

**CITY OF LEWISTON
PLANNING BOARD
Minutes for March 10, 1998**

I ROLL CALL

7 PM

Members Present: D. Theriault, D. Knowlton, H. Milliken, H. Skelton, T. Peters, M. Paradis, L. Zidle (arrived at 7:05), Student Members S. Masood & R. Sawyer.

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

II READING OF THE MINUTES

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T. Peters asked that D. Theriault's motion on page two be clarified -- it should include "and the additional language under Article 10."

MOTION: by T. Peters, seconded by H. Skelton to accept the minutes of February 24, 1998 as amended.

VOTE: 6-0.

III CORRESPONDENCE

- Letter from Maritime & Northeast Pipeline.
- Proposed Amendment to Appendix A Zoning and Land Use Code, Article VII, Sec 4.
Discussion: T. Peters and D. Theriault both reminded the Staff that the Planning Board Policies clearly stated that the Board was not to receive anything after the packets had been sent out on Fridays. It does not give Board members proper time to review material when presented the night of the meeting.

Lew Zidle arrived at 7:05 PM.

MOTION: by D. Theriault, seconded by H. Skelton, to accept the above correspondence with the ability to discuss these late, especially amendment change proposal received just prior to this evening's meeting.

VOTE: 5-1-1 (T. Peters, abstention by L Zidle).

IV REVIEW OF DEVELOPMENT PROPOSALS - FINAL HEARING

A. Spare-Time Recreation Subdivision - Third Revision

James Day has submitted plans for a proposal to amend an approved subdivision where lots #5 & 8 will be expanded, eliminating lot #6 along Falcon Road, and lots #30 & 31 will be expanded by reducing lot #29 and eliminating lot # 32 along Mollison Way.

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Due to the size of the subdivision, the proposed amendment will be reviewed under Lewiston's Expanded Review Authority and forwarded to the DEP for their review and approval.

Pursuant to Article XIII, Section 3(h)(5), the applicant requested a modification and a number of non-applicable status requests to the application requirements listed under Section 3(h)(1-4). Upon review of the requests, Staff found that the requests were justified and recommended that the Board grant them.

Planning Staff found the project's application complete and had no concerns after reviewing the site plans. Police, Fire and Public Works Departments also had no concerns regarding this project.

The Planning staff also reviewed the plans against the Approval Criteria outlined under Article XIII, Section 4(a-u) and the Coordination with State Subdivision Law standards outlined under Section 5(1-14) and found that the plans met all of the applicable criteria. Therefore, Staff recommended that the Planning Board grant final approval to the project with the condition that any concerns raised by DEP be adequately addressed prior to signing and recording of the plans at the registry of deeds.

Art Montana said he moved lines on the subdivision to meet set back requirements for the parking lot. He created two lots out of three; lot 31 has been eliminated. Mr. Montana said they relocated an easement.

At this time Mr. Milliken opened the meeting to the public. Jim Day from Lewiston Raceway said he would be happy to answer any of the Board's questions. There were no further comments so the meeting was closed to the public.

MOTION: by H. Skelton, seconded by T. Peters that the requested waivers of submission requirements by James Day be granted because of the size of the project and the circumstances of the site; such requirements would not be applicable or would be an unnecessary burden upon the applicant and that such waivers do not adversely affect the abutting landowners or the general health, safety and welfare of the City.

VOTE: 7-0.

MOTION: by H. Skelton, seconded by T. Peters that the Board finds the application of James Day meets all of the approval criteria under Article XIII, Section 4 and Article XIII, Section 5 and further that the Board grants final approval to the project, also that concerns raised by the DEP be adequately addressed.

VOTE: 7-0.

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V OTHER BUSINESS

A. New Business:

1. Review and discussion of proposed amendments to the City Policy Manual regarding the Zoning and Land Use Code Application Fee Schedule and forwarding a recommendation to the City Council.

J. Lysen explained his memo of January 29, 1998 to City Clerk Gerald Berube regarding the proposed amendments. He said this did not require a public hearing, but would like a recommendation from the Board forwarded to the City Council on this change.

