens and encumbrances), deliver possession, or make the Property conform, as the case may be, all as herein agreed, then, at Buyer's option and subject to Buyer's other rights in this Agreement, the entire Deposit (including any portion thereof that would otherwise be non-refundable) promptly shall be refunded to Buyer, all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse of the parties hereto.

15. BUYER'S ELECTION TO ACCEPT TITLE AND CONDITION. In addition to such other remedies available to Buyer under this Agreement, Buyer shall have the election, at either the original or during or at the end of any extended time for performance, to accept such title to the Property in its then condition as Seller can deliver and to pay therefor the Purchase Price without deduction, in which case, Seller shall convey such title or deliver the Property in such

Exhibit A

N O T N O T

condition, except that, in the event of such conveyance in accordance with the provisions of this clause, the Property shall have been damaged by fire or casualty insured against, then Seller shall, unless Seller has previously restored the Property to its former condition, and at Buyer's express election, pay over or assign to Buyer, on delivery of the Deed, all amounts recovered or recoverable on account of such insurance, or which would have been recoverable had Seller maintained commercially reasonable insurance on the Property, less any amounts reasonably expended by Seller for any partial restoration.

C O P Y A L O F F I C I A L C O P Y

16. ACCEPTANCE OF DEED. The acceptance of the Deed and other transfer documents by Buyer shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms and conditions hereof, to be performed after the delivery of said documents or to otherwise survive the Closing hereunder.

17. USE OF PURCHASE MONEY TO CLEAR TITLE. To enable Seller to make conveyance as herein provided, Seller may, at the time of delivery of the Deed and other transfer documents, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said Deed and other transfer documents.

18. RISK OF LOSS. Until delivery of possession of the Property from Seller to Buyer, risk or loss or damage to Property by fire, storm, accident, other casualty or otherwise shall be on Seller.

19. ADJUSTMENTS. Water and sewer use charges, if any, real estate taxes and any other municipal assessments for the then current municipal tax year shall be apportioned, as of the Closing, and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price payable by Buyer at the time of delivery of the Deed and other transfer documents. At Buyer's election, the Property shall be removed from any current use tax assessment program such as, by way of example, open space or tree growth classification, at or prior to the Closing, in which case any penalties or other fees resulting therefrom shall be paid by Seller at or prior to the Closing. Real estate transfer taxes due on the sale will be paid by Seller and Buyer in equal amounts in accordance with Maine law.

20. ADJUSTMENT OF UNASSESSED AND ABATED TAXES. If the amount of said real estate taxes and any other municipal assessments referred to in the preceding Paragraph is not known at the time of the Closing, they shall be apportioned on the basis of the real estate taxes assessed for the immediately preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained.

21. DEFAULT/DAMAGES. If Seller fails to fulfill Seller's obligations hereunder, and such failure continues for fifteen (15) days after Seller's receipt of written notice from Buyer, Buyer may elect to receive a refund of the entire Deposit (including any portion thereof that would otherwise be non-refundable) and to pursue all available remedies, pursuant to this Agreement, at law and in equity, including, without limitation, specific performance and reasonable attorneys' fees. If Buyer fails to fulfill Buyer's obligations hereunder, and such failure continues for fifteen (15) days after Buyer's receipt of written notice from Seller, then Seller shall retain the Deposit as

Exhibit A

N O T
A N

N O T
A N

liquidated damages as Seller's sole and exclusive remedy at law or in equity for Buyer's default without further recourse to Buyer and Buyer shall be relieved of all obligations hereunder.

22. ASSIGNMENT/DESIGNATION OF NOMINEE. The rights and obligations of Buyer under this Agreement may be assigned by Buyer provided that such assignee agrees to assume all of Buyer's obligations hereunder. The Buyer may also designate a nominee to take title to the Property.

C O P Y

C O P Y

23. MISCELLANEOUS.

(a) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

(b) All paragraph headings in this Agreement are for convenience of reference only and are of no independent legal significance.

(c) This Agreement may not be modified, waived or amended except in a writing signed by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such a breach, and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise be prejudicial thereto.

(d) Any and all prior and contemporaneous discussions, undertakings, agreements and understandings of the parties are merged in this Agreement, which alone fully and completely expresses their entire agreement.

(e) This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall constitute one and the same instrument. This Agreement may be transmitted between the parties by facsimile machine and/or by email and signatures appearing on faxed or emailed instruments shall be treated as original signatures. Both a faxed or emailed version of this Agreement containing either original, faxed or emailed signatures of all parties, and multiple counterparts of the same Agreement each containing separate original, faxed or emailed signatures of the parties, shall be binding on them.

(f) If any term or provision of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which this Agreement is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(g) It is expressly understood and agreed that time is of the essence in respect of this Agreement.

Exhibit A

N O T N O T

(h) This Agreement shall be governed by and construed and enforced in accordance with the laws in effect in the State of Maine.

(i) Each party shall be responsible for its own legal, advisory and miscellaneous expenses associated with the completion of this transaction.

24. BROKERAGE COMMISSION. Buyer and Seller represent and warrant to each other that they have not dealt with any brokers regarding this transaction other than John Doyon of Malone Commercial ("Seller's Broker") and Tony Armstrong, SVN Urbanek Group (Buyer's Broker"). At Closing, Seller shall be responsible to pay a brokerage commission by a separate agreement between the Seller's Broker and Seller, and a brokerage commission by a separate agreement between the Buyer's Broker and Seller. The commission shall be due if and only the Deed is delivered and recorded, full consideration paid to the Seller, and not otherwise.

25. REPRESENTATIONS. Seller represents and warrants to Buyer that

(a) Seller is the owner in fee simple of the Property (subject to Seller's Mortgage, if any, and matters of record as of the Effective Date), and has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and the execution and delivery of this Agreement and the performance by Seller of its obligations hereunder will not conflict with any agreement to which Seller is a party or by which Seller is bound;

(b) Seller has good and marketable title to the Property, and there are no lawsuits or other proceedings currently pending, contemplated, or threatened by or against the Seller or the Property that would affect the ownership, future development, ability to finance or enjoyment of any of the Property, or which would result in delays in the Buyer's proposed development of the Property for the construction of a multi-family project with at least 125 units;

(c) Seller has received no notice of any eminent domain proceedings or any other adverse event affecting the Property, nor of any special or betterment assessments contemplated against the Property, nor of any actions that would hinder or delay the development of the Property, and Seller has no knowledge of any of the foregoing;

(d) Seller (including Seller's employees, agents, contractors, representatives, and invitees) has not generated, released, stored, disposed of, dumped, flushed or in any way introduced on to the Property oil, hazardous material, hazardous waste or hazardous substances (hereinafter collectively called "Hazardous Substances") as those terms are defined by any applicable federal, state or local law, rule or regulation (hereinafter referred to as "Applicable Environmental Laws"), and Seller has not received notice and is not otherwise aware of any incident which would have required the filing of notice or notification pursuant to any Applicable Environmental Laws applicable to the Property;

(e) Seller is not a "foreign person," as defined by the federal Foreign Investment in Real Property Tax Act (the "Act") and at the Closing, Seller shall execute and deliver to Buyer a "non-foreign certificate," in such form as is customary;

Exhibit A

N O T
A N

N O T
A N

(f) There are no violations of any governmental laws, ordinances, rules, regulations or orders concerning the Property that relate to environmental, hazardous waste, safety, health, zoning, conservation, wetlands, or zoning matters;

(g) No person or entity has any right of first refusal or option to acquire the Property;

(h) There are no parties in possession or with any possessory rights, including licenses, with respect to the Property;

(i) There are not any non-monetary private restrictions affecting the Property that would hinder the development of the Property for the construction of multi-family housing with at least 125 units;

(j) As a material inducement to Purchaser to enter into this Agreement and consummate the transactions contemplated hereby, Seller hereby makes to Buyer the representations and warranties contained in this Section;

(k) Seller has full right, power, authority and capacity to enter into this Agreement and each agreement, document and instrument to be executed and delivered by such Seller pursuant to this Agreement and to carry out the transactions contemplated hereby. The execution, delivery and performance by Seller of this Agreement and each such other agreement, document and instrument require no consent, authorization, permission or filing with or from any other person, entity or agency, violate no contract, agreement, order, judgment or the like that is binding upon such Seller, and have been duly authorized by all necessary action of such Seller, and no other action on the part of Seller is required in connection therewith.

(l) This Agreement and each agreement, document and instrument executed and delivered by Seller pursuant to this Agreement constitutes, or when executed and delivered will constitute, valid and binding obligations of Seller enforceable in accordance with their terms.

(m) Seller represents that all federal, state, local and other taxes will be paid through the Closing, except for those taxes for which Buyer assumes responsibility under the Agreement.

(n) Seller represents that all documentation provided to the Buyer, is to the best of the Seller's knowledge, true, accurate and complete.

It shall be a condition of Buyer's obligation to close under this Agreement that all representations and warranties made by Seller hereunder are true, both as of the date hereof and as of the Closing, and Seller shall take all actions as are required to make the foregoing representations true.

26. CONDITIONS PRECEDENT TO BUYER'S PERFORMANCE. Buyer shall not be obligated to perform under this Agreement unless each of the following conditions shall have been fulfilled at Closing:

(a) Seller shall have timely performed its obligations under this Agreement in all material respects.

Exhibit A

N O T
A N

(b) ^{O F F I C I A L} As of the Closing Date, Seller's ^{O F F I C I A L} representations and warranties shall be true, correct and complete in all material respects. ^{C O P Y}

(c) Seller has satisfied each of the conditions and obligations imposed on the Seller as set forth in this Purchase and Sale Agreement. A N

(d) ^{O F F I C I A L} The Property, consisting of land, shall be in the same condition as it is now, and specifically not subject to erosion, fire, flooding, sinkholes, or any other changes in the condition of the Property (on or below the surface). ^{O F F I C I A L}

(e) No suit shall be pending before any court, agency, regulatory or other body in which it will be or is sought to restrain, prohibit or obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby.

27. ASSUMPTION OF LIABILITIES. Buyer assumes none of Seller's liabilities, including, without limitation, (i) any obligations payable to officers, shareholders, members, affiliated companies or other parties related to Seller, and (ii) any liability of Seller for any employee benefit plans or contributions to said plans. Buyer shall also have no obligation to offer employment to employees of Seller.

28. SELLER INDEMNIFICATION. Seller shall agree to defend, indemnify and hold Buyer harmless from and against any damages, liabilities, losses and expenses (including reasonable attorney's fees) of any kind or nature whatsoever which may be sustained or suffered by Buyer based upon a breach of any representation, or covenant made by or obligation of Seller in this Agreement by reason of any claim, action or proceeding asserted or instituted or growing out of any matter covered by such representations, or covenants.

29. REMOVAL FROM MARKET. Upon the Effective Date of this Agreement and for the duration of this Agreement, Seller agrees to take the Property off the market and further agrees not to deal with any other prospective buyer.

30. NOTICES. All notices required or permitted to be given hereunder (except notices indicating the time for access to the Property, which may be verbal or by email) shall be in writing and sent by certified or registered mail, or by overnight courier, postage prepaid, or hand delivered or by facsimile transmission, addressed to the parties set forth below or to such other address or addresses as the parties may designate from time to time by notice provided in accordance with this provision. Any such notices shall be effective upon receipt or rejection of delivery by the party to which the notice is directed. Copies of all notices shall be send the counsel for each party.

Seller:
To the address first set forth above or
with respect to emails to: _____

Buyer:
To the address first set forth above or
with respect to emails to:
Donald Smith: dsmith@saxon-partners.com

and with respect to verbal notices to:

and with respect to verbal notices to:

Exhibit A

NOT
AN
OFFICIAL
COPY

NOT
AN
OFFICIAL
COPY
Donald Smith: (781) 875-3304

To Counsel:

NOT
Seller's Counsel: AN
Craig J. Hancock
13 Crescent St
Bridgton, ME 04005
craig@jrhancourtlaw.com
207-282-6849

NOT
Buyer's Counsel:
David L. Arons, Attorney at Law
25 Recreation Park Drive, Suite 204
Hingham, MA 02043
(781) 875-3317
darons@saxon-partners.com

In witness whereof, the parties have executed this Purchase and Sale Agreement under seal as of the date written below.

SELLER:

BUYER:

Lewiston Waterfront Development, LLC
a Maine corporation

Saxon Partners, LLC,
a Massachusetts limited liability company


Name: Craig J. Hancock POA
Title: Authorized Agent for
Lewiston Waterfront Development
Date: April 20, 2018


Name: Donald L. Smith
Title: Manager
Date: April 18, 2018

(The last date upon which both Parties have executed, dated and distributed this Agreement, shall be defined as the "Effective Date".)

EXHIBIT A

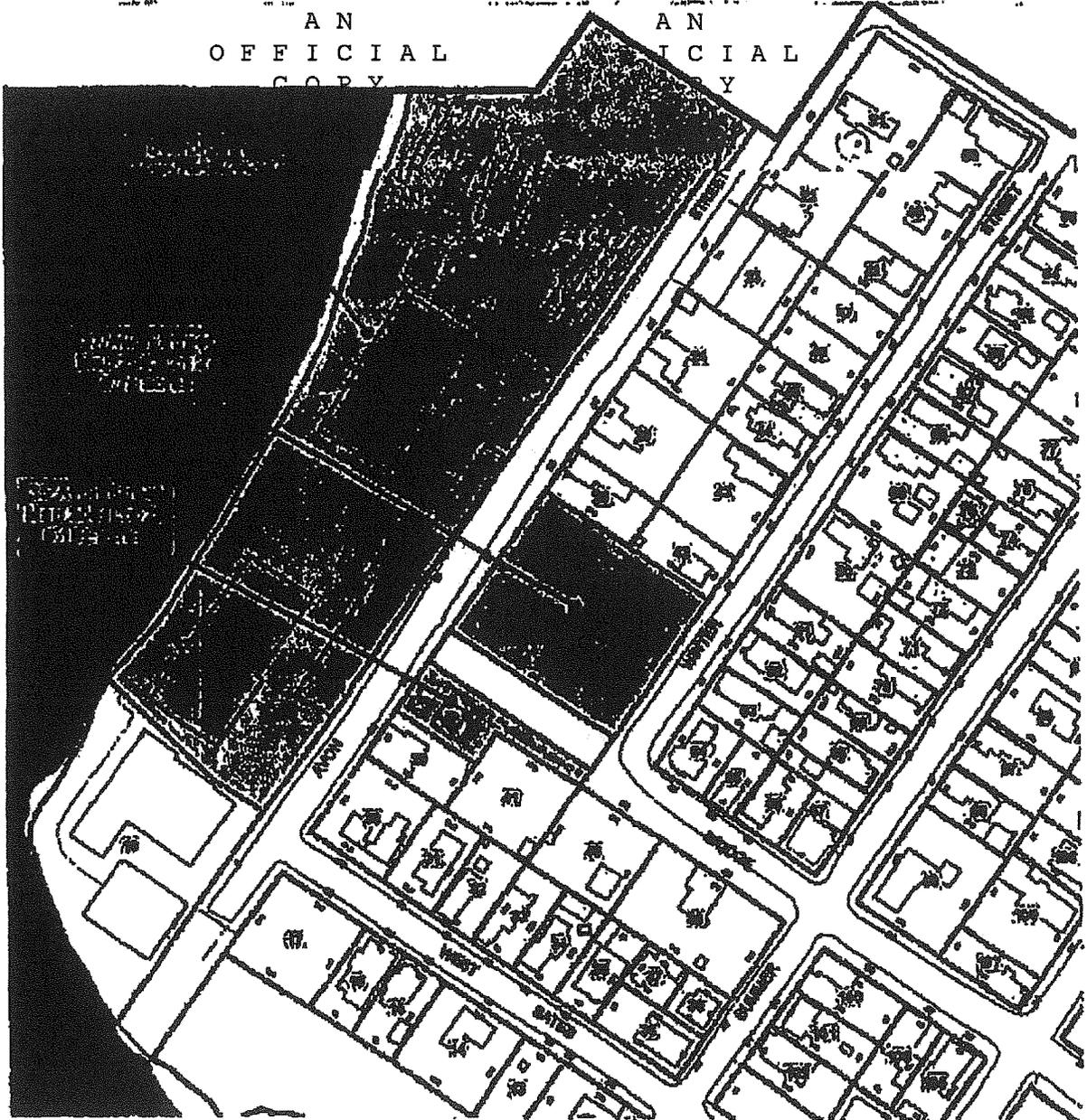
TAX MAP

Source: City of Lewiston Tax Map 206, April 1, 2012.

Note: This is only a portion of tax map 206 with labels and shading added.

Copy of Map 206 is available electronically on request.

NOT AN OFFICIAL COPY



Poor Copy At Time Of Recording
Will Not Reproduce Clearly

Exhibit B

N O T

N O T

2. Your ^{A N}petitioner avers that the above described streets do not have the ^{A N}status of accepted and located public ways, while some are shown on the Plans above referred to, they have never been accepted nor used as streets since they ^{C O P Y}have never been laid out on the surface of the earth.

3. Your ^{A N}petitioner avers that the above described land may be subject to rights of ^{C O P Y}rights of easements in favor of certain ^{A N}owners of lots shown on the aforesaid Plan.

^{A N}WHEREFORE your ^{A N}petitioner prays that the Board of Mayor and Aldermen may vacate in whole the proposed location of the streets described in paragraph one of this ^{C O P Y}petition in accordance with the provisions of Title 23, Chapter 303, Section 3012 of M.R.S.A. 1964. Your petitioner further prays that said Board of Mayor and Aldermen shall cause written notice of the filing of within petition and their intentions to be posted for seven days in two public places in said City of Lewiston and in the vicinity of the land above described.

Your petitioner stands ready to pay all damages occasioned by the vacating of said proposed streets.

Dated at Lewiston, Maine this 28th day of March, 1974.

PINELAND LUMBER COMPANY

By Kenneth A. Linn
President

ORDER VACATING CERTAIN PROPOSED AND PLATTED BUT UNACCEPTED STREETS

A N A N

It appearing that proper notice on the petition of Pine Land Lumber Company ordering a public hearing at the proposed locations on the 20th day of May 1974, at 10:15 O'clock in the forenoon, attested by the City Clerk was posted at two public places in the City of Lewiston and in the vicinity of the ways, in accordance with Maine Revised Statutes Annotated, and acts amendatory thereof, at least seven days before the time fixed for said hearing as set forth in said Order of Notice, and after full hearing of all the parties concerned, it is hereby determined:

A N A N

1. That Pine Land Lumber Company is the owner in fee simple absolute of the after-described property. O P Y

2. That public convenience and necessity no longer require the location of certain proposed streets or parts of the same as shown on a plan entitled "Plan of Lots in Lewiston owned by C.C. Wilson" and recorded in the Androscoggin County Registry of Deeds in Book of Plans, Volume 2, Page 31, as hereinafter described, and therefore, in accordance with the law in such cases made and provided, the municipal officers do hereby vote, decree, order and determine that those proposed streets or parts of the same as hereinafter described and referred to, are hereby discontinued and vacated and are no longer proposed public ways for the convenience of the public and; it is further ordered and declared that no damages are allowed:

Bridge Street or Bridge Street Extension

Beginning at the most southerly corner of lot 110 as shown on the aforesaid plan and thence the line runs in a northwesterly direction along the southwesterly lines of lots 110, 111 and 112 as shown on said plan a distance of two hundred (200) feet to the intersection of Bridge Street Extension with the southeasterly line of Avon Street; thence the line continues across Avon Street a distance of fifty (50) feet to the most southerly corner of lot 141 as shown on said plan; thence the line runs in a northwesterly direction along the southwesterly line of lot 141 and lot 142 a distance of one hundred fifty (150) feet to the most westerly corner of lot 142 as shown on said plan; thence the line continues to run in a northwesterly direction along an extension of the last course a distance of approximately fifty (50) feet to the Androscoggin River; thence the line runs in a southwesterly direction along the river a distance of forty (40) feet, more or less, to a point; thence the line runs in a southeasterly direction parallel with and forty (40) feet distant southeasterly from the southwesterly lines of lots 142, lot 141, lot 112, lot 111 and lot 110 to the intersection of the southwesterly line of Bridge Street with the northwesterly line of Winter Street as shown on said plan; thence the line runs in a northeasterly direction across Bridge Street to the most southerly corner of lot 110 and the point of beginning, excepting therefrom any portion of the above premises included within Avon Street.

