

**CITY OF LEWISTON
PLANNING BOARD MEETING
Minutes of January 28, 1997**

ROLL CALL

The meeting was called to order at 6:05 P.M..

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

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

6:00 PM Planing Board Workshop

Day Care Facilities - Discussion on expanding Day Care Facilities to all zoning districts and considering the feasibility and appropriateness of requiring owner-occupied day care facilities.

H. Skelton outlined some of the issues facing day care facilities in the city. One is a question regarding what the language "in conjunction with residual use" means. There has been some suggestions that the language should be changed to require a day care operator to live on the premises of the day care personally in order to run a day care. He noted the public had raised concerns relating to proprietors who are running a number of different day care establishments throughout residentially zoned neighborhoods in the city and viewed them basically as commercial enterprises. There is also an issue before the Board which would allow the expansion of day care, for example, Councilor Bilodeau suggested that the Planning Board amend the current ordinance to allow the expansion of day care in all zones. They are not allowed now in certain types of commercial and industrial zones. Another suggestion was that the State laws are more liberal than local ordinances as far as resident requirements goes. Another suggestion was that Lewiston create another category for day care in keeping consistent with the State law, small facility day care, that those types of day care might be allowed in some parts of the city and not in others. Finally, is the issue of grandfathering. If there are any changes in the existing ordinances, what effect those have on existing day care facilities, how far back should the Board grandfather the existing day care facilities.

The Board can do a number of things, first of all, recommend that there be no changes in the ordinance. Second to recommend certain changes in the ordinance, schedule a public hearing on the proposed changes, direct staff to draft ordinance changes in accordance with the Planning Board discussion. Or finally, simply continue the conversation and direct staff to draft further proposed options and schedule for further discussion sometime in the future. Gert Mynahan said she gave each Board member a copy of the state's regulations. She stated that the State requires each day care provider to check with city ordinances and zoning.

D. Theriault asked if the name a day care provider registered at the state level has to be the same name

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registered for a license at the city level. Gert Mynaham answered that providers do this in order to qualify for the state food program.

Mr. Theriault noted that the day care at 81 Marble Street was registered under Jamie Bolduc's name, yet the other three were registered under different names. Ms. Bolduc answered that she did this to qualify for the food program for each of her day cares and that her name is on each application even though the license is taken out under someone else's name.

Ms. Bolduc said that most day care facilities in Lewiston are full. The City lacks before and after school care and further stated that she offers this service and is running under the city guidelines and each of her day cares have been approved. She said that she didn't think any of her neighbors had any complaints about her day cares. She predicted that several day care facilities would close in the near future because the State was cutting on the food program. Her five day care facilities employ twenty employees, she pays insurance and worker's comp; and has a van to transport the children to their sports.

Lorraine Comeau said she objected to the commercialization of day care facilities in residential areas. She said that the zoning laws are not being enforced. Mr. Peters told her that the zoning rules have been followed, but there have been loopholes and providers are not against code. Mr. Lysen said that the Board of Appeals decided earlier on that someone had to live at the day care facility. Jamie Bolduc is in compliance with the present ordinance.

Mr. Theriault asked what the largest complaint against these day care was. Mr. Lysen answered, noise, traffic, parking, and safety issues. G. Mynahan said that even though a day care is licensed for twelve children, it can actually have more children because they are staggered; some come in the morning only and a different set come in the afternoons only. This does increase traffic.

T. Peters said that he was on the Board of Appeals when the day care issue came up and that it was looked at carefully regarding exit time for the children and every approval had restrictions placed upon it so that there would not be any problems.

G. Mynahan said that the comments she has heard from different people say they do not mind day care facilities when the owner is on the premises. Mr. Peters said that the Board could not make a rule for Ms. Bolduc only, that it had to make it for all day care operators.

Mr. Lysen said that some people were opposed to conditional usage. Mr. Theriault asked if the Council was leaning toward residential protection. Mr. Lysen answered that they liberalized what is now allowed in residential areas for home occupation. Ms. Bolduc saw a need for day care facilities;

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parents look for this type of service; however, Mr. Lysen said there needed to be a balance to protect neighborhoods.

Ms. Bolduc read the City's day care rules A & B and noted "in conjunction with residential use." She said she is in compliance with the City's ordinances.

Ann Faucher of 171 Pettingill Street said she is opposed to day care facilities that do not have the home owner living in the unit. She said she had traffic concerns. She also read a letter written by her son Ray Faucher who also opposes day care facilities that do not have the owner living at the facility who are operating in residential areas; he feels they are simply another business.