D. Theriault asked if that meant the City Council could waive fees any time. J. Lysen said that if a person wanted to wait for the rezoning to go through the Comp Plan then they would not pay the fees if it was part of the Comp Plan. If a city councilor brings it up, then the constituent will not have to pay the fees either. If the constituent wants it done quicker, he would pay the fees. Fees on regular zoning are \$100, plus \$35 for advertising; conditional zoning is \$250. One problem has been that funding it through Planning's department for the advertising and mailings has been costly. H. Skelton said he understood the proposal before the Board this evening states that the applicant must pay the fees unless it is consistent with the Comp Plan, then the fees would be waived. City Council is also able to waive fees if it is a city project. D. Theriault said he thought there were state monies available when going through the Comp Plan. J. Lysen said that was true. He said the first thing to do was to get the amendments to the Comp Plan done, then the City could apply for the implementation grant which was around \$6,500. H. Milliken questioned item B regarding the Comp Plan – he said his concern was that if City Council applies this concept, he doesn't want anyone to think that the Planning Board will drop everything because the City Council initiated it. It may not be in the Planning Board's Comp Plan schedule to do that area at that time. He said he thought the City Council should have the authority to make that decision, but it should be in the Comp Plan review schedule. T. Peters asked how the City Council decided that these exemptions applied and if they were going to have a hearing. J. Lysen said he would assume that as most things occur, the Board would have to do a findings of fact. T. Peters said this seemed confusing. H. Milliken said the Board should allow something in the timeframe. H. Skelton said item "a" was not a problem, but suggested that item "b" should be taken out. T. Peters also added that the wording should also be changed from "will address" to "may address."

MOTION: by T. Peters, seconded by H. Skelton to send a favorable recommendation to the City Council on the proposed amendments to the City of Lewiston Policy Manual - Policy #71– Zoning and Land Use Code Application Fee Schedule– New Categories 11 & 12 as amended.

VOTE: 7-0.

2. Review and discussion of a City Council request for a Planning Board recommendation on

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proposed amendments to both the Zoning and Land Use Code and the Policy Manual where the requirements for Planning Board recommendations on the sale or acquisition of public land would be amended in order to streamline the process and eliminate duplication of effort, and scheduling of a Public Hearing. (Continued from 2-24-98)

J. Lysen outlined some of the proposed changes which included by-passing the Planning Board for property that was under two acres and with a value of under \$20,000. He said that the procedure would have a request go through the Land Committee, through the purchasing agent.

D. Theriault asked where the public process was in this proposed amendment. He further asked when the public would have an input to the committee. J. Lysen said the proposal was for properties that are less than two acres and less than \$20,000 in value. D. Theriault said the public wouldn't hear bids, etc. J. Lysen said the City Council would still have to vote on acquisition/disposition. D. Theriault voiced his concern that the only voice the City Council would hear was the committee. H. Skelton asked Mr. Theriault if he felt every acquisition/disposition should go through the Planning Board. At this point, Mr. Theriault read from a prepared statement: "The people of the City of Lewiston will not be well served by eliminating or limiting the scope of review of the Lewiston Planning Board, especially since the review for buying or selling property is only a recommendation, it's an opinion. Our democratic form of government exists and thrives on being able to voice our opinions in an open public format. The driving strength behind our Comprehensive Plan is that public input be the key element in creating or implementing any part of the Comprehensive Plan. Without trying to sound philosophical, it was once said that 'the price of democracy is eternal vigilance.' Thomas Jefferson clearly understood that in order to maintain our democratic form of government, we must constantly be watching for policies which will limit the people's scope of review over government. This current presentation by administration staff is clearly an attempt to limit the scope of public involvement by narrowing the recommending scope of review of the Lewiston Planning Board. The Planning Board, through its duties to the Comprehensive Plan, is charged with being the voice of the people and also charged with providing the proper public format to present various ideas, alternatives, acceptances or rejections to plans which affect the people and the City of Lewiston. Any attempt to limit the scope of public review under the smoke and mirrors of streamlining government is an insult to the intelligence of the people of the City of Lewiston. I do not believe that the City Council ever had the intent of sacrificing the voice of the people it represents merely to make the process easier for staff. This attempted change in the existing policy would only serve the administrative staff and limit the number of recommending views, pro or con, presented to the Council. Eventually, the only voice heard will be that of staff and not the people. We all know what type of government we end up without the voice of the people. I believe this Planning Board has never had a greater challenge presented to it than what is framed in front of us tonight-- that being the right to represent the voice of the people of the City of Lewiston and their rights to public involvement and review of their government. This is not merely about the Bates Mill. This has much further reaching implications." He said he was ready to defend any Comp Plans policies and goals that had been used to defend this proposed amendment. He said he does not believe the Comp Plan supports this amendment. J. Lysen said that if the

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Planning Board does not believe it is consistent with the Comp Plan, then the Board had a right to send a negative vote. H. Milliken reminded the Board that they asked to have it put into this format, and it is up for discussion, and Mr. Theriault now had a right to convince other members of his view.