Water Street

Beginning at the aforesaid most westerly corner of lot 142 as shown on said plan and thence the line runs in a northerly direction along the westerly lines of lots 142, 143, 144, 145 and lot 146 as shown on said plan a distance of two hundred forty (240) feet to an angle in the westerly line of lot 146; thence the line runs in a northeasterly direction along the balance of the northwesterly line of lot 146 and along the northwesterly lines of lots 147 through 156 as shown on said plan a distance of five hundred thirty (530) feet to the intersection of the southeasterly line of Water Street with the southwesterly line of Rolland Street as shown on said plan; thence the

Exhibit B

N O T
line runs in a northwesterly direction along an extension of the north-
easterly line of lot 156 a distance of fifty (50) feet to a point;
thence the line runs in a southwesterly direction parallel with the
northwesterly lines of said lots 146 through 156 inclusive to the
Androscoggin River; thence the line runs in a southwesterly direction
along the Androscoggin River to a point intersected by the northeasterly
line of Bridge Street described above; thence the line runs in a south-
easterly direction by the above described northeasterly line of Bridge
Street to the point of beginning.

A N

A N

Dated at Lewiston, Maine, this 21st
C O P Y

day of May, 1974
C O P Y

MAYOR AND BOARD OF ALDERMEN

George F. Ziegen
David S. [unclear]
William A. [unclear]

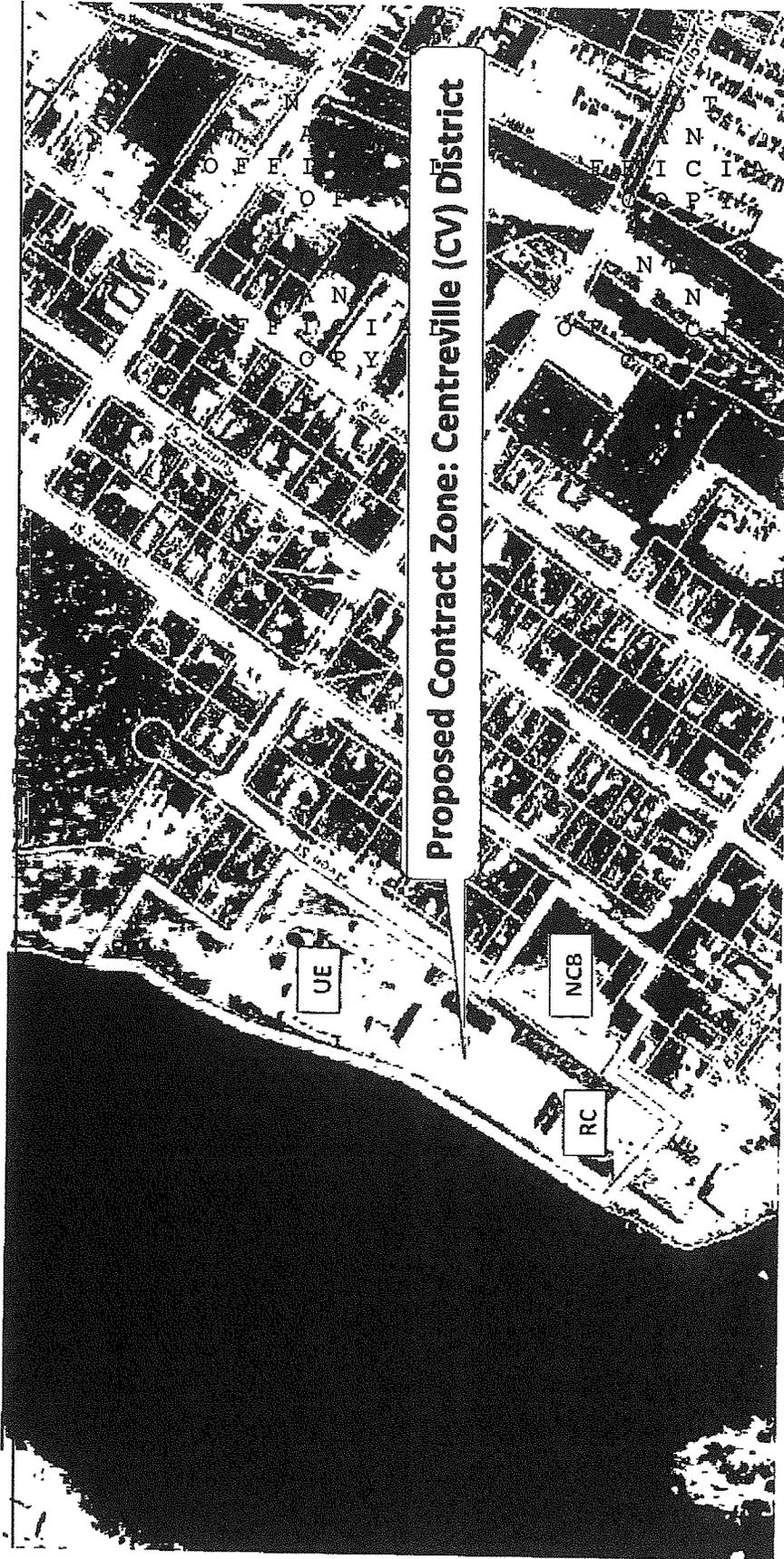
[Signature]
[Signature]
[Signature]
George F. [unclear]

A true record, Attest:

[Signature]
Gerald P. Berube
City Clerk
Lewiston, Maine

Exhibit C

City of Lewiston



Proposed Contract Zone: Centreville (CV) District
10, 35, 37 Avon Street

**CONTRACT ZONE AGREEMENT
BETWEEN
THE CITY OF LEWISTON
AND
SAXON PARTNERS, LLC**

AGREEMENT made this ____ day of December 2019 by and between the **CITY OF LEWISTON**, a body corporate and politic, located in Androscoggin County and State of Maine (hereinafter the “**CITY**”) and **Saxon Partners, LLC**, a Massachusetts limited liability company (hereinafter “**SAXON**”).

WITNESSETH

WHEREAS, **SAXON** has proposed developing up to a 245-unit residential housing complex on 10, 35, and 37 Avon Street (hereinafter the “**Project**”); and

WHEREAS, **SAXON** has proposed the construction and operation of the **Project** on a portion of Tax Map 206 Lots 19, 27 and 28, as described in a Purchase and Sale Agreement between **SAXON** and Lewiston Waterfront Development, LLC, dated April 20, 2018, and extended on October 29, 2019; and

WHEREAS, the **Project** is located in the Centreville (hereinafter “**CV**”) zoning district; and

WHEREAS, the **CITY** will benefit from the construction and operation of the **Project**; and

WHEREAS, the **Project** requires locating up to 245 residential units on 10 Avon Street, **SAXON** requests a modification to the existing contract zone for 10,

35, and 37 Avon Street as recorded in the Androscoggin County Registry of Deeds, Book 10157, Pages 40 – 68; and

WHEREAS, under the existing contract zone, the Property has a density cap of 1,180 square feet per dwelling unit and requires no more than 210 dwelling units be located on 10 Avon Street and no more than 35 dwelling units be located on 35 and 37 Avon Street, SAXON requests that the Property be allowed a density cap of 1,000 square feet and these aforementioned dwelling unit caps for 10, 35, and 37 Avon Street be lifted; and

WHEREAS, the CITY by and through its City Council has determined that said Space and Bulk amendments would be and are pursuant to and consistent with the CITY'S comprehensive land use plan and consistent with the existing and permitted uses in the CV zone; and

WHEREAS, the CITY has determined that because of the unusual nature and unique location of the proposed development it is necessary and appropriate to impose by agreement the following conditions and restrictions that relate only to the physical development or operation of the Property in order to ensure that the Space and Bulk amendments are consistent with the CITY'S comprehensive land use plan; and

WHEREAS, the CITY authorized the execution of this Agreement on _____ 2019; and

* * *

NOW, THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. *Dimensional Requirements.* The Property shall comply with the dimensional requirements currently in force in this specific CV zone, with the following exceptions:
 - a. The minimum net lot area per dwelling unit with public sewer requirement found in the existing contract zone (Space and Bulk Table, Book 10157, Page 46) shall be reduced from 1,180 square feet to 1,000 square feet; and
 - b. The dwelling caps for 10, 35, and 37 Avon Street found in the existing contract zone (Space and Bulk Table Footnote "c", Book 10157, Page 48) shall be removed.

The above stated restrictions, provisions, and conditions are an essential part of the agreement, shall run with the Property, shall bind and benefit SAXON, its successors and assigns, and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the CITY, by and through its duly authorized representatives.

SAXON shall file a copy of this AGREEMENT in the Androscoggin County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the Property, within thirty days following final approval of this contract zone amendment by the CITY.

If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.

Except as expressly modified herein, the development, use, and occupancy of the subject premises shall be governed by and comply with the provisions of the Zoning and Land Use Code of the City of Lewiston (including

the CV zoning district) and any applicable amendments thereto or replacement thereof.

In the event that SAXON or any successor fails or refuses to comply with the conditions imposed or the terms of the AGREEMENT, any use of the Property and any buildings and structures developed pursuant to the rezoning shall be abated and the property brought into compliance with all applicable provisions of the Zoning and Land Use Code of the City of Lewiston.

WITNESS:

CITY OF LEWISTON

By: _____

Edward A. Barrett
City Administrator

STATE OF MAINE
ANDROSCOGGIN, ss.

Date: _____, 2019

Personally appeared before me the above-named Edward A. Barrett, in his capacity as City Administrator, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the City of Lewiston.

Before me,

Notary Public/Attorney at Law

WITNESS:

SAXON PARTNERS, LLC

By: _____

Donald S. Smith
Manager

COMMONWEALTH OF MASSACHUSETTS
PLYMOUTH, ss.

Date: _____, 2019

Personally appeared before me the above-named Donald S. Smith, in his capacity as an Owner of Saxon Partners, LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of Saxon Partners, LLC.

Before me,

Notary Public/Attorney at Law



Androsoggin River

Zoning- Urban Enterprise (UE)

Zoning- Centreville (CV)

10 Avon St.

Zoning- Neighborhood Conservation B (NCB)

37 Avon St.

37 Avon St.

Zoning- Urban Enterprise (UE)

Winter St.

Winter St.

Holland St.

Summer St.

Spring St.



CITY OF LEWISTON

Department of Planning & Code Enforcement

TO: Lewiston Planning Board

FROM: Douglas Greene, AICP, RLA; Deputy Director/City Planner

DATE: November 25, 2019

RE: Design Lewiston Discussion Items

At the October 28, 2019 Planning Board meeting, a presentation was made on the Design Lewiston project. Later in the meeting, the Planning Board approved a motion to initiate a text amendment to various parts of the zoning ordinance to implement proposed design guidelines and regulations. The City Administrator has recommended to defer action until January 2020, after the new Mayor and City Council are sworn in.

The staff will use this additional time for more review and consideration of the impacts and aspects of the Design Lewiston Project. In this packet are draft revisions to Article XIII, Development Review and Standards (attachment 1). Please review this document. In particular, the staff would like Planning Board feedback on the following sections of the draft.

1. Landscaping- Article XIII, Section 4, (q), page 18. The Staff will discuss requiring landscaping citywide and where it will be imposed. We also will discuss how landscaping and buffering requirements will function with regards to the Space and Bulk Standards, Building Set-back and Yard areas.
2. Open Space- Article XIII, Section 4, (s), page 18. Open space has been discussed by the Planning Board during its consideration of certain development review applications and is an approval criteria. The Blake and Pine Street (Avesta) project comes to mind. The Staff does not feel the current open space requirement adequately addresses the different needs and circumstances of urban and suburban development.
3. Buffering- Article XIII, Section 4, (u), page 20. Buffering will be discussed in conjunction with landscaping.
4. New Design District Standards- (x), page 20. This new addition to development review approval criteria will only be applied in the proposed Design Districts

(Downtown Residential (DR), Centreville (CV), Mill (M), and Riverfront (RF) districts. The following sections that have been added:

- a. Exterior Building Standards that include
 - Commercial and Mixed Use Building Standards
 - Residential Building Standards
 - Blank Walls
 - Windows
 - Mechanical Protrusions

- b. Parking Access and Design
- c. Treatment of Yards
- d. Roofs
- e. Context Sensitive Design

The standards for Context Sensitive Design approval criteria are the same, basic criteria used by the Historic Preservation Design Manual and is what the Historic Preservation Review Board uses to review new construction proposals in Historic Districts.

The goal of this discussion is to get your understanding and consensus on these issues. That will help finalize comment that will be sent to the consultants to revise the draft Site Plan Review and Design Guidelines.

Attachments:

1. Draft Article XIII, Development Review and Standards with Staff comments
2. Pages from the Historic Preservation Review Manual that provide details on how to review the Context Sensitive Design Standards.
3. A map of the proposed Design Districts with a Historic Districts overlay.

Attachment 1

APPENDIX A – ZONING AND LAND USE CODE ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

Sec. 1. Purpose.

The purpose of development review is to provide for the review and approval of development plans for nonresidential and residential developments including, but not limited to, subdivisions and mobile home parks to ~~ensure~~ that the development of both private and public land occurs in a manner which minimizes the adverse impact on public facilities, the natural environment, and neighboring uses, and to otherwise protect the health, safety and general welfare of the people. (Ord. No. 99-11, 5-20-99; Ord. No. 99-15, 8-12-99)

Sec. 2. Applicability.

- (a) The requirements of this article shall apply to the following:
- (1) The creation of a subdivision as defined under 30-A M.R.S.A., § 4401, as amended;
 - (2) The construction of any new, nonresidential building or structure;
 - (3) The expansion of an existing nonresidential building or structure provided such expansion involves at least 1,000 square feet of total floor area. However, expansions of buildings or structures reviewed and approved under development review may be determined by the planning director or designee to be of a de minimis nature and can be processed in accordance with the procedures under subsection 3(k) below;
 - (4) The conversion of an existing building from residential to nonresidential uses unless the planning director or designee determines the conversion does not constitute an intensification and/or will have minimal impacts on adjacent residential properties;
 - (5) The construction of any new residential structure, conversion of an existing building into a residential use, the creation of a bed and breakfast establishment with five or six rooms, or the modification of an existing residential structure that results in the net creation of three or more dwelling units;
 - (6) Earth moving, removal, grading, or filling activities which involve more than 5,000 cubic yards of material which is not associated with a building construction project and for which no permit is required pursuant to chapter 66 or 74 of the Code of Ordinances;
 - (7) The development or expansion of a mobile home park;
 - (8) The change of an existing nonresidential building or structure from one use to another use where the proposed use is more intensive than the existing use; or the intensification of any use;
 - (9) The establishment of a new nonresidential use even if no buildings or structures are proposed;
 - (10) The amendment or reconfiguration of an approved subdivision as defined by 30-A M.R.S.A. § 4401, as amended or the amendment of any other development, as defined herein, for which development approval was previously obtained under this article or the amendment to any plan approved by the planning board under the Code of Ordinances in effect prior to January 9, 1988, unless determined by the planning director or designee to be a de minimis change and therefore can be processed in accordance with the procedures under subsection 3(k) below;
 - (11) The creation of a right-of-way for the purpose of allowing a residential lot to gain required frontage pursuant to article XII, section 10; or

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

- (12) The modernization modifications of existing gasoline service stations that involve existing nonconforming pump island replacement.
- (13) The City of Lewiston has also been granted the authority to substitute their review and approval for the following kinds of projects that require a permit from the Maine Department of Environmental Protection (DEP):
 - a. Subdivisions as described in 38 M.R.S.A. Section 482, subsection 5, as amended, of more than 20 acres but less than 100 acres;
 - b. Structures as described in 38 M.R.S.A. Section 482, subsection 6, Paragraph B, as amended, in excess of three acres, but less than seven acres of non-revegetated ground area;
 - c. Projects requiring a permit under the State Stormwater Management Law, as described in 38 M.R.S.A. Section 420-D.
- (14) The City of Lewiston has also been granted the authority to substitute their review and approval for the following kinds of projects that require a permit from the Maine Department of Transportation (MDOT):
 - a. A project generating 100 to 200 passenger car equivalents at peak hour as described in 23 M.R.S.A., Section 704-A subsection 2 and 4. [For the purposes of this article, passenger car equivalents at peak hour means the number of passenger cars, or, in the case of non-passenger vehicles, the number of passenger cars that would be displaced by non-passenger vehicles, that pass through an intersection or on a roadway under prevailing roadway and traffic conditions at that hour of the day during which the traffic volume generated by the development is higher than the volume during any other hour of the day. A one tractor-trailer combination is the equivalent of two passenger cars. (See 23 M.R.S.A. Section 704-A subsection 1-B.)]
 - b. A project generating 200 or more passenger car equivalents at peak hour (provided there is no impact in any other municipality other than Lewiston as described in 23 M.R.S.A., Section 704, subsections A(2) and (4)).
- (b) This section does not apply to the construction of single-family homes or two-family homes, the placement of manufactured housing or mobile homes on individual lots, agricultural buildings or structures, agriculture and forest management, and timber harvesting activities.
- (c) No building permit, plumbing permit or certificate of occupancy shall be issued for a development within the scope of this article unless and until a final plan of the development has been approved in accordance with the procedures set forth in article XIII, section 3.
- (d) The city council may from time to time establish reasonable application fees to defray the costs of reviewing major and minor site plans.
- (e) Minor or major plans for properties located within a Design District shall be noted as such and meet the requirements for Article XIII, Section 4, Approval Criteria (x).

(Ord. No. 89-3, 4-7-89; Ord. No. 90-4, 5-17-90; Ord. No. 91-1, 3-19-91; Ord. No. 99-15, 8-12-99; Ord. No. 03-09, 7-17-03; Ord. No. 06-04, 4-20-06; Ord. No. 06-17, 2-8-07; Ord. No. 07-01, 3-8-07; Ord. No. 08-08, 10-2-08)

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

Sec. 3. Procedure.

- (a) Classification of a project. Projects subject to development review ~~are shall be~~ divided into two classes, minor developments and major developments:
- (1) *Minor development.*
- a. A minor development shall be those projects involving:
- i. The construction or addition of less than 5,000 square feet of nonresidential floor area,
 - ii. The conversion of a residential structure with less than 5,000 square feet of total floor area to a nonresidential use,
 - iii. The change of use of an existing nonresidential building or structure, the separate conveyance of attached and detached principal residential structures,
 - iv. The construction or alteration of a multifamily residential structure, or a conversion of a nonresidential building which involves the creation of 12 or less additional dwelling units, (unless required to be reviewed under state subdivision law),
 - v. Earth moving, removal, filling or grading activities involving greater than 5,000 cubic yards of material, the creation of a right-of-way for the purpose of allowing a residential lot to gain required frontage,
 - vi. The establishment of a new nonresidential use when no buildings or structures are proposed; and
 - vii. The modernization modifications of existing gasoline service stations that involve existing nonconforming pump island replacement.
- b. Projects otherwise meeting the minor development classification, but requiring issuance of a conditional use permit, shall be classified as a major project.
- c. The planning director or designee may also determine that projects otherwise meeting the minor development classification be classified as major projects due to such issues as expected significant public input, impacts to neighborhoods, natural resources or government services, or other significant potential effects to public health, welfare or safety.
- (2) *Major development.* Major developments include the following:
- a. Projects requiring development review and not classified as minor developments including those projects that are determined to be applicable under subsections 3(a)(1)(b) and (c) above;
 - b. Projects which generate 100 or more passenger car equivalents at peak hour; or
 - c. Projects that require a permit under the State Site Location of Development Act and/or Stormwater Management Laws.
- (b) *Review authority.* The responsibility for reviewing and approving developments shall rest with the planning board or the staff review committee depending on the classification of the project.
- (1) *Planning board authority.* The planning board is authorized to review and act on all development plans for major developments.

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

(2) *Staff review committee authority.* The staff review committee is authorized to review and act on all development plans for minor developments.

(c) *Planning board actions.* In considering development plans under this section, the planning board may act to approve, approve with conditions, or disapprove development applications based on the applicable criteria set forth in this article.

The board shall hear and decide requests for the reduction of the provisions under article XI, sections 1 through 14, district regulations, with respect to space and bulk standards for setbacks, yards, maximum lot coverage ratios, maximum impervious surface ratios, minimum open space ratios, and maximum building height, where the development is a major development as defined in article XIII, subsection 3(a) (2) of this Code. In order for the board to grant the aforementioned relief, it must find that the standards contained in article IX, sections (3) (9),(10) and (11), as applicable, are met.