Carolyn Court of Pettengill Street said she had a concern regarding the increased traffic. She also said that she knew of a day care provider at 62 Pettingill Street that had lost money because of a saturation of day cares in this area. She stressed that she wanted the Board to preserve the zoning in residential neighborhoods.

Laurie Danforth said she contacted day care centers in the area. She said that there were no openings in her district and would be at a loss if Jamie Bolduc's day care was forced to close.

Mr. Milliken said that this was a workshop and that no recommendation would be made this evening. He further stated that a lot of the City's rules and regulations concerning day care facilities were taken directly from the State. He thought the City would have to grandfather Jamie Bolduc's day care facilities.

Mr. Skelton asked if the Board should direct staff to draft language proposing change to code or rules that would require a resident operator in all the residential zones of the city; that would allow resident operation in all zoning; that would allow small facility non-resident operations in all but the residential zoning in the city; and that would allow a very generous grandfathering period of all current day care facilities of perhaps 6-7 years. Mr. Milliken and Mr. Peters agreed with Mr. Skelton regarding grandfathering the existing day care facilities.

Mr. Lysen said that this topic will be entered in other business for the February 25, 1997 Planning Board meeting and then set up for a public hearing.

7:00 PM Regularly Scheduled Meeting

READING OF THE MINUTES OF JANUARY 14, 1997

The January 14th minutes were not yet ready.

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MOTION: by D. Theriault, seconded by Mr. Skelton to table the reading of the January 14, 1997 minutes until the next Planning Board Meeting.

VOTE: Passed 6-0.

CORRESPONDENCE

MOTION: by T. Peters, seconded by H. Skelton to accept the correspondence and placed on file.

1. Letter from Robert Mulready and James Lysen re proposed amendments to January 13, 1997 "Modification to Rules of procedure submitted by Tom Peters.
2. Exerts from Board of Appeals minutes dated September 4, 1996 (pp 12-19).
3. International City Management Association Declaration of Ideals (3 pages).
4. ICMA Code of Ethics: Rules of Procedure for Enforcement (3 pages).
5. AICP/APA Ethical Principles in Planning (8 pages).

VOTE: Passed 6-0.

REVIEW OF DEVELOPMENT PROPOSALS FINAL HEARING

Stephan Myers, on behalf of LePage Bakeries, Inc., has submitted plans for a proposal to amend an approved plan where the applicant is proposing to construct a 14,700 square foot, single story loading dock addition to the existing facility, located at 85 Cedar Street.

The project had its Pre Application conference at the January 14th Planning Board meeting at which time the applicant requested the Board to review the project's application for completeness. Upon review of the application the Board determined it to be complete.

The Planning Staff has reviewed the plans against the Approval Criteria outlined under Article XIII, Section 4 (a u) and finds that, in our opinion, the plans meet all of the applicable criteria. Therefore, Staff recommends that the Board review the project against the approval criteria, receive input from Staff and the general public during the final hearing, and vote accordingly.

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Steve Myers reported that he had checked with George Dycio regarding the trees that will be cut on the property and found that they were not part of a buffer strip; the property next door is commercial, not residential. He also reported that a twenty foot fire lane will surround the building.

MOTION: by D. Theriault, seconded by H. Skelton that the Board find that the application of Stephan Myers, on behalf of LePage Bakeries, Inc. meets all of the approval criteria under Article XIII, Section 4 and further that the Board grants final approval to the project.

VOTE: Passed 6-0.

OTHER BUSINESS

Used Car Dealership in the Urban Enterprise (UE) District

The Planning Board, at their January 14th meeting, requested that Staff provide a number of proposed code amendment options to allow for the establishment of used car dealerships in the Urban Enterprise (UE) Zone. Currently, used car dealerships may be deemed to be accessory uses to gasoline service stations, auto repair garages and automotive services, except repair uses, if certain criteria are met. This proposal to amend the Zoning and Land Use Code has been brought forward by the Director of Code Enforcement on behalf of Dave Gendron, the current owner of Easy Rent All, who would like to sell used cars from the business location at 20 South Avenue.

The Planning Staff has reviewed the permitted and conditional uses in the Urban Enterprise (UE) District and offers the following options for the Planning Board to consider:

- 1) Allow Used Car Dealerships as a Permitted Use;
- 2) Allow Used Car Dealerships as a Conditional Use, or;
- 3) Expand those uses to which a Used Car Dealership may be deemed "accessory to."

The Planning Staff asks that the Board consider the options, determine if the Board would like to initiate the amendment on behalf of Dave Gendron, or the City, and provide the Planning Staff further guidance and direction with respect to this proposal.