T. Peters asked how many of these situations come up. He asked if there were problems within the city that would cause the need to streamline. Mr. Peters said that when Mr. Mulready spoke before the Board, he told the Board there wasn't a problem and wondered why this had become an issue. J. Lysen said the City has had over a hundred pieces of property needing to be disposed of at one time, some were fifty-foot parcels, some were wetlands, no value at all, etc. He said that this procedure would move some of those without a long process. It will go before the public at the City Council. If it is a larger parcel, then that is the level that should have a review before the Planning Board. T. Peters asked if there would be open discussion by the public before the Land Committee. J. Lysen said that would be up to the Land Committee, but typically it is not. T. Peters agreed with Denis that there needed to be some forum to voice opinions before it gets to the City Council for a final vote. H. Skelton said that after serving nearly five years on the Planning Board, this issue doesn't stick in his mind as something that has slowed government down. He further said of all the things that the Planning Board reviews, he doesn't see this as a particular burden. H. Milliken agreed that the Planning Board is continually forgotten by staff, city council, etc. in conducting the proper process. Even though it has been brought up to everyone attention, things come before the Board after the fact. H. Milliken suggested that some of the Board members attend the City Council meeting to voice their feelings on this issue and asked that a copy of what he proposed last August to Frank Kelly be forwarded to the City Council. He said he felt the Land Committee should make a presentation to the Planning Board, and that recommendation along with Planning Board recommendation should be presented to the City Council. He said he did not think that the Planning Board should make recommendations to the Land Committee and then they make their recommendation to the City Council. T. Peters suggested the Board send a negative recommendation on this proposal and send one in their own format. D. Theriault reminded the Board that they did not receive anything on the Lincoln Street properties from staff regarding the value of the property on financials, or what the other department's opinions were. D. Theriault noted that the Planning Board voted on a Tuesday and that following Friday, City Departments were just receiving requests for their input. He asked what happened to the policy process. H. Milliken suggested to get a motion as far as the recommendation to the City Council at this time and to table the second part until later this evening -- reopen the issue, and make another motion on this issue.

MOTION: by D. Theriault, seconded by M. Paradis that the Lewiston Planning Board, after careful and diligent review of its responsibilities of maintaining and upholding the Comprehensive Plan and representing the people of the City of Lewiston in regards to this Plan, finds that the recommended Land Use Code change regarding Article VII -- Planning Board -- Section 4 -- Powers and duties (see attached) regarding acquisition and disposition of city property be rejected by the Lewiston City Council due to its non-compliance with the Comprehensive Plan.

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VOTE: 7-0.

MOTION: by T. Peters, seconded by D. Theriault to continue this matter until later this evening.

VOTE: 7-0.

Number 4 was taken out of order before item 3.

4. Review and discussion of proposed amendments to the Zoning and Land Use Code regarding the standards for granting appeals (modifications), and scheduling of a Public Hearing.

G. Arsenault said that the document before the Board was a good working document, but the Board may want to send it to the City Attorney and hold off scheduling a public hearing. He pointed out one of the more important improvements this amendment would do is eliminate the need for a citizen to attend a second meeting, typically held on a Thursday morning following a Wednesday evening meeting on the same matter. He explained that by having the Planning Board have the ability to grant modifications, the Board of Appeal would not have to deal with modification that are on a minor level.

Mr. Arsenault said this proposal would give staff the ability to grant modifications up to 25%. He went on to explain the remainder of the document before the Board. He said that yards and set-backs have become issues. What was before the Board was if a citizen who went beyond the 50% , he will need to get an easement maintenance agreement from his neighbor. Art Montana, reinforced what G. Arsenault said. He reiterated that 25% modification is wasting the Appeal Board's time and the applicant's time. He said that this could be screened out by the staff.