(d) *Staff review committee actions.* In considering development plans under this section, the staff review committee may act to approve, approve with conditions, or deny site plan applications based on the applicable criteria set forth in this article.

The staff review committee shall consist of the planning director, or designee, who shall serve as chairman and a representative from the following departments; public services, planning and code enforcement, police and fire.

Actions by the staff review committee to approve an application or approve an application with conditions shall require the unanimous consent of the members of the committee. The disapproval of two or more members of the committee shall constitute denial of the application.

The staff review committee shall hear and decide requests for the reduction of the provisions under article XI, sections 1 through 14, district regulations, with respect to space and bulk standards for setbacks, yards, maximum lot coverage ratios, maximum impervious surface ratios, minimum open space ratios, and maximum building height, where the development is a minor development as defined in article XIII, subsection 3(a)(1) of this Code. In order for the committee to grant the aforementioned relief, it must find that the standards contained in article IX, section 3(9), (10) and (11), as applicable, are met.

The staff review committee shall hear and decide requests for the separate conveyance of attached and detached principal residential structures. In order for the committee to grant such requests, it must find that the standards contained in article V (3)(w) are met.

(e) *Pre-application procedures.* The applicant for any development approval shall meet with the planning director or designee prior to the submission of a development review application plan to generally discuss the proposal and to obtain guidance in the development of the plan.

The planning director or designee, shall review materials in terms of the requirements of this Code and shall provide direction to the applicant on the plan concept, overall

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

suitability of the proposal, questions or issues to be addressed in the development plan and act on any modifications or waivers requested by the applicant pursuant to subsection 3(h)(5) of this article. Modifications or waivers will be granted when the size of the project or circumstances of the site are such that the requirements would not be applicable or would be an unnecessary burden upon the applicant and that such modification or waiver would not adversely affect the abutting landowners or the general health, safety and welfare of the city, and must be confirmed by the reviewing authority at the meeting.

Commented [DG1]: MODIFICATION! Needs to be addressed!

- (f) *Application procedures.* Applications for development review shall be submitted on application forms provided by the city. The completed application form, appropriate fee and the required copies of a complete site plan for the proposed development and any related information shall be submitted to the office of the planning director.
- (g) *Application requirements.* The application for development review, the site plan and related submissions shall contain at least the following exhibits and information:
- (1) A fully executed and signed copy of the application for development review.
 - ~~(2) One original of all maps and drawings on durable, permanent transparency material.~~
 - ~~(2) Fifteen Initial Review Materials- Five copies (seven for both minor and major developments) of written application materials plus 15 five sets (seven for both minor and major developments) of maps or drawings containing the information listed below. The written materials shall be contained in a bound report. The maps or drawings shall be at a scale sufficient to allow the review of the items listed under approval criteria, but in no case shall be more than 50 feet to the inch for that portion of the tract of land being proposed for development.~~
 - ~~(3) Digital files for all written materials and plans (.PDF files are acceptable).~~
 - ~~(4) Final Development Review Application- After the application has been reviewed by staff and revisions made, the application shall be deemed complete and a meeting date established for consideration by the Staff Review Board or Planning Board. The applicant shall be notified of the meeting date.~~
 - ~~(5) Final Development Review Materials- A complete application for the Planning Board shall consist of twelve copies of the complete application, nine 11" x 17" and three 24" x 36" copies of maps and drawings and PDF files of all application materials shall be submitted to the Planning Office no later than 5 days before the scheduled meeting.~~
- a. *General Application information.*
1. Record owner's name and address and applicant's name and address if different.
 2. The name of the proposed development.
 3. Sketch map showing general location of the site within the city.
 4. Boundaries of all contiguous property under the control of the owner or applicant regardless of whether all or part is being developed at this time.
 5. The tax map number and street or parcel number of the parcel or parcels.

Commented [DG2]: Coordinate this with the New Application!

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

6. A copy of the deed to the property, option to purchase the property or other documentation to demonstrate right, title or interest in the property on the part of the applicant.
 7. The name, registration number and seal of the land surveyor, architect, engineer and/or similar professional who prepared the plan.
- b. *Existing conditions.*
1. Zoning classification(s) of the property and the location of zoning district boundaries if the property is located in two or more zoning districts or abuts a different district.
 2. The bearings and distances of all property lines of the property to be developed and the source of this information.
 3. Location and size of any existing sewer and water mains, culverts and drains on the property to be developed and of any that will serve the development from abutting streets or land.
 4. Location, names, and present widths of existing streets and rights-of-way within or adjacent to the proposed development.
 5. The location, dimensions and ground floor elevations of all existing buildings on the site.
 6. The location and dimensions of existing driveways, streets, parking and loading areas and walkways on the site.
 7. Location of intersecting roads or driveways within 200 feet of the site.
 8. The location of open drainage courses, wetlands, stands of trees and other important natural features, with a description of such features to be retained.
 9. The direction of existing surface water drainage across the site.
 10. The location, front view and dimensions of existing signs.
 11. Location and dimensions of any existing easements and copies of existing covenants or deed restrictions.
- c. *Proposed development activity.*
1. The location of all building setbacks, yards and buffers required by this Code.
 2. The location, dimensions, and ground floor elevations of all proposed buildings on the site.
 3. The location and dimensions of proposed driveways, parking and loading areas, and walkways.
 4. The location and dimensions of all provisions for water supply and wastewater disposal.
 5. The direction of proposed surface water drainage across the site.
 6. Location of all proposed signs.
 7. Location, ~~and~~ height and type of exterior lighting.
 8. Proposed landscaping and buffering.

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

9. Copies of applicable state approvals and permits, provided, however, that the board or staff review committee may approve development plans subject to the issuance of specified state approvals and permits where it determines that it is not feasible for the applicant to obtain them at the time of development review.
10. A schedule of construction, including anticipated beginning and completion dates.
11. Space shall be provided on the plan for the signature of the chair of the reviewing body and dates of the meeting and the signature together with the following words, "Approved: City of Lewiston".

(6) Additional information that may be required due to the nature of the project:

- a. Existing and proposed topography of the site at two-foot contour intervals.
- b. A stormwater drainage and erosion control plan showing:
 1. The existing and proposed method of handling stormwater runoff.
 2. The direction of flow of the runoff through the use of arrows.
 3. The location, elevation, and size of all catch basins, dry wells, drainage ditches, swales, retention basins and storm sewers, and all other stormwater management structures.
 4. Engineering calculations used to determine drainage requirements as specified by subsection 4(f) of this article.
 5. Methods of controlling erosion and sedimentation during and after construction.
- c. A groundwater impact analysis prepared by a groundwater hydrologist for projects involving common on-site water supply or sewage disposal facilities with a capacity of 2,000 gallons per day or greater or for projects located within the groundwater conservation overlay district.
- d. A utility plan showing, in addition to provisions for water supply and wastewater disposal, the location and nature of electrical, telephone and any other utility services to be installed on the site.
- e. A planting schedule keyed to the site plan and indicating the general varieties and sizes of trees, shrubs and other plants to be planted on the site.
- f. A traffic impact analysis demonstrating the impact of the proposed project on the capacity, level of service and safety of adjacent streets.
- g. A written statement as to the adequacy of the water supply in terms of quantity and pressure for both domestic and fire flows.
- h. The location, width, typical cross-section, grades and profiles of all proposed streets and sidewalks.
- i. Construction drawings for streets, sanitary sewers, water and storm drainage and management systems, designed and prepared by a professional engineer registered in the State of Maine.
- j. Proposed lot lines with their dimensions and the location of required setbacks. If the development involves a subdivision consisting of principal buildings on the same lot, the locations, building outlines, and dimensions of all buildings, with setback dimensions, shall be shown.

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

- k. Lots and blocks within a subdivision numbered in accordance with local practice.
- l. The location of any pedestrian ways, lots, easements, open spaces and other areas to be reserved for or dedicated to public use and/or ownership. For any proposed easement, the developer shall submit the proposed easement language with a signed statement certifying that the easement will be executed upon approval of the development. In the case of any streets or other ways dedicated to public ownership, the developer shall submit a signed statement that he will maintain such streets or ways year-round until they are accepted by the city.
- m. Sufficient data acceptable to the city engineer to determine readily the location, bearing, and length of every street line, lot line, easement, and boundary line and to reproduce such lines upon the ground. Where practical, these should be tied to reference points previously established and the data transferred in an appropriate electronic file format.
- n. A copy of such covenants or deed restrictions, if any, as are intended to cover all or part of the tract. Such covenants or deed restrictions shall be referenced on the plan.
- o. Written offers of dedication or conveyance to the municipality, in a form satisfactory to the city attorney, of all land included in the streets, highways, easements, parks, or other open space dedicated for public use, and copies of agreements or other documents showing the manner in which spaces, title to which is reserved by the developer, are to be maintained.
- p. If the development is a condominium or a clustered development, evidence that all requirements relative to establishment of a homeowners' association or condominium owners' association have been met. If the development is a clustered development, evidence shall be presented that all other requirements of this Code pertaining to clustered development have been met. The submission shall include copies of the by-laws of any homeowners' or condominium association charged with maintaining common spaces and lands. Homeowners' association or condominium documents shall clearly state that the association or condominium shall properly maintain private roadways and stormwater management systems serving the development after the developer has legally relinquished that responsibility and until such time as the city may accept them as public ways.
- q. A performance guarantee in a form and amount meeting the requirements of article XIII, section 12 to secure the completion of all public improvements required by the planning board in a form acceptable to the city. The guarantee need not be submitted as part of the application, but must be submitted before the plan is signed. The plan shall not be deemed approved until the performance guarantee has been filed. Cost estimates of the proposed public improvements obtained by the applicant from a licensed professional engineer who, in the planning board's judgment, is qualified to make such estimates, shall be submitted as part of the final plan application. If a conditional agreement is to be filed in lieu of the

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

performance guarantee, it must be endorsed by the planning board on the plan and meet the requirements under article XIII, section 12.

- r. Cost of the proposed development and evidence of financial capacity to complete it. This evidence should be in the form of a commitment letter from a bank or other source of financing indicating the name of the project and the amount of financing proposed.

- s. Projects in the Riverfront District (RF), Downtown Residential District (DR), Centreville District (CV), and Mill District (M) shall meet the requirements of Article XIII, Section 4, (x). ~~additionally provide ground level floor plans indicating uses and access and elevations indicating door and window placement.~~

- (6) The planning board or staff review committee shall confirm the modification or waiver of any of the submission requirements in article XIII, subsection 3(g) recommended by the planning director or designee, when it determines that because of the size of the project or circumstances of the site such requirements would not be applicable or would be an unnecessary burden upon the applicant and that such modification or waiver would not adversely affect the abutting landowners or the general health, safety and welfare of the city.

Commented [DG3]: We need to work on the modification language found throughout the ZO.

- (h) *Review procedures.* The following procedures shall be used for the review of development applications:

(1) *Minor developments.*

- a. Upon receipt of an application for a minor development, the planning director shall, within five working days, determine substantial completeness of the application and, if so determined, notify the applicant in writing that the application is substantially complete, additional information necessary to complete the application the date, time and place on which the staff review committee will consider the application.
- b. Staff shall notify all abutting property owners and the appropriate municipality when a development review project abuts or is in close proximity to an adjacent municipality's border, by mail sent no less than seven days prior to the meeting, of: the pending application, the opportunity to submit written comments on the application to the office of the planning director, and the date, time and place of the staff review committee meeting at which the application will be considered.
- c. If the application is not substantially complete, the planning director shall notify the applicant of the additional information necessary to complete the application.
- ~~a.d.~~ Upon determination of substantial completeness, the planning director shall also transmit copies of the plans and related information to the following departments; public services, planning and code enforcement, police and fire.
- ~~b.e.~~ The staff review committee shall meet to review the application and the committee shall approve, approve with conditions or deny the application. A written record of the staff review committee's meeting shall be maintained and shall be available for public inspection. The committee

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

shall act on each application within 30 days of the date on which said application was determined by the planning director to be complete so long as the required notice to abutters has been given, or at its next regularly scheduled meeting after said required notice has been given, whichever occurs later.

f. Within five working days of the date of the committee's action, the office of the planning director shall notify the applicant in writing thereof.

(2) *Major developments.*

a. Upon receipt of an application for a major development, the planning director shall review said application for substantial completeness and if so determined, schedule a review of said application before the planning board and notify the applicant and all abutting property owners, by mail, sent no less than seven days prior to the meeting, of the pending application, the opportunity to submit written comments on the application to the planning board on or before the date of said review and the date, time and place of the planning board meeting at which the application will be considered.

b. All reviews of applications for development review shall be public hearings, and shall be held within 30 days of the date the planning director determined the application to be substantially complete and shall advertise said public hearing in a newspaper of general circulation in the city at least two times, the date of the first publication to be at least six days prior to the date of the hearing.

c. The planning board shall take final action on said application within 30 days of the public hearing.

d. Except for developments which involve the creation of a subdivision as defined by 30-A M.R.S.A. Section 4401 as amended, the limits provided for in this subsection may be extended by mutual agreement between the planning director and the applicant. For those developments which involve the creation of a subdivision as defined by 30-A M.R.S.A. Section 4401 as amended, the limits provided in this subsection may be extended only by mutual agreement between the planning board and the applicant.

(i) *Building permit.* One copy of the notice of approval of the application shall be included in the application for a building permit and shall become part of the permit.

(j) *Appeals of staff decisions.* The applicant or any participating abutter may appeal the action of the staff review committee to the board of appeals within 15 days of the committee action.

(k) *De minimis changes to development plans.* The planning director or designee may determine amendments to a development plan are "de minimis," that is of a minor nature, and do not require a formal review process. Accordingly, the amended plan can be signed directly by the planning director or designee. However, amendments to developments which involve the creation of a subdivision as defined by 30-A M.R.S.A. Section 4401, as amended, will require signature of the amended plan by the planning board chair, who may request that the de minimis change be brought before the board for their review and approval prior to the signing of the permanent copy of the plan (mylar.) A report of all

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

approved de minimis changes will be submitted to the planning board or staff review committee as appropriate at their next available meeting.

(Ord. No. 89-3, 4-7-89; Ord. No. 90-4, 5-17-90; Ord. No. 94-18, 12-1-94; Ord. No. 95-10, 9-14-95; Ord. No. 98-6, 7-2-98; Ord. No. 98-12, 11-19-98; Ord. No. 99-15, 8-12-99; Ord. No. 03-09, 7-17-03; Ord. No. 03-17, 1-1-04; Ord. No. 06-17, 2-8-07)

Sec. 4. Approval criteria.

The following criteria are to be used by the staff review committee and the planning board in judging applications for development review and shall serve as minimum requirements for approval of the application. The application shall be approved unless the staff review committee or the planning board determines that the applicant has failed to meet one or more of these standards. In all instances, the burden of proof shall be on the applicant and such burden of proof shall include the production of evidence sufficient to warrant a finding that all applicable criteria have been met.

- (a) *Utilization of the site.* ~~The~~ A grading plan for the development will reflect the natural capabilities of the site to support development. Buildings, lots and support facilities will be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas such as wetlands, steep slopes, floodplains and unique natural features will be maintained and preserved to the maximum extent. Natural drainage areas will be preserved to the maximum extent.

- (b) *Traffic movement into and out of the development area.* The developer has made adequate provision for traffic movement of all types into and out of the development area. Vehicular access to the site will be on roads which have adequate capacity to accommodate the additional traffic generated by the development. Intersections on major access routes to the site within one-half mile of any entrance road which are functioning at a level of service of C or better prior to the development will function at a minimum at level of service C after development. If any intersection is functioning at a level of service D or lower prior to the development, the project will not reduce the current level of service. If a development is located in the highway business (HB), community business (CB), centreville (CV), mill (M), riverfront (RF), urban enterprise (UE), office service (OS), office residential (OR), and industrial (I) districts, which are designated as growth areas within the comprehensive plan, and the plan has been found by the state to be consistent with the growth management program under Title 30-A, Chapter 187, the planning board or staff review committee shall require improvements to the level of traffic service only if the level of service adjacent to or in the vicinity of the development is or would be level of service E or F, as determined by the City of Lewiston's Engineering Department and/or LACTS. In these cases, improvements shall be required so as to bring the traffic service to, at minimum, level of service D. All level of service determinations shall be made in accordance with the "Highway Capacity Manual" (3rd Ed. 1994), and as described in the site plan review and design guidelines.

Before granting approval for any development, the planning board or staff review committee shall determine that any traffic increase attributable to the proposed development will not result in unreasonable congestions or unsafe conditions on a road in

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

the vicinity of the proposed development. The applicant shall provide to the City of Lewiston with an analysis of traffic movement of all types into and out of the development area and with a statement of recommended findings on traffic issues, after consulting, as necessary, with the Maine Department of Transportation (MDOT), the City of Lewiston Engineering Department, and the Lewiston-Auburn Comprehensive Traffic Study (LACTS). The reviewing body may require this analysis to be done by a registered professional engineer. In all cases where the passenger car equivalents at peak hour is 100 or greater, the project must be reviewed by the planning board and a registered professional engineer shall prepare the analysis and recommendations. In all instances, the city shall discuss with the applicant and their representatives the scope of impact evaluation required for the proposed development to be studied, what other agencies need to be consulted, and what other information is required. In making its determination under this subsection, the planning board or staff review committee shall consider the analysis and recommendations provided by the applicant as well as those submitted by the Maine Department of Transportation (MDOT), the City of Lewiston Engineering Department, and the Lewiston-Auburn Comprehensive Traffic Study (LACTS), as applicable. Where required by state law, the applicant shall provide notice to affected abutting municipalities.

The planning board or staff review committee may approve a development not meeting this requirement if the applicant demonstrates that:

- (1) A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard; or
 - (2) The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will guarantee the completion of the improvements within one year of approval of the project.
- (c) *Access into the site.* Vehicular access into the development will provide for safe and convenient access.
- (1) Grades, intersections, access and sight distances shall be in accordance with the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks.
- (d) *Internal vehicular circulation.* The layout of the site will provide for the safe movement of passenger, service and emergency vehicles through the site.
- (1) ~~Nonresidential p~~Projects with delivery needs will ~~shall~~ provide a clear route for delivery vehicles with appropriate geometric design to allow turning and backing for WB-40 vehicles.
 - (2) Clear routes of access will be provided and maintained for emergency vehicles to all portions of the site and will be posted with appropriate signage.
 - (3) The layout and design of parking areas will provide for safe and convenient circulation of vehicles throughout the lot and will prohibit vehicles from backing out onto a street.
 - (4) All streets will be designed to harmonize with the topographic and natural features of the site. The road network will provide for vehicular and pedestrian

Commented [DG4]: Note this intent language would allow the review and "control" of parking lot circulation. Something that wasn't done in older big box projects.

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

- safety, all season emergency access, snow storage and delivery and collection services.
- a. Residential streets will be curved whenever practicable to the extent necessary to avoid conformity of lot appearance.
 - ~~b. Culs-de-sac and loop streets are encouraged so that through traffic on residential streets is minimized.~~ Similarly, to the extent practicable, driveway access to collector or arterial streets will be minimized to facilitate the free flow of traffic and avoid traffic hazards.
 - c. Streets will be designed to provide for proper continuation of streets from adjacent development and for ~~proper~~ projection of streets into adjacent unsubdivided and open land. Where the developer owns substantial contiguous land that is not part of the proposed development, the planning board may require a conceptual layout of streets to serve the contiguous land. This layout will not be binding, but shall provide an indication of how the contiguous area can be served in relation to the proposed development.
 - d. Wherever existing or planned streets, topographical features, and public safety permit, streets will run in east-west directions, and lots on a north-south axis, to maximize access to direct sunlight for solar energy systems. The character, extent, width, and grade of all streets will be considered in their relation to existing or planned streets.
- (5) Where a development borders an existing narrow road (below standards set in this Code for public streets) or when the comprehensive plan indicates plans for realignment or widening of a road that would require use of some of the land in the development, the applicant shall be required to show areas for widening or realigning such roads on the plan, marked "Reserved for Road Realignment (or Widening) Purposes." It shall be mandatory to indicate such reservation on the plan when a proposed widening or realignment is shown on the official map. Land reserved for such purposes may not be counted in satisfying setback or yard or area requirements of the zoning districts.
- (6) Where a development abuts or contains an existing or proposed arterial street, the board may require marginal access streets (street parallel to arterial street providing access to adjacent lots), reverse frontage lots (that is, frontage on a street other than the existing or proposed arterial street) with screen planting contained in a nonaccess reservation along the rear property line, or such other treatment(s) as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.
- (e) *Pedestrian circulation.* The development plan will provide for a system of pedestrian circulation within the development. This system will connect with existing sidewalks if they exist in the vicinity of the project. The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in open space or recreation areas. The system will be designed to link residential units with recreational and commercial facilities, other common facilities, school bus stops and existing sidewalks in the neighborhood. Sidewalks shall meet the standards identified in the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks and Complete Streets Policy ordinance.