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T. Peters noted that option three could expand; while option one, someone could develop brand new used car dealerships. H. Skelton said he did not support option one and didn't like option three. He would consider option 2 because it required control, but would prefer leaving the code the way it is written now. G. Dycio said that the Lincoln Street corridor was addressed specifically in the comp plan. H. Milliken said he didn't like option one either and would consider looking at a draft of two and three, maybe combining the two of them. H. Skelton said he would like to see language from staff on this issue. J. Lysen suggested that the petitioner bring the request forward so that a fee could be charged to cover costs. H. Milliken noted that if it is site-specific, then a fee should be charged to the petitioner.

B & G's Cheese - Conditional Rezoning

Review proposal to conditionally rezone the front portion of property located at 1048 Main Street and schedule a public hearing. Mr. Giroux is looking to rezone only the front portion of the property; the rear would remain the same. He may want to open not only a manufacturing plant, but perhaps a retail store as well. Staff feels this is not an intensification, but it does require both Planning Board recommendation and City Council action for the zoning.

H. Skelton asked if this zone was grand fathered for commercial use since the building has been in commercial use all along. G. Dycio said that Schott's had to go before the Board of Appeal because there is a certain time frame for a non-conforming use. If it is abandoned for twelve months or not in use for twelve months, the code says there is another twelve months in which they can resurrect it; after that period, they would need to start all over.

J. Lysen said that conditional zoning would be great for this issue. D. Theriault asked who drafted exhibit A. G. Dycio informed him that it was Kevin Clark and Leo LaRoche. D. Theriault said part B Line 4 should read "then that" and not "that that." Line E - question the wording regarding the lighting not being able to be altered. H. Skelton said that the purpose for the lighting language is to protect the abutter so that lighting cannot be increase and does not bother them. D. Theriault asked if they would be allowed to up-grade. J. Lysen said he would check it out. D. Theriault brought out another concern regarding F3 should add "prior to the city issuing an occupancy permit." G. Dycio said that this was automatic. D. Theriault questioned the wording in section F5 - it was explained that the building would have to go back to the way it was before any changes were made. D. Theriault also questioned F6 "board of competence" - wondered if this wording was necessary. H. Milliken suggested on number 4 "rezone" to add "for this purpose only." G.Dycio explained that if the owner sells the property, the conditional zoning would go with the sale. H. Skelton suggested that the wording "for the purpose of manufacturing cheese" be

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added to the first page. H. Milliken had questions regarding the buildings listed on the plan - one story metal frame building, cement block building and an one story garage - this needs to be clarified.

J. Lysen explained that for conditional zoning to apply, specific use needs to be said; it is not something that will go on forever. Any future use that is different will have to be brought forward to the planning board again. D. Theriault noted that the entrance had different elevations and asked if the entrance will be clearly identified. He said that there were large dips from the road elevation and had some safety concerns. T. Peters asked if the drainage problem was resolved. G. Dycio said they were.

MOTION: by H. Skelton, seconded by D. Jacques that the proposal for B & G Cheese be set for public hearing.

VOTE: Passed 6-0.

PUBLIC HEARINGS

Rules of Procedure

H. Skelton informed the Board that the Sun-Journal had contacted his law firm regarding the Media-Relations issue with the Planning Board and said that he would not participate in any vote on any motions but asked permission to participate in any discussions. The Board had no objections. H. Milliken thanked Editor Mary Kelsch from the Sun-Journal for forwarding the letter Bryan Dench had written to her regarding this issue. He further stated that the Board was not assuming that any of the minutes were being typed up, placed in a file and then shipped out two weeks later. The intent was once the minutes were ready, they were available to anyone. H. Milliken referred to the revision of T. Peter's proposed motion by Bob Mulready and Jim Lysen and the code of ethics that each board member received in his packet. H. Skelton said in regards to the revised motion that paragraph 2H and 2D were more acceptable. He reiterated the public's right to know law and suggested that they strike out both of those numbers because they may differ from state law. He further said that the public could ask for the recording secretary's notebook and not even have to wait until the minutes were completed. The state law does have requirements that the Board is bound to and did not feel a need to recreate any further rules.

D. Theriault, who is now the elected secretary, informed the Board that he wanted to see the minutes as soon as they were typed and instructed D. Ouellette to notify him.

H. Milliken said that state law is part of the Planning Board Rules and Procedure. T. Peters said that it was his understanding that the public could see any official's notes. J. Lysen explained that if

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someone came in asking about a particular issue, that the recording secretary would transcribe that section and give the draft to the person asking even before the Board approves them. If this happens, staff would need to send the Planning Board that portion and let them know that someone had received a particular portion of the minutes. H. Milliken said that if anyone comes in asking for the tapes, they are entitled to receive them, allowing staff reasonable amount of time to copy them. Once the minutes are translated into a written form, they are available immediately and cannot be held for two weeks saying that it was a reasonable amount of time.