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

- (f) *Stormwater management.* Adequate provisions shall be made for the disposal of all stormwater collected on streets, parking areas, roofs or other impervious surfaces through a stormwater drainage system which will not have adverse impacts on abutting or downstream properties. All projects disturbing less than one acre shall be designed to meet the requirements of this subsection 4(f). All projects including one acre or more of disturbed land shall meet the requirements of this subsection 4(f) and the requirements of the Site Location of Development Law, 38 MRSA, 481--490, the Maine Stormwater Management Law, 38 M.R.S.A. Section 420-D, and regulations promulgated there under, specifically Rules 500, 501, and 502, as amended on August 12, 2015. At the discretion of the director of public works or his/her designee he/she may waive the above requirements, based on a finding that a particular site will have no significant runoff.
- (1) The plan will demonstrate the disposal of stormwater on the land at the site of development, and do so through the wise use of the natural features of the site. Stormwater runoff systems will infiltrate, detain or retain water falling on the site such that the rate of flow from the site does not exceed that which would occur in the predevelopment state for a storm of intensity equal to at least a 2-, 10-, and 25-year storm, with a duration equal to the time of concentration. The stormwater quantity calculations must be in accordance with acceptable engineering practice. Acceptable stormwater methodologies and models include but are not limited to TR-20-Computer Program for Project Formulation--Hydrology, Second Edition, U.S. Department of Agriculture, Soil Conservation Service (May 1983); TR-55-Urban Hydrology for Small Watersheds, Second Edition, U.S. Department of Agriculture, Soil Conservation Service (June 1986); TR-55 Microcomputer Program, Version 2.0, (January 15, 1990); and HEC-1 Flood Hydrology Package, U.S. Army Corps of Engineers. Any methodology other than those listed must have prior approval from the director of public works or his/her designee. Use of the 25-year, 24-hour storm as a design standard in this chapter is not intended to prohibit appropriate use of the rational method. The outlet structures of each detention basin must be designed to control 24-hour storms of 2-, 10-, and 25-year frequencies. Each detention basin must be constructed with an emergency spillway designed to independently convey the unrouted runoff from a 25-year, 24-hour storm event.

Additionally, a waiver from these standards may be granted by the director of public works or his/her designee in the cases specifically identified below:

- a. *Discharge to the Androscoggin River.* A project conveys stormwater exclusively in a manmade piped or open drainage system directly into the Androscoggin River. Areas of the project or adjoining properties to be flooded during the 2-, 10-, and 25-year, 24-hour storms must be identified and easements secured, if necessary. A project that changes the flow-type (example: sheet to shallow concentrated), changes the flow channel, or increases the stormwater discharge must secure easements on the intervening property that meet the easement and covenant requirements following in this section. The discharge may not result in erosion of any upland or freshwater wetlands. The director of public works or his/her designee may allow a waiver if it is determined that the increase in peak

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

flow from the site will not significantly affect the peak flow of the receiving waters or result in unreasonable adverse impact on the river.

- b. *Public stormwater system.* A project discharges its stormwater flow into the City of Lewiston Stormwater System, when the applicant has adequately demonstrated to the director of public works or his/her designee that it has the capacity to accommodate increases in flow. The director of public works or his/her designee may allow an insignificant increase in the peak flow from the site or in the peak flow of the receiving waters, if it is determined that the increase cannot be avoided by reasonable changes in project design or density and does not significantly impact abutters or city property.
- (2) If the outflow volume is greater than that for the undeveloped site, the developer will demonstrate that downstream channel or system capacity is sufficient to carry the flow without adverse effects, or will be responsible for the improvements to provide the required increase in capacity.
- (3) All natural drainage ways will be preserved at their natural gradients and will not be filled or converted to a closed system except as approved by the director of public works or his/her designee and appropriate state agencies.
- (4) The design of stormwater drainage systems will insure the acceptance and disposal of stormwater runoff based on quantities calculated per subsection 4(f)(1) above, without damage to streets, adjacent properties or downstream properties.
- (5) The design of the storm drainage systems will be fully cognizant of upstream runoff which must pass over or through the site to be developed. The system will be designed to pass upstream flows, based on quantities calculated per subsection 4(f)(1) above, from the land, as fully developed, without surcharging the system.
- (6) The maximum length for carrying open stormwater in a street gutter prior to intake at a catch basin will be three hundred feet. No stormwater will be permitted to drain on the surface across a street or across an intersection.
- (7) The storm drainage system to serve a proposed development will be designed and installed in accordance with the plans and specifications prepared by a professional engineer, unless waived at the discretion of the director of public works or his/her designee.
- (8) The developer will maintain and inspect all components of the stormwater runoff system unless the system is formally accepted by the city, or is placed under the jurisdiction of a legally created property owners association whose charter and powers require maintenance of the system, with adequate financing to carry out this responsibility. Any approved plans must include a statement as to who will be responsible for said maintenance and inspections. The components of the stormwater run-off system shall include, but not be limited to, detention ponds, level spreaders, inlet and outlet protection and structures, swales, etc., and the piping unless the piping is under an accepted city street. For piping under accepted city streets, at the time of street acceptance, the piping shall become the property and maintenance responsibility of the city. An easement shall be provided to the city for the maintenance of this piping. In addition, a separate access easement for all other stormwater runoff components shall be provided to the city for emergency purposes.
- (9) The biological and chemical properties of the receiving waters will not be degraded by the stormwater runoff from the development site. The use of oil and

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

grease traps in manholes, the use of on-site vegetated waterways, and the reduction in use of deicing salts and fertilizers may be required, especially where the development stormwater discharges into a gravel aquifer area or other water supply source.

- (10) The filling of wetlands on-site will be conducted only in accordance with applicable federal and state law and regulations, including the Natural Resources Protection Act.
- (g) *Erosion control.* For all projects, building and site designs and street layouts will fit and utilize existing topography and desirable natural surroundings to the fullest extent possible. Filling, excavation and earth moving activity will be kept to a minimum. Parking lots on sloped areas will be terraced to avoid undue cuts and fills, and the need for retaining walls. Natural vegetation will be preserved and protected wherever possible. Erosion and sedimentation control measures shall comply with the Maine Erosion and Sedimentation Law, 38 M.R.S.A. § 420-C, and regulations promulgated thereunder, as amended, both during construction and continuously after construction is complete. In addition, erosion and sedimentation measures consistent with the Maine Erosion and Sedimentation Control BMPs, ~~Pub. No. DEPLW0588, published by the Maine Department of Environmental Protection (March 2003)~~ Manual for Designers and Engineers, October 2016 shall be implemented.
- (1) Storage of fill materials within 50 feet of the banks of any stream, intermittent or perennial or water body will not be allowed.
 - (2) The top of a cut or the bottom of a fill will not be closer than ten feet from a property line.
 - (3) Removal of topsoil from any lot will not be allowed, except for that removed from areas to be occupied by buildings, paving or other surfaces that will not be revegetated, or unless in conformance with the performance standards for earth material removal set forth in article XII of this Code.
- (h) *Water supply.* The development will be provided with a system of water supply that provides each use with an adequate supply of water meeting the standards of the State of Maine for drinking water. A water system shall be designed and constructed in accordance with the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks. Developments and projects that will be provided by private water supplies shall demonstrate sufficient water is available for the reasonably foreseeable needs of the development or project.
- (i) *Sewage disposal.* A sanitary sewer system will be installed at the expense of the developer, or, if in the opinion of the planning board, service by a sanitary sewer system is not feasible, the board may allow individual underground waste disposal systems to be used. A sewer system shall be designed and constructed in accordance with the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks.
- (j) *Utilities.* The development will be provided with electrical and telephone service adequate to meet the anticipated use of the project.
- (1) Each utility system has adequate capacity to service the proposed development.

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

- (2) All overhead utility poles and lines will be located to minimize potential safety hazards and visual impact to the public. Similarly, transformer boxes, meters, pumping stations and other components of the utility system located above ground will be located so as not to be unsightly or hazardous to the public and will be landscaped or otherwise buffered so as to screen the components from public view.
- (k) *Natural features.* The landscape will be preserved in its natural state insofar as practical by minimizing tree removal, disturbance and compaction of soil and by retaining existing vegetation insofar as practical during construction. A grading plan for the project shall be included in the application and communicate the following:
- (1) Extensive grading and filling will be avoided as far as possible.
 - ~~(2) Cutting of trees on the northerly borders of the development will be avoided to the extent possible to retain a natural wind buffer.~~
 - ~~(2)3~~ The planning board or staff review committee may require a shadow study if it believes the proposed development may interfere with the solar access of adjacent properties.
 - ~~(3)4~~ If there has been excessive natural vegetation removal from the site since the adoption of the current zoning and land use code prior to the submittal of an application for development review, the planning board or staff review committee may require a regeneration plan to be submitted by a registered forester and to be implemented to revegetate that portion of the site not directly impacted by the proposed development. For the purposes of this section, excessive is defined as the removal of more than 60 percent of trees from a property, either in number of stems or area of tree cover, in any ten-year period.
 - ~~(4)5~~ Tree protection areas shall be shown on the site and flagged prior to any site disturbance.
- (l) *Groundwater protection.* The proposed site development and use will not adversely impact either the quality or quantity of groundwater available to abutting properties or public water supply systems. Projects involving common on-site water supply or sewage disposal systems with a capacity of 2,000 gallons per day or greater have demonstrated that the groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine.
- (m) *Water and air pollution.* The proposed development will not result in undue water or air pollution.
- (n) *Exterior lighting.* The proposed development will provide for adequate exterior lighting to provide for the safe use of the development in nighttime hours.
- (1) All exterior lighting will be designed and shielded to avoid undue adverse impact on neighboring properties and rights-of-way.
 - (2) Pole lighting shall be a maximum of 25' tall to the greatest extent possible.
 - (3) Lighting will be provided, at a minimum, in the following areas:
 - a. Entrances to facilities and recreation areas;
 - b. Street intersections;

Commented [DG5]: This doesn't seem practical.

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

- c. Pedestrian crossings; and
 - d. Entrance roads.
- (o) *Waste disposal.* The proposed development will provide for adequate disposal of solid wastes and hazardous wastes.
- (1) All solid waste will be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.
 - (2) All hazardous wastes will be disposed of at a licensed hazardous waste disposal facility and evidence of a contractual arrangement with the facility has been submitted.
- (p) *Lot layout.* Lot layout shall conform to Article II, Definitions, *Net Lot Area* and Article V, Administration and Enforcement, Section 3.
- (q) *Landscaping.*
- (1) A ~~The~~ landscaping plan will be provided and comply with the guidelines contained in the City of Lewiston's Site Plan Review and Design Guidelines as amended.
 - (2) Where required- ~~Landscape objectives:~~ The development plan shall provide for landscaping to define along street edges, break up parking areas adjacent to street frontage, soften the appearance of the development and and protect abutting for commercial development properties from adjacent residential properties. ~~adverse impacts of the development.~~
 - (3) ~~Front setbacks: Front setbacks, including areas between the principal wall plane of a building and a public street, are required to be landscaped for the entire length except for driveways, pedestrian access ways, and allowable encroaching building attachments (stoops, chimneys, awnings, porches). Trees are recommended if the front setback is at least 5 feet wide to provide adequate space for the tree roots. Short fences of approximately 3 feet in height are desirable in residential front yards.~~
 - (34) Maintenance: Property owners are responsible for maintaining the landscaping on the property as approved in ~~Site Plan~~Development Review after receiving a certificate of occupancy. ~~for at least five years including replacement of dead plants and trees.~~
- (r) *Shoreland relationship.* The development will not adversely affect the water quality or shoreline of any adjacent water body. The development plan will provide for access to abutting navigable water bodies for the use of residents of the development.
- (s) *Open space.* The development plan will provide for recreation areas and open space to meet the needs of residents and users of the development.

Commented [DG6]: Moved this to Section x

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

- (1) For projects involving the construction of ten or more new residential dwelling units in a land subdivision, a portion of the site shall be set aside as permanent open space or recreational land.
- (2) Required Open Space—
The size of the area to be set aside for open space shall be based upon the following:
 - a. Dwelling units exclusively for occupancy by persons 55 years or older--
~~None. Two hundred and fifty square feet per dwelling unit.~~
 - b. Dwelling units with less than two rooms designed or used for sleeping--
Three hundred fifty square feet per dwelling unit.
 - c. Dwelling units with two rooms designed or used for sleeping--Seven hundred square feet per dwelling unit.
 - d. Dwelling units with three or more rooms designed or used for sleeping--
One thousand square feet per dwelling unit.
 - e. For mobile home parks, the size of the area to be set aside shall be no less than ten percent of the combined area of the individual lots within the mobile home park.
- (3) No portion of the site used to meet the minimum lot size or minimum lot area per dwelling unit requirements shall be used toward meeting this requirement. This shall include the required open space in a clustered residential development.
- (4) The area to be set aside for open space shall be shown on the development plan and marked "Reserved for Recreation and/or Conservation Purposes".
- (5) The open space provided to meet this requirement shall be owned and managed by one of the following methods:
 - a. Continued ownership by the project owner for developments involving rental housing, mobile home parks and similar situations where the development remains under single ownership; or
 - b. Ownership by a condominium or lot owners association for developments involving the creation of separate lots, condominiums or other situations where the development is owned by a number of entities; or
 - c. Dedication of the land to the City of Lewiston as public park land; or
 - d. Transfer, with permanent restrictions, to a land trust or other recognized conservation organization.
- (6) The planning board shall approve the arrangements for the ownership, control and maintenance of the open space as part of the approval of the final plan. No changes in the ownership or management of the open space shall be made without planning board approval. The arrangements for the ownership and management, if the open space is not to be dedicated to the city, shall provide for at least the following:
 - a. That the area shall be permanently maintained as open space.
 - b. That there shall be no transfer of the open space separately from the remainder of the development without approval of the planning board.
 - c. That there shall be no division of the property.

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

- d. That no structures or buildings other than those shown on the approved plan shall be erected in the open space.
 - e. That any agricultural or forestry activity be carried out in accordance with an approved plan of action.
- (7) The land designated as open space shall meet the following requirements:
- a. The site shall have pedestrian access from a public street or private road and shall be of such size, shape, and topography as to be usable for open space or recreation purposes, with at least 50 percent of the land to be suitable to be used for active recreation, including, but not limited to, softball fields, swimming pools, tennis courts, ~~bicycle~~ multi-use-paths, tot lots and hard surface court games.
 - b. Parcels ~~which that~~ can be combined with existing city-owned property, dedicated open space on adjacent parcels, or with possible future land dedications shall be given priority.
 - c. The land will be maintained in a usable condition and retained in a natural state to the maximum extent practicable. All clearing, grading and material placement or removal shall be carried out in accordance with the approved landscape plan and under the supervision of the city engineer and code enforcement officials.
- (t) *Technical and financial capacity.* The applicant has demonstrated that he has the financial and technical capacity to carry out the project in accordance with this Code and the approved plan.
- (1) The applicant has submitted evidence from a financial institution or other source of project funding that demonstrates that adequate resources are available to complete the project in accordance with the approved plans.
- (u) *Buffering.* The development ~~will~~ shall comply with the guidelines contained in the City of Lewiston's Site Plan Review and Design Guidelines as amended and provide for the buffering of adjacent uses where there is a transition from one type of commercial use to ~~another a residential~~ use and to screen service and storage areas.
- (v) *Compliance with district regulations.* The applicant has established that the development will be consistent with the district regulations of article XI.
- (w) *Design consistent with performance standards.* The applicant has so designed the development as to make it probable that the development and its use will comply with performance standards of article XII, insofar as they ~~maybe~~ may be applicable.
- (x) *Design district standards.*
Projects in the Design Districts (Riverfront (RF) Districts, Downtown Residential (DR) District, Centreville (CV) District, and Mill (M) District) shall comply with the following urban design district standards provisions. These provisions standards establish the desired form and character for new development and significant renovations in this area. The Design Districts are in Lewiston's historic core, an area with a walkable street

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

pattern and historically and architecturally significant buildings. Its streets are well defined by trees, building facades, and pedestrian activity.

(1) Exterior Building Standards

a. Commercial and Mixed Use Building Standards-

1. Commercial First Floor Doors and Windows- A minimum of fifty percent (50%) of the first floor façade shall consist of clear glass as visible from a public street. No minimum requirement shall be imposed for theaters, places of worship, fire and police stations, municipal service facility, or transformer stations.
2. Commercial First Floor Elevation- Commercial first floors shall be at street grade.
3. Commercial First Floor Entrances- Commercial buildings shall have a minimum of one entrance every 75 feet of street frontage. The entrance shall be visible and accessible from a sidewalk and shall be open during normal business hours. Commercial entrances shall be recessed and between 15 and 100 square feet in size, with a surface grade that matches the sidewalk.

b. Residential Building Standards-

1. Residential First Floor Doors and Windows- A minimum of twenty-five percent (25%) of the first floor façade shall consist of clear glass as visible from a public street.
2. Residential First Floor Elevation- A residential first floor elevation shall be twenty-one inches (21") or three steps above the grade of any adjacent sidewalk and first floor window sills of dwelling units shall be a minimum of sixty inches (60") above sidewalk grade.
3. Residential First Floor Entrances- Multifamily entrances shall have covered weather protection.

c. Blank Walls- Building facades visible from a public street shall not contain blank walls longer than ten feet.

d. Windows- Windows shall not be flush with exterior wall treatments and shall be recessed at least 2 ½ inches. Windows shall be provided with an architectural surround at the jambs, header, and sill.

e. Mechanical protrusions: Vent stacks, roof vents, and other mechanical protrusions shall be screened or painted the color of the roof or the adjacent façade. Roofs and roof lines shall minimize the visual impact of mechanical systems.

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

(2) Parking access and design

- a. Parking ~~banned from~~ prohibited in front setbacks- ~~Surface motor~~
Vehicle parking is prohibited in the area between building frontages and public streets or parks except in conjunction with a single- or two-family dwellings.
- b. Driveways- ~~Access~~ Driveways to parking areas and service facilities ~~located elsewhere~~ on the site shall be limited to a total width of 24 feet ~~of width~~ unless a wider entrance is justified for any individual driveway. The number of access drives shall be limited to one per 100 feet of lot frontage, with a minimum of one allowable driveway per lot.
- c. Required walkways- ~~Surface~~ Parking lots with 40 spaces or greater shall be designed to separate pedestrian travel area from vehicles.
- d. Maximum number of parking spaces: ~~For buildings with less than or equal to 60,000 gross square feet, no more than 140% of the required minimum parking spaces are permitted.~~ For buildings greater than ~~6~~10,000 gross square feet, no more than 140 ~~25~~% of the required minimum number of parking spaces are permitted, except as provided in Article XII, Section 17 Off-Street Parking and Loading.
- e. Multi-modal facilities: ~~To promote bicycling, projects categorized as Major developments and any~~ Projects with 20 or more parking spaces shall provide outdoor bicycle racks for ~~no fewer than~~ a minimum of 4 bicycles ~~storage racks~~. Required bicycle ~~storage~~ racks shall be within 100 feet walking distance of ~~a~~ the main building entrance.

(3) Architectural design

- a. Entrances: A minimum of one building entrance shall be located on a street frontage. The door shall be visible and accessible from a sidewalk or public park in a place appropriate for a pedestrian oriented, street facing use, and shall be open during normal business hours. Non-residential entrances shall have alcoves between 15 and 100 square feet in size, with a surface that matches the sidewalk. Multifamily entrances shall have weather protection.
- b. Architectural details: The use of architectural features and details such as porches, awnings, columns, dormers, skylights and arches shall be used to create visually dynamic and interesting buildings. The definition of street corners with building form and architectural features is important to anchoring the building on the site and framing the street.
- c. Windows: Windows shall not be flush with exterior wall treatments and shall be recessed at least 2 1/2 inches. Windows shall be provided with an architectural surround at the jambs, header, and sill.