Discussions followed regarding agendas. J. Lysen explained that it changes as things are added to it. The final agenda is always on Thursday at noon the week before the Planning Board meeting. H. Skelton said that even though it was changing, it was still available at any time to the public whenever someone requested it - even if it was not in its final stage. J. Lysen said that he was concerned with the definition of "pre-release." If the press comes in and asks for something, then the language in the motion said that staff is to forward this identical information to the Board on the same day. H. Skelton said that his interpretation of "pre-release" was that it would be released to the public, then inform the planning board that this had been done; that information could not be withheld from the public. H. Milliken said that if #10 was just simply eliminated and what was basically being done there was to define in a short paragraph the code of ethics of the planning department/board if the Planning Board chooses to adapt the code of ethics that J. Lysen has submitted, then that is all covered and there is no controversy. Any question on pre-release etc. has been answered there. It was agreed that Bryan Dench brought up a good point regarding when the minutes would be released, that they should be release immediately and not stored for two weeks and then released.

Mary Kelsch, editor of the Sun-Journal, said she had a problem regarding the wording of #10, "If a document is requested by the public, is significant to future Planning Board actions, and is in a completed stage, the document shall be released to the public and the Planning Board either be notified of its release or be sent the document as soon as possible." She said the way she read this was that the Planning Board was putting restrictions on documents that can be released. There is nothing in state law that says a document has to be significant. T. Peters said he was concerned with this language as well, and asked if there was a particular reason it was written this way, if it was from the code of ethics. J. Lysen said it was not but simply an attempt to qualify when a member of the public asked for a document that the Planning Board would be notified as soon as possible. T. Peters then said that the wording was confusing, but that it simply meant that if a request was made then it is given to the public and if it is significant to the planning board then it is given to the planning board as well. T. Peters went on to say that what the Planning Board wants to be able to do is to have the information ahead of time so that when someone calls after reading an article in the newspaper, the Board can respond.

H. Skelton said that language in section 10A had to be cleaned up and that he thought that there was

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no need for any new policy. T. Peters asked that section #10 be modified and brought to the next meeting. H. Milliken suggested to table the matter until the next meeting. Mary Kelsch from the Sun-Journal also said that the first sentence in B "...planning staff shall provide to Planning Board members, to be included in their packets, their professional opinions and the options available to the Board on actions that are scheduled for that specific meeting." If that information is in the packet, then she felt it should be available to the public as well. H. Milliken said it was his personal opinion was to scratch B completely because these issues were included in the code of ethics. J. Lysen said that when the Board becomes too defining, then it becomes too restrictive; the Code of Ethics cover all of the procedures for public right to know. T. Peters suggested that Jim and Bob take a look at that issue and if they wanted to strike it out, then it was fine with him since it was covered in the code of ethics.

MOTION: by T. Peters, seconded by D. Theriault to table this issue until the next planning board meeting.

VOTE: Passed 5-0-1 (H. Skelton abstained).

FY98 LCIP (LEWISTON CAPITAL IMPROVEMENT PROGRAM)

D. Theriault made a presentation to the Board. Since he was a member of the LCIP committee, he had first hand knowledge on the work that went into the FY98-LCIP. He asked if the Board wanted to go line by line or go by the committee's recommendations. T. Peters answered that he wanted to go by the committee unless D. Theriault thought there was any red flag items that should be brought to the Board's attention. D. Theriault reported that the committee that did review the LCIP looked at all of the items and reviewed each one; they took out waste, and listed only the priorities. He felt that the committee did much work on this project. G. Dycio reported that the original LCIP was for approximately 10 million dollars and the current one was cut down to 5.1 million. T. Peters asked if this was in keeping with the comp plan and D. Theriault and J. Lysen both answered that it was. Mr. Theriault recommended to the Board that the LCIP be accepted as written. H. Skelton said he was confident with Mr. Theriault's opinion and Mr. Milliken agreed.

MOTION: by T. Peters, seconded by D. Theriault that the Board send a favorable recommendation to the City Council to accept the FY98 LCIP.

VOTE: Passed 6-0

COMPREHENSIVE PLAN UPDATE

J. Lysen reported to the Planning Board that the final update had not yet been completed and would

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hope to have it ready for the next Planning Board meeting. H. Milliken asked if there was going to be any yearly review on the comp plan. J. Lysen said there would be a yearly review with a major update every three years.

ADJOURNMENT

MOTION: by H. Skelton, seconded by D. Jacques to adjourn.

VOTE: Passed 6-0.

Meeting adjourned at 8:55 PM.

Respectfully submitted,

Denis Theriault
Planning Board Secretary

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