Commented [DG7]: This section has been incorporated into other sections.

Commented [DG8]: Move to Context Sensitive Section?

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

- d. ~~Blank facades: Blank walls longer than 10 feet shall be prohibited where buildings face public streets and parks. A blank wall is a facade that, at eye level, does not include doors, windows, or surface relief through the use of columns, cornices, moldings, piers, pilasters, sills, sign bands, other equivalent architectural features that either recess or project from the average plane of the facade by at least 4 inches.~~
 - e. ~~Mechanical protrusions: Vent stacks, roof vents, and other mechanical protrusions shall be painted the color of the roof or the adjacent facade. Roofs and roof lines shall minimize the visual impact of mechanical systems.~~
 - f. ~~Architectural consistency: Projects shall maintain consistency of architectural character, treatments, and details on all building facades visible from public entrances, public streets, or public parks. Architectural features that shall remain consistent include cladding material, trim, fences and other buffers, and lighting.~~
- (3) Treatment of Front Yards:
- a. The areas between the principal wall plane of a building and the public right of way, are required to be landscaped except for driveways, sidewalks, and allowable encroaching building attachments (stoops, chimneys, awnings, porches).
 - b. Trees are recommended if the front setback is at least 5 feet wide to provide adequate space for the tree roots.
 - c. Short fences of approximately 3 feet in height are desirable in residential front yards.
- (4) Roofs
- a. Rooflines- Roofs and roof lines shall avoid unbroken expanses the length of the building through the use of dormers, chimneys, and changes in the ridgeline. Variations in design shall connect to the overall building design, such as being shaped to define building corners and entries.
 - b. Solar panels- Solar panels shall follow rooflines and where possible be integrated with the roof design.
 - c. Falling snow- Roofs shall be designed to prevent falling ice and snow onto entrances and walkways.
- (5) Context-sensitive design
- a. Documentation of Surrounding Context- An applicant shall include documentation (site map, photos, and narrative) of the ~~adjacent building~~ architectural style, character and site conditions of the eight adjacent buildings (two buildings on right, two on the left, and four across the street).

Commented [DG9]: Move to Context Sensitive Section.

Commented [DG10]: Should there be more on what constitutes landscaping? Shrubs, flower beds, trees, gardens, etc.

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS

b. Context-sensitive design criteria. An applicant shall address the following criteria: in a narrative to insure ~~how~~ the proposed project will be ~~the~~ compatible ~~proposed project~~ and in harmony with the surrounding significant structures: ~~meets the intent of the following criteria:~~

- i. ~~Mass:~~ The height of principal building or structure, its bulk; the nature of its roofline and the proportions of the new construction will be of the same scale and proportion as the surrounding, adjacent structures;
- ii. The location, size, and proportions of openings in the facade, primarily windows and doors, of new construction will be consistent in proportion and rhythm with openings in the facade of ~~as the surrounding,~~ adjacent significant structures.
- iii. The massing and type of roof (flat, gabled, hip, gambrel, mansard) of the new construction shall complement the massing and type of roof as the ~~surrounding,~~ adjacent, significant structures.
- iv. ~~Nature of b~~ Building materials and texture shall exhibit the characteristics of texture, composition, and reflectivity of as the ~~surrounding,~~ adjacent, significant structures.
- v. The placement and orientation of the new construction/in-fill shall be in harmony with the ~~surrounding,~~ adjacent, significant structures.
- vi. Architectural consistency: Projects shall maintain consistency of architectural character, treatments, and details on all visible building facades.

Commented [DG11]: We need to test this to see what an applicant needs to do to comply and what needs to be submitted.

(Ord. No. 89-3, 4-7-89; Ord. No. 90-10, 10-4-90; Ord. No. 92-12, 6-4-92; Ord. No. 92-18, 9-10-92; Ord. No. 99-11, 5-20-99; Ord. No. 99-15, 8-12-99; Ord. No. 00-5, 5-4-00; Ord. No. 01-23, 2-7-02; Ord. No. 05-21, 1-19-06; Ord. No. 06-17, 2-8-07; Ord. No. 07-02, 3-22-07; Ord. No. 08-08, 10-2-08; Ord. No. 16-12, 12-15-16)

Sec. 5. Coordination with state subdivision law.

To the extent that the following standards are not contained in article XIII, section 4, said standards shall be applicable to the review and approval of subdivisions:

- (1) Will not result in undue water or air pollution. In making this determination, it shall at least consider: the elevation of land above sea level and its relation to the floodplains; the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations.
- (2) Has sufficient water available for the reasonably foreseeable needs of the subdivision.

structure. However, if so desired, both later features can be easily removed to expose the original design intent. Other additions are not so easy to correct, as witnessed by the addition made to the rear of an frame, L-shaped plan Italianate residence (Fig. 150).



Fig. 149



Fig. 150

B: New Construction

The guidelines and standards governing new construction apply to new buildings and additions to existing, listed buildings. Like the standards regarding the alteration of existing buildings above, these guidelines are just that, guidelines to help insure the compatibility of new construction. The evaluation of each new construction project in a local historic district, and proposed additions to individually listed properties will still require the interpretation of and be the responsibility of the review board—the guidelines are designed to provide a framework for their deliberations. The standards and guidelines do not prescribe the application of design elements of an earlier period or style, or the slavish copying of neighboring buildings as a way of seeking compliance. Attempts at reproducing past architectural styles result in a lessening of the intrinsic value of the original works. Such reproductions can also limit opportunities for the construction of a well designed contemporary building, one that might achieve landmark status in the future.

A number of mid 20th century buildings have been put up in Lewiston that mimic an earlier style, many of which are incompatible with their surroundings. The design of the pseudo-Georgian style New England Telephone Company Building (Fig 151) was seriously compromised by the need to provide an enormous amount of floor space and volume. The massing, bulk, height and scale of this structure simply cannot be contained within a predominantly residential scale shell, a shell that rarely exceeds two to two-and-one-half stories in height

The standards for new construction encourage the use of contemporary design and new materials, if the result is compatible. New buildings will be reviewed as part of a continuum that reflects the fact that historic districts in Lewiston are the product of over 200 years of addition and subtraction. However, one of the primary goals of any set of design standards for new construction

in an historic district is avoiding confrontational designs, designs that are in marked contrast to the existing building stock. Rather than contrast, harmony should be the goal, where the new complements the old.

Any new building in a local district or an addition to a listed building should reflect the surrounding structures, but need not comply with every standard. While total compliance can stifle innovative design, a project should relate to most of the standards and guidelines that are meant to insure compatibility. Each project will be judged in its own context of neighboring buildings, landscape and relationship to the street pattern. Standards and guidelines for local districts in Lewiston, because of the diversity of building forms, must relate to the property under review, (site specific) rather than the city as a whole. Each district is different, from block to block, street-scape to street-scape. While many blocks, especially in the Kennedy Park Historic District (Fig. 152), exhibit a homogeneous character, others like the Lower Lisbon Street Historic District (Fig. 153) lack uniformity of massing and design. New construction at a site within a district like Kennedy Park should strive for a solution that reinforces and respects the uniform character of the district. In areas such as Lower Lisbon Street, the board review should recognize the lack of consistency of such items as height, roof forms, setbacks, spacing and materials, and apply the standards accordingly.



Fig. 151



Fig. 152



Fig. 153

However, meeting most if not all of the standards and guidelines does not necessarily insure approval by the Review Board. No set of standards or guidelines can guarantee good architecture—there is no proven way to legislate good design. The best that the city can hope for is that the application of these standards will lessen the possibility of poor design. On the other hand, strict application of the guidelines may be waived by the board if an applicant's design meets the spirit of the guidelines and results in a solution that is better than one that would have satisfied all of the standards..

Generally speaking, the standards and guidelines for new construction concentrate on building mass, (including height, footprint—the width and depth of the plan, bulk, proportions and scale), the location and size of window and door openings (proportions of openings, scale, the rhythm of

openings versus wall surface), the roof type and its impact on the skyline, building materials and texture, and the placement of mechanical devices (antennas, TV dishes, solar panels etc). Review based on these five general categories is mandated in Article XV of the Lewiston Code, Sec.31-216, (c) New Construction. The following discussion is based on the five criteria included in Article XV, plus one other recommended standard concerned with the placement of a new building on its lot.

Criterion 1. Mass. The height of a principal building or structure, its bulk, the nature of the roofline, and the proportions of the new construction will be of the same scale and proportion of the existing significant structures.

This standard relates primarily to in-fill projects, in-fill being defined as “*vacant parcels that are already served by utilities and are surrounded by urban development (USDHUD, 1981).*” An infill project can be as small as a single-family residence or as large as a four story commercial building or a five-unit residential block. Often the most important element in satisfying the goals of Criteria 1 is **height**. While height limits are traditionally controlled by a city’s zoning code, building heights in a historic district should be reviewed to insure that a new building respects the heights and skyline created by its neighboring buildings. This does not necessarily mean that all new in-fill construction must be of a lesser height than the surrounding buildings—new structures can be designed with the upper floors setback from the lower levels—but that a proposal must relate to the scale of the historic district and the character of the immediate streetscape. In Lewiston, sections of the Kennedy Park district such as Knox Street are almost uniform in height, and limits are easier to apply. At the Lower Lisbon Street district (Fig. 154), however, building heights vary from one to four-stories along the single block front. In this case, a *maximum design envelope*



Fig. 154

will be developed by the review board and the applicant. The Lisbon Street drawing indicates a variety of permissible heights (and as new development on this street is limited to infill between existing buildings, the maximum width of a structure). To avoid monotony, new building designs with a proposed height that is within the range of heights shown on the sketch should be promoted.

The **width** of a structure is also controlled by city ordinance that establishes minimum and maximum side-yards for any site. In non-historic areas, simply subtracting the side-yard widths from the width of a particular lot will determine the maximum allowable coverage, or footprint, of a new building. Within a historic district, or contiguous to an individually listed property, this preliminary determination must be reviewed by the Review Board to insure compatibility with the width of neighboring buildings. In-fill being proposed within the Lower Lisbon Street historic district or otherwise along a commercial street, where buildings abut each other at the side lot line, must retain this spatial relationship, filling the street frontage. In such cases, however, the maximum width of any section of a proposed in-fill project should not exceed the average width of the surrounding structures. If an in-fill lot is wider than its neighboring lots, the mass of the facade can be visually diminished by breaking the elevation into a number of bays (Fig. 155) that are compatible with the width of the buildings on the rest of the block.

The compatibility of building widths, especially in a pedestrian related environment like the Lower Lisbon Street and the Kennedy Park historic districts, is critical to maintaining a sense of *rhythm*. The repetition of facade widths along a street frontage establishes a comfortable reference point for a walker. The principal of rhythm can best be experienced when walking along a row of shops, where the first floor has been separated into bays of a similar width, sometimes the width being a function of the common width of neighboring buildings, other times, such as at the Centennial Block on lower Lisbon Street (Fig. 156), created by the use of granite or cast iron piers set at regular, pedestrian related intervals. At the Music Hall (Fig. 157), the impact of the largest building in the downtown, 148 feet in width, has been moderated by dividing the facade into six 18 foot wide bays, each separated by heavy masonry piers.



Fig. 155



Fig. 156

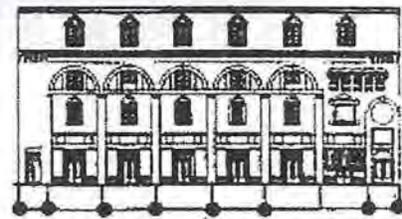


Fig. 157

Rhythm is equally important in establishing continuity in facade design regarding the relationship of solids and voids (see Criterion 2), and in areas consisting of detached individual buildings, such as many of the densely developed residential streets in the city (see Criterion 5, below).

Scale and Massing are also directly related to personal experience. Buildings are regarded as pedestrian in scale when they compliment the scale of man, colossal when they overwhelm a pedestrian. Scale and massing must be judged in context, however, as in the case of the Country Kitchen Bakery (Fig. 158) opposite the Lower Lisbon Street historic district. (This building is drastically out-of-scale in its present location, while their second bakery, of almost equal scale and massing, located between the Hill Mill and the Androscoggin Mill, is compatible with its surroundings.) Conversely, a building may be out of scale when it is too small for its surroundings, like the cottage shown in Figure 159 in Little Canada. Scale is determined by a perception of how a particular facade or detail relates to a human being. Traditionally sized windows and doors are easily comprehended as non-confrontational. Large scale shop windows or commercial entrances, unless they have been broken down in size and scale, do not relate as well (Fig. 160).



Fig. 158



Fig. 159



Fig. 160

The use of traditional building materials also contributes to the perception of a human scale—clapboards, shingles, stone and brick are of a comfortable, non-threatening scale, while porcelain or glass facades (Fig. 161) do not relate to either a human being or to the surrounding environment. Scale and massing is of great importance when designing new construction to be constructed in the city's residential neighborhoods, where an out-of-scale building can seriously compromise the visual appeal of the area. Even if height, setback, side yards and the use of materials are in conformance with building codes and the other standards and guidelines for new construction, the visual impact of an out-of-scale building, like that superimposed over an elevation of lower Lincoln Street, is obvious (Fig. 162).



Fig. 161



Fig. 162

The proportion (the relationship of width to height) and directional expression (vertical, horizontal or non-directional) of the front facade should, to avoid visual tension, recognize the directional expression of the individual properties that together make up the street-scape. A vertical directional expression (Fig. 163) usually is a result of a building height greater than its width, architectural details such as corner quoins and stacked three and four story porches that raise the eye to the roof line, and window arrangements in a vertical row or in a bay unit. Horizontal directional expression (Fig. 164) usually is predicated on the width of the facade being greater than height, especially when there is a full width, one-story porch, heavy cornices at the first floor as well as the roof line, and windows in horizontal rows or pairs. In some instances a facade may have contradictory design elements, like a four-story-tall building with a horizontal ground floor of shop windows, a cornice above the first floor, two stone belt courses that contrast with the wall material, windows arranged in horizontal rows, and a heavy, ornate roof cornice. Here the height versus width of the building (vertical emphasis) is modulated by the horizontal design elements, resulting in a non-directional facade (Fig. 165).

New in-fill construction that either connects to or abutts a listed building must be designed so that there is a design link between the two units that clarifies the change in architectural design. Links are often a simple return, where an entire new wall is set back from the plane of an elevation of the old building, or an indentation as narrow as the width of a brick that provides a visual break between the old and the new. If the new building, or the link itself, is of a different material than the old, the link may also be flush with the wall of the old. The Lewiston Public Library (Fig. 166) and its connection to the Lisbon Street section, and the U. S. Post Office (Fig. 167) with its later flanking wings, are examples of a satisfactory link.

There is a clear distinction between the first and the upper floors of commercial buildings along most of Lisbon Street. This distinction should be retained in designs for new in-fill structures.

Also, new storefronts should recognize the design elements found at neighboring storefronts—a recessed entrance, a base for the large storefront windows, a clerestory above the windows and any doors, and an intermediate cornice, as shown in Figure 168.



Fig. 163



Fig. 164



Fig. 165



Fig. 166



Fig. 167

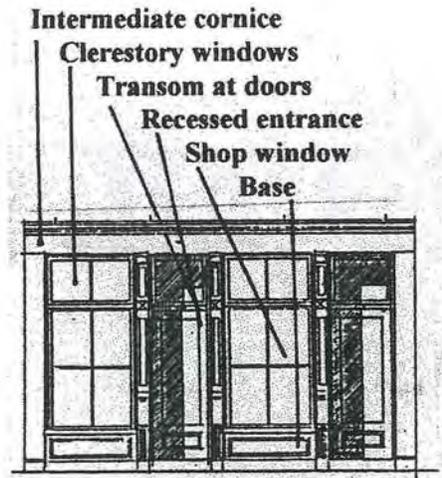


Fig. 168

Criterion 2. The location, size and proportion of openings in the facade, primarily windows and doors, of new construction will be consistent in proportion and rhythm with openings in the facade of existing significant structures.

For new in-fill construction to be compatible, the proportion, size, and the rhythm established by the placement of windows and doors in a facade must relate to neighboring buildings. Window proportion is usually expressed as a ratio, as shown in the sketch below, Figure 169. The

sketch also illustrates the design concept of solid to void, where the “solid” wall area accounts for approximately two-thirds of the facade area, the rest being window and door openings. Just as a building in its totality creates a rhythm with regard to its neighboring structures, rhythm can be established at the facade, primarily through regular (not necessarily constant) spacing of windows (Fig. 170). The second sketch illustrates facade rhythm at the Union Block. Here the upper floor windows are set into recessed window openings, the amount of solid wall, window to window equaling 4'0", the windows 2' 0" wide, creating a rhythm pattern of 4/2/4. The sense of rhythm is heightened by the repetition of the spacing of horizontal rows of recessed openings, and especially at the excellent cornice, where the deep consoles are set 8' 0" on center and in-filled with three sawn brackets, positioned 21' 6" apart. In the case of the Union Block, rhythm is also established by the granite posts that separate the four shop fronts and three entrances from one another.

It is also important that window and door openings be of the same proportion and orientation (usually vertical) as the openings in neighboring buildings. Figure 171, the two buildings contiguous to the Union Block illustrate a lack of rhythm, with distinctly horizontal window openings contrasting with the vertical openings at buildings on either side of these two structures. As such, these buildings are incompatible. Windows at new in-fill buildings should be a product of their own time. Vertical casements, 1/1 sash double hung windows, fixed sash and hopper or awning windows may be appropriate at some proposed buildings if all other considerations such as proportion, spacing and orientation have been satisfied. Windows that incorporate small sized panes of glass, in imitation of 18th century windows are discouraged..

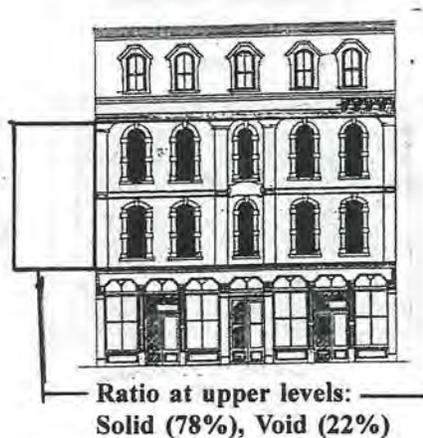


Fig. 169



Fig. 170



Fig. 171

Criterion 3. The massing and type of roof (flat, gabled, hip, gambrel, mansard) of the new construction shall complement the massing and type of roof of existing significant structures.

The type of roof proposed for new in-fill construction will vary by specific location, as most of the residential streets, such as Bartlett Street, exhibit a number of roof forms, from cross-gable to flat to pedimented gable (Fig. 172). In such situations, any one of the three roof forms

would be acceptable, and the applicant should be allowed the freedom of selecting one that is compatible to the area. Little Canada, with one exception, consists entirely of flat roof structures (Fig. 173). New in-fill construction should reflect this trait by providing flat roofs, the flat roof further emphasized by a heavy cornice at approximately the same height as at neighboring structures. A section of lower Lincoln Street, shown in Figure 174, is primarily gable roof to the street, with the notable exception of the one flat roof building, a non-compatible roof form (as well having a non-conforming facade emphasis). Inherent in this criterion is the issue of orientation. The Lincoln Street block is primarily a row of houses that have gable roofs with the ridge lines perpendicular to the street, the roof forms create an interesting saw-toothed, rhythmical effect on the skyline. This should not be compromised. Conversely, this same sort of skyline interest has been achieved at the Lower Lisbon Street historic district. Here, with one exception, the roofs are



Fig. 172



Fig. 173



Fig. 174



Fig. 175

flat or hidden behind horizontal parapets, but the skyline is made interesting by the changes in building heights (Fig. 175). Roof lines at in-fill construction should be simplified to reflect existing conditions. Dormers may be appropriate at gabled or hipped roofs, and flat, surface mounted skylights, if set to therear of the front elevation of the building may be considered.



Fig. 176

While the mansard roof is used at a number of significant listed buildings, usually of the Second Empire period, its is totally out of place on this new building (Fig. 176), located within a residential area where, while roof forms are limited to gable and flat, they create an interesting skyline. Here the false mansard roof sits as a cap to this structure, the roof form unrelated to surrounding conditions. To compound the problem, the mansard roofed structure also lacks an appropriate relationship to the scale, materials, rhythm (as established by the porches, projecting bay units) and the window patterns of the residential buildings to its right.

Criterion 4. Nature of building materials and texture shall exhibit the characteristics of texture, composition and reflectivity of adjacent structures and buildings.

Generally speaking, buildings within the Lower Lisbon Street historic district are of brick construction, while the residential buildings in the Kennedy Park historic district are frame, almost all of which originally had horizontal wood clapboard. Brick as a material establishes a particular pedestrian related scale because of the size of a unit, its texture, and pattern laid in three-inch tall courses. At streetscapes where brick is the predominant building material, brick should be considered for any in-fill construction to reinforce the sense of place. Similarly, horizontal wood siding has a texture of its own, and contributes to the notion of scale, especially so when the lap (space between the clapboards) is similar to that at neighboring buildings, likely 3 1/2" to 6".

Photo of bad siding job, stripping trim

While brick and horizontal sided frame construction are the norm, other materials have been successfully used in Lewiston, especially stone (churches, Depositors Trust Company and its addition), Carrera glass and brick (First National Bank), or combined with stone (The Grant Building), and embossed aluminum panels and exposed aggregate concrete stucco (Lamey-Wellehan). Less successful is the use of reflecting glass, pebble-dashed concrete and polished granite at the Androscoggin Savings Bank (Fig. 177), a non-historic building but one that directly relates to the National Register listed Grant Building to its right, shingles used to cover in-filled shop window bays (Fig. 178), and imitation stone used as an applique. The texture of each of these materials, and the reflectivity of the glass at the bank, are not visually compatible with their surroundings.



Fig. 177



Fig. 178

Criterion 5. Mechanical equipment or other utility hardware on the roof, ground or buildings will be screened from public view with materials harmonious with the building, or they will be so located as not to be visible from public ways.

Included in this criteria are solar collectors, satellite dishes and television antennas, utility meters and roof-top evaporators for central air conditioning. Solar collectors, because of the need to orient them towards the most sun, are difficult to hide, as shown in Figure 179, an exceptional Greek Revival store. If an alternate location can be selected that still allows the device to collect enough sun, this panel should have been mounted on the side of the gable roof opposite the street intersection of Bates and Lowell streets. Also, the angle of the collector panel should be as close as possible to the slope of, and be flush with the roof. Satellite dishes and television antennas, because of their size and flexibility regarding where they are mounted, can be hidden from view from the street by simply locating the appliance at the rear of the roof. Utility meters must be located where they will be as unobtrusive as possible, recognizing the fact that they must be easily accessible to meter readers and service technicians. Figure 180 below shows the negative visual impact of a group of electric meters, an impact that could have been alleviated by placing the meters in a closet-like construction made of the same material as the wall of the linkage between the two buildings. Roof-top air conditioning compressors and evaporators can be located at the rear of a roof and screened from view, especially when the roof is flat. Such equipment can be, and often is, located at the rear yard of the property to facilitate maintenance.

While not specifically listed in Article XV, a sixth criterion will be addressed by the review board in their deliberations, **the placement and orientation of the in-fill structure on its lot.** Virtually all of the commercial and office buildings along Lisbon and Main streets occupied the entire width of the lot and were aligned along the sidewalk line in straight rows (Fig 181). The holes in the street-scape, or missing teeth, are the result of demolished buildings. Apartment



Fig. 179



Fig. 180



Fig. 181

buildings in the earlier residential areas also fronted directly on the sidewalk line, but were almost invariably set apart from each other by side yards (Fig. 182). In both areas, the facades formed a continuous block-long wall that ran from cross-street to cross-street. Important exceptions to this edge of the sidewalk rule occur in some of the late 19th and early 20th century residential areas (especially north of Sabbathus Street) where the residences are detached and usually have front lawns. The front lawns vary from 10' to 30' and more, yet the street has a consistent pattern of setbacks. This occurs also on Main Street, between Holland and Frye streets (Fig. 183), but in this case the exceptional residences are situated almost along the rear lot line, with landscaped front lawns establishing a distinctive unique to the two-block-long area.



Fig. 182



Fig. 183

New in-fill construction must relate to the existing conditions of the street-scape. As discussed above, new buildings along historically and visually important commercial streets should be designed so that they front directly on the sidewalk, without any side yards. The alignment and setbacks of residential in-fill should also follow existing conditions, but should be based on a site-specific street-scape. A section of a plate from the Sanborn Insurance Atlas (Fig. 184) illustrates a consistency regarding side yards and setbacks from the sidewalk, but also indicates “holes” in the street-scape (Fig. 185). In-fill proposed for either site should maintain the average setback of its neighboring structures.



Fig. 184



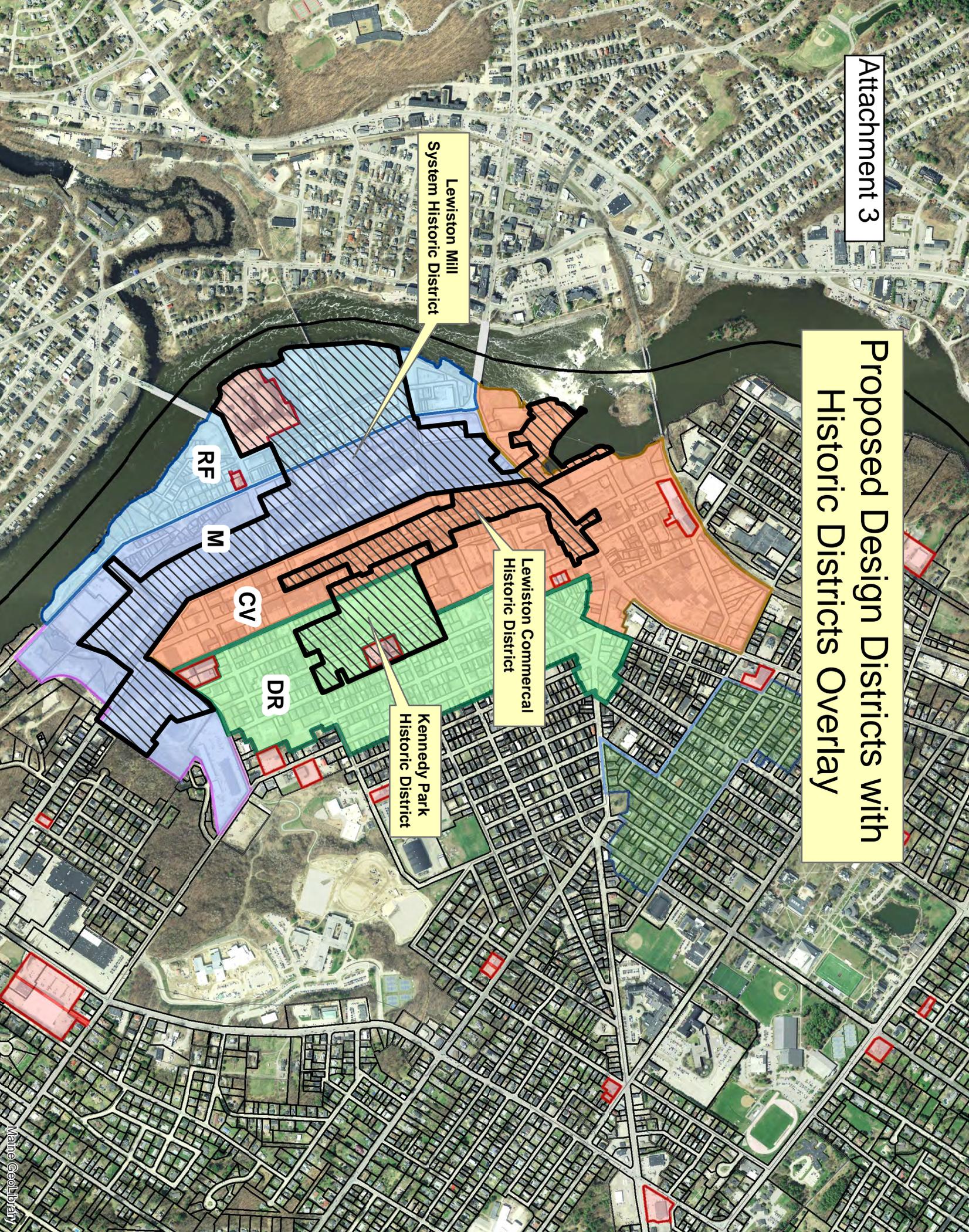
Fig. 185

The relationship to the sidewalk of buildings along Lisbon and Main streets, and in many of the earlier residential areas, is further emphasized by the main entrances opening directly to the sidewalk. However, at a number of earlier residential blocks, especially those containing three to five story apartment buildings, the entrances vary from front elevation to side elevation. In such areas, either location is permissible as long as the proposed entrance is compatible with its surroundings. Further, many of the entrances to commercial building constructed before the middle of the twentieth century are recessed, creating shelter and allowing the doors to open out (a code requirement) without blocking the sidewalk. In areas where this occurs, entrances should continue this pattern.

C: Demolition or relocation of listed historic buildings

Section 5. 3. D. of Article XV presents a set of criteria to be used by the Review Board when dealing with a request to demolish or relocate an individually listed building or a contributing structure within a listed historic district (new development resulting from the demolition of a

Proposed Design Districts with
Historic Districts Overlay



Lewiston Mill
System Historic District

Lewiston Commercial
Historic District

Kennedy Park
Historic District

RF

M

CV

DR



CITY OF LEWISTON

Department of Planning & Code Enforcement

TO: Lewiston Planning Board

FROM: Douglas Greene, AICP, RLA; Deputy Director/City Planner

DATE: November 21, 2019

RE: Annual Review of Planning Board Protocol and Handbook

As per your request, please review the attached 2019 Planning Board Protocol and Handbook materials. The staff would like to discuss this at your December 9, 2019 meeting.

City of Lewiston Planning Board Meeting Protocol, 2019
**(The purpose of this document is to provide guidance to Planning Board members
when conducting a meeting)**

A. *Call to Order (by chairman)*

I am, _____, Chairman of the Lewiston Planning Board. I welcome all here this evening and call this meeting to order (gavel). Roll Call please.

B. *Roll Call (by secretary)*

Planning Board Members:

Pauline Gudas
Sandy Marquis
Normand Anctil
Kristine Kittridge
Lucy Bisson
Benjamin Martin
Shanna Cox
Roger Fuller
Ryan Rhoades

City Staff:

Doug Greene, City Planner, Deputy Director
David Hediger, Director, Planning and Code Enforcement
Identify any other Staff or City representative in attendance.

C. *Planning Board's Procedures (when appropriate, this section may want to be read aloud by the chairman)*

The Planning Board is comprised of seven (7) appointed members. A quorum necessary to conduct an official meeting of the Planning Board shall consist of at least four (4) members.

Agendas for this meeting are available in the wall container at the entrance to this room, should anyone in attendance not have a copy. The agenda for this evening consists of the following items. Is there anyone in attendance present for a matter not on tonight's agenda?

“Regarding the agenda items before the Planning Board, I will first identify the item, and then Staff will make a brief presentation followed by Planning Board questions. I will then request a presentation by the applicant/petitioner to explain their proposal followed by board questions. I will then open the meeting for public comment with proponents speaking first followed by anyone in opposition or having questions regarding the proposal. I please ask that everyone who speaks for or against or has a question concerning the subject matter to use the microphone provided by

Staff as this meeting is being recorded and to identify themselves by name and address for our record. The applicant/petitioner shall be given the opportunity to make any responses to public comments. The public portion will then be closed and the Planning Board will deliberate and vote on the matter before us. Once the public comment portion of the meeting is closed, unless there is a specific question from a Board Member to the public, the public portion will remain closed.

The Planning Board must decide on all matters in accordance with the Code of Ordinances of the City of Lewiston along with any other provisions of law within our jurisdiction. Some decisions that this Board makes may also be contrary to public opinion and it is possible that some Board Members may have philosophical differences with some proposals; however, this Board must base its decisions on the law and ordinances rather than on individual sentiments. The concurring vote of at least four (4) members is required to constitute an action on any matter requiring a Public Hearing. All other matters require a simple majority vote.

D. Correspondence

The Chairman will request a motion to accept and place on file correspondence (to be identified) and to include Planning Staff memoranda (this will establish the record as Staff memoranda will reference all submittals the Planning Board has received).

E. Public Hearings

Any agenda items requiring a public hearing by ordinance or law (i.e. development review, zoning amendments). .

F. Other Business (these items are typically not public hearings, but rather public meetings. Public meetings are not required to be open to the public for comment.)

1. New Business
2. Old Business

G. Minutes

I am proposing to review and accept Minutes at the end of a meeting as a means to address matters of greater public interest first and in addition the Board may take time for Minute modifications without feeling pressured for time.

H. Adjournment



PLANNING BOARD HANDBOOK

Adopted: January 2019

PLANNING BOARD HANDBOOK

CONTENTS

- I. Article IV, City Charter**

- II. Rules of Procedure**

- III. Public Procedures and Freedom of Access Law (Maine Public Right to Know Law)**

- IV. Ethical Principles in Planning (American Planning Association)**

- V. Article VII. Planning Board- Lewiston Zoning Ordinance**

ALL ORDINANCE PROVISIONS GOVERNING AND REGULATING DEVELOPMENT ACTIVITY IN THE CITY OF LEWISTON, AS REVIEWED BY THE PLANNING AND CODE ENFORCEMENT DEPARTMENT, PLANNING BOARD AND BOARD OF APPEALS ARE CONTAINED IN APPENDIX A OF THE LEWISTON REVISED CODE OF ORDINANCES ENTITLED, "ZONING AND LAND USE CODE".

I. City Charter

EXCERPTS FROM CHARTER OF THE CITY OF LEWISTON

Article IV. Administrative Organization

4.05 PLANNING BOARD

- (a) APPOINTMENTS. There shall be a Planning Board consisting of seven (7) members, each of whom shall be a qualified voter of the City of Lewiston and who shall be appointed by the Mayor. No more than two (2) members may reside in the same ward. The terms of office of members of the Board, appointed following the adoption of this Charter shall be established by the Mayor who shall appoint one (1) member to serve one (1) year; two (2) members to serve two (2) years; one (1) member to serve three (3) years; two (2) members to serve four (4) years; and one (1) member to serve five (5) years. Thereafter, all members shall be appointed for five (5) year terms.

There shall be, in addition to the seven (7) members of the Board, two (2) associate members of the Board, each of whom shall be a qualified voter of the City of Lewiston, appointed by the mayor. The associate members are subject to the same ward residency requirements as the regular members. They shall serve for five-year staggered terms, with initial terms being one (1) associate member serving for four (4) years and one (1) for five (5) years. An associate member shall serve in the place of a member who is absent, disqualified or otherwise unable to participate when designated by the chair person to do so.

- (b) COMPENSATION. Each member shall receive salary at the rate of six hundred (\$600.00) dollars per year, payable monthly.
- (c) DUTIES. The Planning Board shall carry out those duties assigned to it by general law and by ordinance.
- (d) RULES OF PROCEDURE. The Planning Board shall adopt appropriate rules of procedure consistent with the provisions of this Charter to enable it to carry out its functions.

4.07. COMPENSATION. Compensation paid to members of the Personnel Board, Planning Board and Board of Appeals may be changed by ordinance.

4.08 FORFEITURE OF OFFICE. A member of the Personnel Board, Planning Board, or Board of Appeals shall forfeit his office and a vacancy therein shall exist, if he (1) dies; (2) resigns; (3) moves from the City; (4) in the case of the Planning Board and Board of Appeals if he moves from his ward into a ward in which there are currently two (2)

members of the same Board; (5) is convicted of a crime or offense involving moral turpitude while in office; (6) is found to be in violation of Section 8.04 of this Charter; or (7) exceeds the tenure authorized for the office. If any vacancy should occur, it shall be filled for the remainder of the unexpired term by appointment of the Mayor.

- 4.09 LIMITATION OF TERMS. No member of any Board established by this Article shall serve more than a full five (5) year term on the same Board within any ten (10) year period. Said period shall be deemed to commence at the time of their first appointment.

Article VI. Financial Procedures

6.05 CAPITAL PROGRAM.

- (a) SUBMISSION TO COUNCIL. The administrator shall each year prepare and submit to the Council a five (5) year capital program, including the capital program proposed for the School Department, at least five and one-half (5½) months prior to the end of the fiscal year. The Administrator shall concurrently refer the Capital Program to the Planning Board for its review.
- (b) CONTENTS. The capital program shall include:
- (1) A clear general summary of its contents;
 - (2) A list of all capital improvements which are proposed to be undertaken during the five (5) years next ensuing, with appropriate supporting information as to the necessity for such improvements;
 - (3) Cost estimates, method of financing and recommended time schedules for each improvement; and;
 - (4) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

The above information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

- (c) PLANNING BOARD REVIEW. The Planning Board shall review the proposed capital program each year, and following public hearing thereon, shall forward its recommendations to the City Council at least four and one-half (4½) months prior to the end of the current fiscal year.

Article VIII. General Provisions

- 8.01 (b) APPOINTIVE OFFICERS AND EMPLOYEES: TERMS. Except as may otherwise be provided in this Charter, all City officers, employees and appointees shall serve at the pleasure of the appointing power.
- 8.03 SWEARING IN OFFICERS. All officers provided for in this Charter, whether elective or appointive, shall, before assuming their respective duties, qualify by being sworn to the faithful performance thereof before the City Clerk or some magistrate thereto qualified.
- 8.04 PERSONAL/ FINANCIAL INTEREST. If any elected or appointed official, officer or employee, or the spouse of any such person has financial interest, direct or indirect, in any contract with the City or in the purchase or sale of any land, material, supplies or services to the City or to a contractor supplying the City, he shall make known that interest and shall refrain from voting upon or otherwise participating in his capacity as an elected or appointed official, officer or employee, in the making of such purchase or sale or in the making or performance of such contract. Any such person who willfully conceals the financial interest of himself or his spouse, or willfully violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit his office or position. Violation of this section with the knowledge, express or implied, of the person or corporation contracting with or making a purchase from or a sale to the City, shall render the contract, purchase or sale voidable by the City.
- 8.05 PROHIBITIONS.
- (a) ACTIVITIES PROHIBITED. No person shall be appointed to or removed from or in any way favored or discriminated against with respect to any City position or appointive City administrative office because of race, sex, political or religious opinions or affiliations, or on any other basis prohibited by Statute of general application.
- (b) PENALTIES. Any person convicted of any crime involving falsification in official matters, bribery, corrupt practices, or obstructing governmental administration, as these crimes are defined in the Revised Statutes of Maine, as amended, shall be ineligible for a period of two (2) years following said conviction to hold any City office or employment, except as otherwise provided by law.

II. Rules of Procedure

Lewiston Planning Board

1. Officers.

The first regular meeting in January shall constitute an annual organizational meeting of the Board. A chairman, vice-chairman, and secretary shall then be elected by a majority vote of members present. The officers will serve for one (1) year until their successors are elected at the next organizational meeting.

Officers may be elected for a shorter term at the discretion of the Planning Board with new elections to be held upon that term's expiration. Should an officer cease to serve for whatever reason, the Planning Board may hold new elections.

2. Duties.

A. The chairman shall call regular meetings of the Planning Board as required. The chairman shall also call meetings of the Planning Board when requested to do so by four (4) members of the Planning Board. The chairman shall preside at all meetings and hearings of the Board, decide all points of order and procedure, be the official spokesman for the Board, act as liaison between the Board and other agencies of the City of Lewiston, and perform any duties required by law, ordinance, charter or the Board.

B. In the absence or disqualification of the chairman, the vice-chairman shall assume the duties of the chairman. In the absence and/or disqualification of both the chairman and vice-chairman, a member shall be chosen by a majority vote of all members present and will assume the duties of chairman for that meeting.

C. The secretary, with the assistance of the Planning and Code Enforcement Staff, shall keep a permanent record of all Board Meetings or other official actions of the Board and shall keep all correspondence of the Board on file in the City Planning and Code Enforcement Department's office. The secretary, with the assistance of the Planning and Code Enforcement Department Staff, shall also be responsible for keeping the records of the various proceedings which may be brought before the Board. All records to be prepared or retained by the secretary are deemed public and may be inspected at reasonable times. The secretary, with the direction of the Planning and Code Enforcement Department Staff, shall conduct, at the direction of the Planning Board, all official correspondence of the Board, send out all required notices, and perform all other duties required by law, ordinance, or the Board.

All correspondence from the City Staff as well as all recommendations presented and actions suggested as necessary shall be incorporated without need for a specific motion into the record and shall be part of the record of the hearing on the specific issue.

- D. The Planning Board shall request an advisory opinion from the Historic Preservation Review Board concerning development proposals that may potentially impact significant structures or districts as defined in Appendix A, Article XV, Sec. 3 of the Zoning and Land Use Code.

3. Meetings.

- A. Regular meetings of the Planning Board shall be held on the second and fourth Mondays of each month beginning at 5:30 p.m. in the City Building. No new agenda item shall be heard after 9:00 p.m., with meetings adjourning no later than 9:30 p.m. Whenever there are no business matters to be considered at any regular meeting, other than the organizational meeting, the chairman may dispense with such meetings by notifying each member of the Board and each other person who may have been given notice of the meeting at least 24 hours prior to the time set for the meeting, provided that when at least four (4) other members of the Board request that such regular meeting be held, the chairman shall not dispense with it.

Notification by use of electronic mail shall be considered an acceptable means of communication.

- B. **Special meetings** and executive sessions may be held upon call of the Mayor, the chairman, and at such other times as the Planning Board may determine, provided that at least 24 hours notice of the meeting be given to each member.
- C. **Removal of Members-** A member who misses three (3) consecutive meetings without just cause, as determined by the chairman, shall be reported to the Mayor for an evaluation of his/her willingness to continue to serve on this Board.
- D. **Late Material** related to both development and non-development review agenda items which are not included in the Planning Board packet may only be considered if agreed to by a majority vote of the Board.
- E. **Agenda-** The order of business at all regular meetings of the Planning Board shall be as follows:
 - 1. Roll Call - Planning Board Members, City Staff, and identify other Staff or City representatives in attendance.
 - 2. Adjustments to the Agenda.
 - 3. Correspondence - The Chairman will request a motion to accept and place on file correspondence (to be identified), other submitted material not in the Planning Board packet, and -Staff memoranda (this will establish the record as Staff memoranda will reference all submittals the Planning Board has received.) Pursuant to 2.C. all correspondence from the City Staff is, without need for motion, incorporated into the record. All other correspondence may be adopted by motion at this point or later in the proceedings as decided by the Planning Board by four (4) affirmative votes.
 - 4. Public Hearings.

5. Review of Development Proposals.
6. Other Business - New and Old Business.
7. Reading of Minutes of the previous meeting.
8. Adjournment.

- F. **Protocol** - The Planning Board is comprised of seven (7) appointed members. A quorum necessary to conduct an official meeting of the Planning Board shall consist of at least four (4) members. There shall be, in addition to the seven (7) members of the Board, two (2) associate members. Associate members will sit with the rest of the members and may participate in all Board deliberations, but are not able to vote unless designated by the chair or acting chair to serve in the place of a member who is absent, substantially tardy, recuses themselves, is disqualified or otherwise unable to participate. Such designations should be on a rotating basis between associate members as the opportunity arises during the course of the meeting.

Agendas for meetings shall be made available at the entrance to the meeting room.

Regarding the agenda items before the Planning Board, the chair shall first identify the item, and Staff will make a brief presentation followed by Planning Board questions. The chair will then request a presentation by the applicant/petitioner to explain their proposal followed by Board questions. The chair will then open the meeting for public comment with proponents speaking first followed by anyone in opposition or having questions regarding the proposal. The chair shall request that everyone who speaks for or against or has a question concerning the subject matter to identify themselves by name and address for our record. The applicant/petitioner shall be given the opportunity to make any responses to public comments. The public portion will then be closed and the Planning Board will deliberate and vote on the matter before us. Once the public comment portion of the meeting is closed, unless there is a specific question from a Board Member to the public, the public portion will remain closed.

The Planning Board must decide on all matters in accordance with the Code of Ordinances of the City of Lewiston along with any other provisions of law within the Board's jurisdiction. Some decisions that this Board makes may also be contrary to public opinion and it is possible that some Board Members may have philosophical differences with some proposals. However, the Board must base its decisions on the law and ordinances rather than on individual sentiments. The concurring vote of at least four (4) members is required to constitute an action on any matter requiring a Public Hearing. All other matters require a simple majority vote.

- G. **Guidance**- The Planning Board shall act in accordance with the provisions of the Zoning Ordinance (Appendix A of the Lewiston Revised Code of Ordinances)and shall follow as guidance, the standards of development review outlined in the Site Plan Review and Design Guidelines adopted by the Planning Board on October 22, 1987, and as amended.

- H. **Minutes-** The secretary, with the assistance of the Planning and Code Enforcement Department staff, shall keep minutes of the proceedings of each meeting of the Planning Board, including workshops, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and the final disposition of matters shall be recorded by resolution indicating the reasons of the Board therefore.
- I. **Freedom of Access/Information-** All meetings of the Planning Board shall be conducted in accordance with Maine's Public Right to Know Law. A copy of this statute, Title I, M.R.S.A., Sections 401—410 is enclosed in this handbook and deemed a part of these Rules.
- J. **Attendance by Applicant-** An applicant or petitioner or their agent must appear at the scheduled meeting at which the subject case is to be heard. Failure to appear may result in the dismissal of the case. The Planning Board may, upon majority vote, continue the matter to a date specific for the hearing. Reinstatement of the case shall be allowed upon the filing of a written request. Reinstatement shall be allowed only upon payment of any required fees incurred from re-advertising the case.
- K. **Continuance-** A continuance may be granted to an applicant when good cause is shown that they are unable to present their case at the scheduled meeting.

4. Notice.

- A. **Legal Notice-** The secretary of the Planning Board, with the assistance of the Planning and Code Enforcement Department staff, will coordinate with the City Clerk of the City of Lewiston to ensure compliance with required legal notice for public meetings. In addition, it will be assumed by implication that notice of public hearings held by the Planning Board is mandatory and legal notice will consist of a notice conspicuously posted in the office of the City Clerk a reasonable time in advance of the meeting which under normal circumstance will be construed to mean at least seven (7) days before the date of each meeting. The Board at its discretion may determine that a given matter is of particular importance or interest to the community and in addition to posting as required above may insert a paid notice of the subject public hearing in the local newspaper.

On all proposals to amend the code, including rezoning proposals, notice shall be provided in accordance with Title 30-A, Chapter 187 §4352, section 8, 9, and 10 of the Maine Revised Statutes Annotated. In the case of a proposal for conditional or contract zoning, a copy of the proposed conditions and restrictions must be included. Mailed notices shall be sent first class to the addresses shown on the property tax records of the City of Lewiston and shall be deemed given when mailed.

- B. **Meeting Notice-** The secretary of the Planning Board, with the assistance of Planning and Code Enforcement Department Staff, will coordinate with the City Clerk of the

City of Lewiston to serve notice of such public hearings detailing subject, time, and place of hearing a reasonable time in advance of the hearing, upon those individuals meriting personal notice because of their relationship to the subject matter at issue. By way of example, the following are parties who because of their relationship to the subject matter at issue shall be given official notice of such public hearing: developer of a proposed development, petitioners of a zoning amendment, all land owners whose property abuts the lot or lots involved, and other property owners potentially affected by the proposed development or zoning amendment as determined by the Planning and Code Enforcement Department Staff. Notice shall be by any method of personal service or substituted personal service authorized by the ordinances of the City of Lewiston and the laws of the State of Maine.

C. Notice of Abutters.

Procedure for Notification of Development to Affected Property Owners.

For projects requiring Planning Board review and approval, the Planning and Code Enforcement Department Staff shall notify abutting and affected property owners, in writing, of the specific nature of the development plans.

The word, “abutting” shall be defined to mean any property which shares a common physical boundary with the area under review and properties located directly across any previously accepted city street.

The word, “affected” shall be defined to mean any property not sharing a common physical boundary but upon whom the proposed development would have impact, as determined by the Planning and Code Enforcement Department Director or designee.

Notification shall be by first-class mail and include a brief description of the project. Notice shall be mailed at least seven (7) days in advance of formal review by the Planning Board and shall include the date(s) and time(s) of review by the reviewing authority.

5. Ad Hoc Committees.

The chairman may from time to time appoint committees necessary to perform special functions of the Board.

6. Parliamentary Procedures.

- A. In all cases where parliamentary procedure questions arise in the conduct of the Board’s affairs, the current edition of Robert’s Rules of Order shall be taken as the source of authority to decide the orderly course of the proceedings except as otherwise provided herein.
- B. Reconsideration of Items - When an item is voted on by the Board, it shall be in order for any member who voted on the prevailing side to move a reconsideration thereof, during the same meeting or at the immediate next regularly scheduled Planning Board

meeting, but not afterwards. In instances where a majority of those present vote in favor of an item but there are less than the normally required four votes, the prevailing side shall be those who voted against the item. No motion to reconsider a vote taken at a previous meeting shall be in order for consideration at the immediate next regularly scheduled Planning Board meeting unless an item to that effect is scheduled on the agenda for such meeting or unless five of the members consent to such reconsideration.

7. Hearing Procedures for all Planning Board Public Hearings.

- I. Staff presentation
- II. Applicant presentation
- III. Public Comment:
 - A. Proponents or their representatives
 - B. Opponents or their representatives.
 - C. Other interested parties.
 - D. When all parties or representatives have presented their position, other parties may ask questions through the chair.
 - E. Testimony or other evidence may be submitted or received in writing when the same shall benefit convenience. This shall not be construed to abridge the right of any person or party to be heard orally by the Board.
- IV. After determining all public representatives have been provided opportunity to be heard, the Chair shall close the review to public comment. (The Board shall reserve the right to question through the Chair, any person present).
- V. The Board shall deliberate on the evidence (the record) and take appropriate action (including findings of fact) which may include tabling the item to a future meeting.
- VI. Within five (5) working days of the meeting, written notification of Board action shall be sent to the applicant.

8. Guide to Ethical Conduct.

The Planning Board adopts for the Board and its staff as a guide to ethical conduct The American Planning Associations (APA) “Ethical Principles in Planning”, as applicable, copies of which are enclosed in this handbook and deemed a part of these Rules. (See Section IV of the Handbook)

9. Amendment.

These Rules may be suspended, amended, or repealed on an affirmative vote of a majority of all members present.

10. Review and Adoption.

These Rules of Procedure shall be reviewed and adopted annually at the Board’s organizational meeting, or during the year should the need arise.

11. Student Members.

Student members are appointed by the Mayor. They will enjoy full honorary Board privileges and should be extended the same courtesy as full Board Members. The only exception is that they have no voting privileges. Student members will have full access to information as regular Board Members and receive meeting information packets as regular Board Members. Student Members will conduct themselves appropriately. Student members serve at the pleasure of the Planning Board Chair and/or the Mayor.

12. Workshops

- a) Workshop meetings shall be held when deemed appropriate and necessary.
- b) Citizens are welcome, and highly encouraged, to attend and participate in workshops, however, discussion may be limited by the Planning Board Chair, if deemed appropriate.

13. Rules of Decorum

The Planning Board will practice civility and decorum in discussion and debate. Each member of the Board shall cooperate with the Chair when presiding in preserving order and decorum and no member shall, by conversation or otherwise, delay or interrupt the proceedings of the Board, nor disturb any member while speaking, or fail to abide by the orders of the Chair except as specifically permitted by these Rules or Roberts Rules of Order.

- (a) Subject to being overruled by a majority vote of the members, which vote shall be taken without debate or comment, the Chair shall maintain order and preserve the decorum of the meeting.
- (b) Every member of the Board desiring to speak shall seek recognition from the Chair and, upon recognition, shall confine remarks to the question under debate, avoiding all indecorous language or reference to personalities, and direct comments to the Chair unless otherwise granted permission.
- (c) A member of the Board, once recognized, shall not be interrupted when speaking unless it is for the purpose of calling such person to order. If a member of the Board, while speaking, is called to order, that person shall cease speaking until the question of order is determined.
- (d) When two or more members request the floor at the same time, the Chair shall name the one entitled to the floor.
- (e) After receiving permission from the Chair, any member may address a question to any other member.
- (f) All members of the Board shall be provided the opportunity to speak and agree or disagree, but no member shall speak twice on any given subject unless all other members have been given the opportunity to speak.
- (g) No Board members shall engage in private conversation while in the Planning Board in such a manner as to interrupt the proceedings of the Board.
- (h) If considered necessary because of grave disorder, the Chair may adjourn or suspend the meeting for a specified time.

III. Public Procedures and Freedom of Access Law (Maine Public Right to Know Law)

Maine Revised Statute Title 1, Chapter 13: PUBLIC RECORDS AND PROCEEDINGS
A portion of which acquired from
<http://www.mainelegislature.org/legis/statutes/1/title1ch13sec0.html> on January 18, 2017.

Maine Revised Statutes

Title 1: GENERAL PROVISIONS

Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

Subchapter 1: FREEDOM OF ACCESS

§400. SHORT TITLE

This subchapter may be known and cited as "the Freedom of Access Act." [2011, c. 662, §1 (NEW).]

SECTION HISTORY
2011, c. 662, §1 (NEW).

§401. DECLARATION OF PUBLIC POLICY; RULES OF CONSTRUCTION

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter. [1975, c. 758, (RPR).]

This subchapter does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of this subchapter. [2011, c. 320, Pt. B, §1 (NEW).]

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent. [1975, c. 758, (RPR).]

SECTION HISTORY
1975, c. 483, §1 (AMD). 1975, c. 758, (RPR). 2011, c. 320, Pt. B, §1 (AMD).

§402. DEFINITIONS

1. Conditional approval. Approval of an application or granting of a license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.

[1975, c. 758, (NEW) .]

1-A. Legislative subcommittee. "Legislative subcommittee" means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.

[1991, c. 773, §1 (NEW) .]

2. Public proceedings. The term "public proceedings" as used in this subchapter means the transactions of any functions affecting any or all citizens of the State by any of the following:

A. The Legislature of Maine and its committees and subcommittees; [1975, c. 758, (NEW).]

B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Community College System and any of its committees and subcommittees; [1989, c. 358, §1 (AMD); 1989, c. 443, §1 (AMD); 1989, c. 878, Pt. A, §1 (RPR); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF).]

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; [1991, c. 848, §1 (AMD).]

D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1995, c. 608, §1 (AMD).]

E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees; [2009, c. 334, §1 (AMD).]

F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and [2009, c. 334, §2 (AMD).]

G. The committee meetings, subcommittee meetings and full membership meetings of any association that:

- (1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and
- (2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.

This paragraph applies to only those meetings pertaining to interscholastic sports and does not apply to any meeting or any portion of any meeting the subject of which is limited to personnel issues, allegations of interscholastic athletic rule violations by member schools, administrators, coaches or student athletes or the eligibility of an individual student athlete or coach. [2009, c. 334, §3 (NEW).]

[2009, c. 334, §§1-3 (AMD) .]

3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:

- A. Records that have been designated confidential by statute; [1975, c. 758, (NEW).]
- B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding; [1975, c. 758, (NEW).]
- C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over; [1991, c. 773, §2 (AMD).]
- C-1. Information contained in a communication between a constituent and an elected official if the information:
- (1) Is of a personal nature, consisting of:
 - (a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
 - (b) Credit or financial information;
 - (c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;
 - (d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or
 - (e) An individual's social security number; or
 - (2) Would be confidential if it were in the possession of another public agency or official; [2011, c. 264, §1 (NEW).]
- D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives; [1989, c. 358, §4 (AMD).]
- E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Community College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B; [1989, c. 358, §4 (AMD); 1989, c. 443, §2 (AMD); 1989, c. 878, Pt. A, §2 (RPR); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF).]
- F. Records that would be confidential if they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1991, c. 448, §1 (AMD).]
- G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1991, c. 448, §1 (AMD).]
- H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct; [1995, c. 608, §4 (AMD).]
- I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter; [1999, c. 96, §1 (AMD).]

J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed by a member or in a public meeting of the advisory organization; [2001, c. 675, §1 (AMD).]

K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A; [2003, c. 392, §1 (AMD).]

L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure; [2003, c. 614, §1 (AMD).]

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure, systems and software. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure; [2011, c. 662, §2 (AMD).]

N. Social security numbers; [2011, c. 320, Pt. E, §1 (AMD).]

O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:

(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and

(2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials; [2009, c. 1, §1 (COR).]

P. Geographic information regarding recreational trails that are located on private land that are authorized voluntarily as such by the landowner with no public deed or guaranteed right of public access, unless the landowner authorizes the release of the information; [2011, c. 149, §1 (AMD).]

(Paragraph P as enacted by PL 2009, c. 339, §3 is REALLOCATED TO TITLE 1, SECTION 402, SUBSECTION 3, PARAGRAPH Q)

Q. (REALLOCATED FROM T. 1, §402, sub-§3, ¶P) Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the general public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials or the Department of Corrections under conditions that protect the information from further disclosure; [2015, c. 335, §1 (AMD).]

R. Social security numbers in the possession of the Secretary of State; [2013, c. 518, §1 (AMD).]

S. E-mail addresses obtained by a political subdivision of the State for the sole purpose of disseminating noninteractive notifications, updates and cancellations that are issued from the political subdivision or its elected officers to an individual or individuals that request or regularly accept these noninteractive communications; [2015, c. 161, §1 (AMD).]

T. Records describing research for the development of processing techniques for fisheries, aquaculture and seafood processing or the design and operation of a depuration plant in the possession of the Department of Marine Resources; and [2015, c. 161, §2 (AMD).]

U. Records provided by a railroad company describing hazardous materials transported by the railroad company in this State, the routes of hazardous materials shipments and the frequency of hazardous materials operations on those routes that are in the possession of a state or local emergency management entity or law enforcement agency, a fire department or other first responder. For the purposes of this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of Federal Regulations, Section 105.5. [2015, c. 161, §3 (NEW).]

[2015, c. 161, §§1-3 (AMD); 2015, c. 335, §1 (AMD) .]

3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:

A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of furlough and dates of furlough; [2013, c. 267, Pt. B, §1 (AMD).]

B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of residence and dates of supervision; and [2013, c. 267, Pt. B, §1 (AMD) .]

C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information. [2013, c. 267, Pt. B, §1 (AMD).]

[2013, c. 267, Pt. B, §1 (AMD) .]

4. Public records of interscholastic athletic organizations. Any records or minutes of meetings under subsection 2, paragraph G are public records.

[2009, c. 334, §4 (NEW) .]

5. Public access officer. "Public access officer" means the person designated pursuant to section 413, subsection 1.

[2011, c. 662, §3 (NEW) .]

6. Reasonable office hours. "Reasonable office hours" includes all regular office hours of an agency or official.

[2011, c. 662, §3 (NEW) .]

SECTION HISTORY

1973, c. 433, §1 (AMD). 1975, c. 243, (RPR). 1975, c. 483, §2 (AMD). 1975, c. 758, (RPR). 1977, c. 164, §§1,2 (AMD). 1977, c. 696, §9 (AMD). 1985, c. 695, §§1,2 (AMD). 1985, c. 779, §§1,2 (AMD). 1987, c. 20, §1 (AMD). 1987, c. 402, §A1 (AMD). 1987, c. 477, §1 (AMD). 1989, c. 358, §§1-4 (AMD). 1989, c. 443, §§1,2 (AMD). 1989, c. 878, §§A1,2 (AMD). 1991, c. 448, §§1,2 (AMD). 1991, c. 773, §§1,2 (AMD). 1991, c. 848, §1 (AMD). 1995, c. 608, §§1-5 (AMD). 1997, c. 714, §1 (AMD). 1999, c. 96, §§1-3 (AMD). 2001, c. 477, §1 (AMD). 2001, c. 675, §§1-3 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2003, c. 392, §§1-3 (AMD). 2003, c. 614, §§1-3 (AMD). 2005, c. 381, §§1-3 (AMD). 2007, c. 597, §1 (AMD). RR 2009, c. 1, §§1-3

(COR). 2009, c. 176, §§1-3 (AMD). 2009, c. 334, §§1-4 (AMD). 2009, c. 339, §§1-3 (AMD). 2011, c. 149, §§1-3 (AMD). 2011, c. 264, §1 (AMD). 2011, c. 320, Pt. E, §1 (AMD). 2011, c. 662, §§2, 3 (AMD). 2013, c. 267, Pt. B, §1 (AMD). 2013, c. 339, §§1-3 (AMD). 2013, c. 518, §§1-3 (AMD). 2015, c. 161, §§1-3 (AMD). 2015, c. 335, §1 (AMD).

§402-A. PUBLIC RECORDS DEFINED

(REPEALED)

SECTION HISTORY

1975, c. 483, §3 (NEW). 1975, c. 623, §1 (RPR). 1975, c. 758, (RP).

§403. MEETINGS TO BE OPEN TO PUBLIC; RECORD OF MEETINGS

1. Proceedings open to public. Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.

[2011, c. 320, Pt. C, §1 (NEW) .]

2. Record of public proceedings. Unless otherwise provided by law, a record of each public proceeding for which notice is required under section 406 must be made within a reasonable period of time after the proceeding and must be open to public inspection. At a minimum, the record must include:

A. The date, time and place of the public proceeding; [2011, c. 320, Pt. C, §1 (NEW).]

B. The members of the body holding the public proceeding recorded as either present or absent; and [2011, c. 320, Pt. C, §1 (NEW).]

C. All motions and votes taken, by individual member, if there is a roll call. [2011, c. 320, Pt. C, §1 (NEW).]

[2011, c. 320, Pt. C, §1 (NEW) .]

3. Audio or video recording. An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.

[2011, c. 320, Pt. C, §1 (NEW) .]

4. Maintenance of record. Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.

[2011, c. 320, Pt. C, §1 (NEW) .]

5. Validity of action. The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.

[2011, c. 320, Pt. C, §1 (NEW) .]

6. Advisory bodies exempt from record requirements. Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.

[2011, c. 320, Pt. C, §1 (NEW) .]

SECTION HISTORY

1969, c. 293, (AMD). 1975, c. 422, §1 (AMD). 1975, c. 758, (RPR). 2009, c. 240, §1 (AMD). 2011, c. 320, Pt. C, §1 (RPR).

§404. RECORDED OR LIVE BROADCASTS AUTHORIZED

In order to facilitate the public policy so declared by the Legislature of opening the public's business to public scrutiny, all persons shall be entitled to attend public proceedings and to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings. The body or agency holding the public proceedings may make reasonable rules and regulations governing these activities, so long as these rules or regulations do not defeat the purpose of this subchapter. [1975, c. 758, (RPR).]

SECTION HISTORY

1975, c. 422, §2 (RPR). 1975, c. 483, §4 (AMD). 1975, c. 758, (RPR).

§404-A. DECISIONS

(REPEALED)

SECTION HISTORY

1973, c. 433, §2 (NEW). 1973, c. 704, §§1,2 (AMD). 1975, c. 758, (RP).

§405. EXECUTIVE SESSIONS

Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions. [1975, c. 758, (NEW).]

1. Not to defeat purposes of subchapter. An executive session may not be used to defeat the purposes of this subchapter as stated in section 401.

[2009, c. 240, §2 (AMD) .]

2. Final approval of certain items prohibited. An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at an executive session.

[2009, c. 240, §2 (AMD) .]

3. Procedure for calling of executive session. An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.

[2009, c. 240, §2 (AMD) .]

4. Motion contents. A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the executive session exists and the failure to cite the valid authority was inadvertent.

[2003, c. 709, §1 (AMD) .]

5. Matters not contained in motion prohibited. Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session.

[2009, c. 240, §2 (AMD) .]

6. Permitted deliberation. Deliberations on only the following matters may be conducted during an executive session:

A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or persons subject to the following conditions:

(1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the individual's reputation or the individual's right to privacy would be violated;

(2) Any person charged or investigated must be permitted to be present at an executive session if that person so desires;

(3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against that person be conducted in open session. A request, if made to the agency, must be honored; and

(4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.

This paragraph does not apply to discussion of a budget or budget proposal; [2009, c. 240, §2 (AMD) .]

B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, as long as:

(1) The student and legal counsel and, if the student is a minor, the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire; [2009, c. 240, §2 (AMD) .]

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency; [1987, c. 477, §3 (AMD) .]

D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions; [1999, c. 144, §1 (RPR) .]

E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage; [2009, c. 240, §2 (AMD) .]

F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute; [1999, c. 180, §1 (AMD) .]

G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and [1999, c. 180, §2 (AMD) .]

H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter. [1999, c. 180, §3 (NEW) .]

[2009, c. 240, §2 (AMD) .]

SECTION HISTORY

1975, c. 758, (RPR). 1979, c. 541, §A3 (AMD). 1987, c. 477, §§2,3 (AMD). 1987, c. 769, §A1 (AMD). 1999, c. 40, §§1,2 (AMD). 1999, c. 144, §1 (AMD). 1999, c. 180, §§1-3 (AMD). 2003, c. 709, §1 (AMD). 2009, c. 240, §2 (AMD).

§405-A. RECORDED OR LIVE BROADCASTS AUTHORIZED

(REPEALED)

SECTION HISTORY

1975, c. 483, §5 (NEW). 1975, c. 758, (RP).

§405-B. APPEALS

(REPEALED)

SECTION HISTORY

1975, c. 483, §5 (NEW). 1975, c. 758, (RP).

§405-C. APPEALS FROM ACTIONS

(REPEALED)

SECTION HISTORY

1975, c. 483, §5 (NEW). 1975, c. 758, (RP).

§406. PUBLIC NOTICE

Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons. This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding. [1987, c. 477, §4 (AMD).]

SECTION HISTORY

1975, c. 483, §6 (AMD). 1975, c. 758, (RPR). 1987, c. 477, §4 (AMD).

§407. DECISIONS

1. Conditional approval or denial. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to appraise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.

[1975, c. 758, (NEW) .]

2. Dismissal or refusal to renew contract. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof must be kept by the agency and made available to any interested member of the public who may wish to review it.

[2009, c. 240, §3 (AMD) .]

SECTION HISTORY

1975, c. 758, (NEW). 2009, c. 240, §3 (AMD).

§408. PUBLIC RECORDS AVAILABLE FOR PUBLIC INSPECTION AND COPYING

(REPEALED)

SECTION HISTORY

1975, c. 758, (NEW). 2003, c. 709, §2 (RPR). 2007, c. 501, §1 (AMD). 2009, c. 240, §4 (AMD). 2011, c. 662, §4 (RP).

§408-A. PUBLIC RECORDS AVAILABLE FOR INSPECTION AND COPYING

Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record. [2011, c. 662, §5 (NEW).]

1. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge a fee for inspection unless the public record cannot be inspected without being converted or compiled, in which case the agency or official may charge a fee as provided in subsection 8.

[2011, c. 662, §5 (NEW) .]

2. Copy. A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. The agency or official may charge a fee for copies as provided in subsection 8.

A. A request need not be made in person or in writing. [2011, c. 662, §5 (NEW).]

B. The agency or official shall mail the copy upon request. [2011, c. 662, §5 (NEW).]

[2011, c. 662, §5 (NEW) .]

3. Acknowledgment; clarification; time estimate; cost estimate. The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within 5 working days of receiving the request and may request clarification concerning which public record or public records are being requested. Within a reasonable time of receiving the request, the agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request, as well as a cost estimate as provided in subsection 9. The agency or official shall make a good faith effort to fully respond to the request within the estimated time. For purposes of this subsection, the date a request is received is the date a sufficient description of the public record is received by the agency or official at the office responsible for maintaining the public record. An agency or official that receives a request for a public record that is maintained by that agency but is not maintained by the office that received the request shall forward the request to the office of the agency or official that maintains the record, without willful delay, and shall notify the requester that the request has been forwarded and that the office to which the request has been forwarded will acknowledge receipt within 5 working days of receiving the request.

[2015, c. 317, §1 (AMD) .]

4. Refusals; denials. If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide, within 5 working days of the receipt of the request for inspection or copying, written notice of the denial, stating the reason for the denial or the expectation that the request will be denied in full or in part following a review. A request for inspection or copying may be denied, in whole or in part, on the basis that the request is unduly burdensome or oppressive if the procedures established in subsection 4-A are followed. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.

[2015, c. 494, Pt. A, §1 (RPR) .]

4-A. Action for protection. A body, an agency or official may seek protection from a request for inspection or copying that is unduly burdensome or oppressive by filing an action for an order of protection in the Superior Court for the county where the request for records was made within 30 days of receipt of the request.

A. The following information must be included in the complaint if available or provided to the parties and filed with the court no more than 14 days from the filing of the complaint or such other period as the court may order:

- (1) The terms of the request and any modifications agreed to by the requesting party;
- (2) A statement of the facts that demonstrate the burdensome or oppressive nature of the request, with a good faith estimate of the time required to search for, retrieve, redact if necessary and compile the records responsive to the request and the resulting costs calculated in accordance with subsection 8;
- (3) A description of the efforts made by the body, agency or official to inform the requesting party of the good faith estimate of costs and to discuss possible modifications of the request that would reduce the burden of production; and
- (4) Proof that the body, agency or official has submitted a notice of intent to file an action under this subsection to the party requesting the records, dated at least 10 days prior to filing the complaint for an order of protection under this subsection. [2015, c. 248, §2 (NEW) .]

B. Any appeal that may be filed by the requesting party under section 409 may be consolidated with an action under this subsection. [2015, c. 248, §2 (NEW) .]

C. An action for protection may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require upon the request of any party. [2015, c. 248, §2 (NEW) .]

D. If the court finds that the body, agency or official has demonstrated good cause to limit or deny the request, the court shall enter an order making such findings and establishing the terms upon which production, if any, must be made. If the court finds that the body, agency or official has not demonstrated good cause to limit or deny the request, the court shall establish a date by which the records must be provided to the requesting party. [2015, c. 248, §2 (NEW) .]

[2015, c. 248, §2 (NEW) .]

5. Schedule. Inspection, conversion pursuant to subsection 7 and copying of a public record subject to a request under this section may be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody or control of the public record requested. If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists.

[2011, c. 662, §5 (NEW) .]

6. No requirement to create new record. An agency or official is not required to create a record that does not exist.

[2011, c. 662, §5 (NEW) .]

7. Electronically stored public records. An agency or official having custody or control of a public record subject to a request under this section shall provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.

A. If in order to provide access to an electronically stored public record the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format for inspection or copying, the agency or official may charge a fee to cover the cost of conversion as provided in subsection 8. [2011, c. 662, §5 (NEW).]

B. This subsection does not require an agency or official to provide a requester with access to a computer terminal. [2011, c. 662, §5 (NEW).]

[2011, c. 662, §5 (NEW) .]

8. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for public records as follows.

A. The agency or official may charge a reasonable fee to cover the cost of copying. [2011, c. 662, §5 (NEW) .]

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information. [2011, c. 662, §5 (NEW) .]

C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format. [2011, c. 662, §5 (NEW) .]

D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies. [2011, c. 662, §5 (NEW) .]

E. The agency or official may charge for the actual mailing costs to mail a copy of a record. [2011, c. 662, §5 (NEW) .]

[2011, c. 662, §5 (NEW) .]

9. Estimate. The agency or official having custody or control of a public record subject to a request under this section shall provide to the requester an estimate of the time necessary to complete the request and of the total cost as provided by subsection 8. If the estimate of the total cost is greater than \$30, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 10 applies.

[2011, c. 662, §5 (NEW) .]

10. Payment in advance. The agency or official having custody or control of a public record subject to a request under this section may require a requester to pay all or a portion of the estimated costs to complete the request prior to the search, retrieval, compiling, conversion and copying of the public record if:

A. The estimated total cost exceeds \$100; or [2011, c. 662, §5 (NEW) .]

B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner. [2011, c. 662, §5 (NEW) .]

[2011, c. 662, §5 (NEW) .]

11. Waivers. The agency or official having custody or control of a public record subject to a request under this section may waive part or all of the total fee charged pursuant to subsection 8 if:

A. The requester is indigent; or [2011, c. 662, §5 (NEW) .]

B. The agency or official considers release of the public record requested to be in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. [2011, c. 662, §5 (NEW) .]

[2011, c. 662, §5 (NEW) .]

SECTION HISTORY

2011, c. 662, §5 (NEW). 2013, c. 350, §§1, 2 (AMD). 2015, c. 248, §§1, 2 (AMD). 2015, c. 249, §1 (AMD). 2015, c. 317, §1 (AMD). 2015, c. 494, Pt. A, §1 (AMD).

§409. APPEALS

1. Records. Any person aggrieved by a refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record under section 408-A may appeal the refusal, denial or failure within 30 calendar days of the receipt of the written notice of refusal, denial or failure to the Superior Court within the State for the county where the person resides or the agency has its principal office. The agency or official shall file a statement of position explaining the basis for denial within 14 calendar days of service of the appeal. If a court, after a review, with taking of testimony and other evidence as determined necessary, determines such refusal, denial or failure was not for just and proper cause, the court shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

[2015, c. 249, §2 (AMD) .]

2. Actions. If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

[2011, c. 559, Pt. A, §2 (AMD) .]

3. Proceedings not exclusive. The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.

[2009, c. 240, §6 (AMD) .]

4. Attorney's fees. In an appeal under subsection 1 or 2, the court may award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.

This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.

[2009, c. 423, §1 (NEW) .]

SECTION HISTORY

1975, c. 758, (NEW). 1987, c. 477, §5 (AMD). 2007, c. 695, Pt. C, §1 (AMD). 2009, c. 240, §§5, 6 (AMD). 2009, c. 423, §1 (AMD). 2011, c. 559, Pt. A,

§§1, 2 (AMD). 2011, c. 662, §6 (AMD). 2013, c. 350, §3 (AMD). 2015, c. 249, §2 (AMD).

§410. VIOLATIONS

For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation shall be liable for a civil violation for which a forfeiture of not more than \$500 may be adjudged. [1987, c. 477, §6 (RPR).]

SECTION HISTORY

1975, c. 758, (NEW). 1987, c. 477, §6 (RPR).

IV. Ethical Principles in Planning

(Adopted May 1992 by the American Planning Association and acquired from <http://www.planning.org/ethics/ethicalprinciples.htm> on January 18, 2017)

This statement is a guide to ethical conduct for all who participate in the process of planning as advisors, advocates, and decision makers. It presents a set of principles to be held in common by certified planners, other practicing planners, appointed and elected officials, and others who participate in the process of planning.

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community.

Planning issues commonly involve a conflict of values and, often, there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants.

Those who practice planning need to adhere to a special set of ethical requirements that must guide all who aspire to professionalism.

The Code is formally subscribed to by each certified planner. It includes an enforcement procedure that is administered by AICP. The Code, however, provides for more than the minimum threshold of enforceable acceptability. It also sets aspirational standards that require conscious striving to attain.

The ethical principles derive both from the general values of society and from the planner's special responsibility to serve the public interest. As the basic values of society are often in competition with each other, so do these principles sometimes compete. For example, the need to provide full public information may compete with the need to respect confidences. Plans and programs often result from a balancing among divergent interests. An ethical judgment often also requires a conscientious balancing, based on the facts and context of a particular situation and on the entire set of ethical principles.

This statement also aims to inform the public generally. It is also the basis for continuing systematic discussion of the application of its principles that is itself essential behavior to give them daily meaning.

The planning process must continuously pursue and faithfully serve the public interest.

Planning Process Participants should:

1. Recognize the rights of citizens to participate in planning decisions;

2. Strive to give citizens (including those who lack formal organization or influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;
3. Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;
4. Assist in the clarification of community goals, objectives and policies in plan-making;
5. Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
6. Strive to protect the integrity of the natural environment and the heritage of the built environment;
7. Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.

Planning Process Participants should:

1. Exercise fair, honest and independent judgment in their roles as decision makers and advisors;
2. Make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker.
3. Define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision;
4. Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethics matters has expressly authorized their participation;
5. Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;
6. Not participate as an advisor or decision maker on any plan or project in which they have previously participated as an advocate;
7. Serve as advocates only when the client's objectives are legal and consistent with the public interest.
8. Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation

commence earlier than one year following termination of the role as advisor or decision maker;

9. Not use confidential information acquired in the course of their duties to further a personal interest;
10. Not disclose confidential information acquired in the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to third persons; provided that disclosure in the latter two situations may not be made until after verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions;
11. Not misrepresent facts or distort information for the purpose of achieving a desired outcome;
12. Not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service;
13. Respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected under civil rights laws and regulations.

V. ARTICLE VII- PLANNING BOARD

(From the Lewiston Zoning Ordinance)

Sec. 1. Purpose.

The purpose of this article is to establish the organization, authority and responsibilities of the planning board.

Sec. 2. Authority.

The planning board is established pursuant to Section 4.05 of the City Charter and the laws of the state as amended.

Sec. 3. Organization and rules.

- (a) A quorum necessary to conduct an official meeting of the planning board shall consist of at least four members.
- (b) The concurring vote of at least four members is required to constitute an action on any matter requiring a public hearing.
- (c) All seven members enjoy the same rights and privileges regardless of any planning board office that they may hold.
- (d) The mayor or chairman of the planning board may call special meetings of the board.
- (e) Any request for a recommendation by the city council shall be acted upon within 30 days of the request except as otherwise provided for by statute or ordinance or unless a longer period is specified by the city council.
- (f) The planning board may adopt rules of procedure and may adopt statements of policy consistent with the Charter and this Code to assist it in the performance of its functions.
- (g) No member of the board shall participate in the hearing or disposition of any matter in which he has an interest. Any question of whether a member has a conflict of interest sufficient to disqualify the member shall be decided by a majority vote of the members present, except the member whose possible conflict is being examined. Where such vote results in a tie, the subject member shall be disqualified.

Sec. 4. Powers and duties.

- (a) The planning board shall prepare and maintain the official map.
- (b) The planning board shall prepare and maintain a comprehensive plan as defined in 30 M.R.S.A. section 4961 as amended and shall review and make recommendations on all investigations, reports and plans relating to the planning and development of the city or affecting the comprehensive plan.
- (c) The board shall perform those duties prescribed by ordinance and statute including, but

not limited to, approving or disapproving subdivisions, making recommendations on amendments to the land use code and administering and enforcing certain provisions of the Code.

- (d) The board shall perform those duties requested by the city council and may perform duties upon request of other public agencies.
- (e) The board shall review the annual capital program and report to the city council in accordance with Section 6.05 of the City Charter its findings regarding the needs of the city for the improvement, replacement and alteration of existing facilities and the acquisition or construction of additional facilities and the order in which such projects should be undertaken. The board shall hold at least one public hearing prior to making its recommendations to the city council.
- (f) The board shall review and make a recommendation to the city council with regard to all capital expenditures costing \$100,000.00 or more which are not included in the annual capital program.
- (g) The board may provide assistance and recommendations to any municipal department on matters affecting the comprehensive plan. Each officer and department of the city shall give all reasonable aid, cooperation and information to the board.
- (h) The board shall review and make a recommendation to the city council with regard to the acquisition, except through tax lien foreclosure (36 M.R.S.A. section 942 as amended), and disposition of all public ways, lands, buildings and other municipal facilities.
- (i) The powers and duties described in this section are subject to the powers and duties assigned to the historic preservation review board in article XV of this Code.
- (j) Conditional use permits. The board shall hear and decide applications for conditional use permits, where the development is a major development as defined in article XIII of this Code, in accordance with the standards and procedures set forth in article X of this Code.
- (k) Modifications. The board shall hear and decide requests for the reduction of the provisions under article XI, sections 1 through 14, district regulations, with respect to space and bulk standards for setbacks, yards, maximum lot coverage ratios, maximum impervious surface ratios, minimum open space ratios, and maximum building height, where the development is a major development as defined in article XIII, subsection 3(a)(2) of this Code. In order for the board to grant the aforementioned relief, it must find that the standards contained in article IX, sections 3(9), (10) and (11), as applicable, are met.
- (l) The board shall make determinations necessary for its review of major developments as defined in article XIII of this Code.

(Ord. No. 89-3, 4-7-89; Ord. No. 98-6, 7-2-98; Ord. No. 99-11, 5-20-99)

Sec. 5. Administration and staff support.

- (a) The planning director shall assist the planning board in the administration of its powers and duties including preparing agendas and minutes, providing public notice of meetings, handling correspondence and maintaining all official records.
- (b) Unless otherwise specifically provided in this Code, whenever the planning board conducts a public hearing, notice of said public hearing shall be provided by publication of said notice at least seven days prior to the hearing in a newspaper of general circulation in the city.

Sec. 6. Appeal of planning board action.

Any appeal from an action of the planning board in administering the provisions of this Code shall be made to the superior court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure as amended.