Pauline Taylor said the Code does not allow the Board of Appeal to deny an applicant as it is written. Bruce Mason said these issues came up particularly with single family homes. D. Theriault asked Gil Arsenault if he wanted the Planning Board to make a recommendation to send this to the City Attorney. G. Arsenault said he didn't want to send it to the attorney earlier without the Board first looking at it. G. Arsenault suggested not to schedule it for hearing until Attorney Hark has had a chance to look at it.

MOTION: by D. Theriault, seconded by T. Peters to send the proposed amendments to the Zoning and Land Use Code regarding the standards for granting appeals/modifications to City Attorney Robert Hark for review and comment.

VOTE: 7-0.

3. Review and discussion of a proposed amendment to the Zoning and Land Use Code where properties located at 6 thru 14 and 7 thru 17 Riley Street would be rezoned from a Highway

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Business (HB) District to a Neighborhood Conservation "A" (NCA) District, and scheduling of a Public Hearing.

MOTION: by T. Peters, seconded by L. Zidle to schedule this matter for a public hearing on March 24, 1998.

Discussion: T. Peters asked which item had priority from this evening's agenda so that proper notice can be given. H. Milliken suggested to schedule item 3 and 6 for the next meeting and put 5 the week after. Item 5 is, however, a request from City Council so there is a thirty day deadline. H. Milliken asked if they could ask for an extension. J. Lysen said that the Planning Board at their last meeting said they would initiate it, so there is not a thirty day limit. D. Theriault said he did not recall initiating this in a motion. H. Milliken said the Board should cover items 6 and 3 at the next meeting and postpone item 5 until the first meeting in April.

MOTION: by T. Peters, seconded by L. Zidle to amend his first motion to schedule items 3 and 6 for March 24, 1998 and item 5 for the first meeting in April.

VOTE: 7-0.

(Continue under Old business)

Harold Skelton left at 8:47 PM.

5. Review and discussion of a possible rezoning, from Suburban Residential (SR) District to Neighborhood Conservation "A" (NCA) District, in the Montello Street and Hogan Road area, and scheduling of a Public Hearing.

Scheduled for the first meeting in April.

6. Review and discussion of a possible rezoning from NCA to OR along East Avenue from Webster Street to Sabattus Street, and possible scheduling of a Public Hearing.

Scheduled for the March 24, 1998 meeting.

7. Update on the status of property located at 18 Fireslate Place.

Pictures will be shown after recess.

8. Review, discussion and recommendation to the City Council on the disposition of Lot 4 in Fireslate Place Subdivision off Hamel Road.

J. Lysen said there were two abutters that were interested in the property. He said they may have to amend the subdivision to split lot 4 to dispose of it. D. Theriault asked for the opinion

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of the Land Committee -J. Lysen said they have not met yet, Planning Board was reviewing it first. An unidentified gentleman in audience asked if this land went out to the public for bid. J. Lysen said that it would be offered to the abutters. D. Theriault asked what the City's process was with bids; would they take the highest bid, or take the offer from the abutter. J. Lysen said the City had two people interested in portions of the same lot and we're looking for a recommendation from the Board. D. Theriault said he wanted to see the assessed value of this parcel of land and that there was nothing in front of the Board other than the two proposals. D. Theriault pointed out that there was no comment from the City Assessor in the packet regarding splitting the property and the extent that would have on the assessed value. H. Milliken said if he had to make a recommendation tonight, then he would want sealed bids. He asked if the property line had to be amended before the bids went out. T. Peters said if it was divided before it goes out for bid, then it would be worthless to anyone other than the abutters.

MOTION: by T. Peters, seconded by M. Paradis to recommend to the City Council that land be sold in an open bid process. If the abutters are the only people who bid on the property and want to subdivide, then Planning Board would consider that issue at that time.

Discussion: D. Theriault said he wants to see a letter from the City Assessor that splitting the property would add value to the property. Discussion ensued whether the City would get more money if the lots were subdivided or left as is. J. Lysen said he thought the City was limiting its options if the property went out to bid before they were subdivided. T. Peters said that J. Lysen was assuming the property was worth more after it was subdivided but had no evidence to support that position.

VOTE: 6-0.

Recess at 9:28 PM. Student members left due to their academic commitments.

Back in session 9:41 PM.

The Board reviewed the photos of the Fireslate Place tire clean-up. D. Theriault requested a copy of the DEP document which would state that this property is now free of hazards. J. Lysen said he would obtain that document for the Board.

Returned to Item 2 regarding procedure for acquisition/disposition of city-owned property. T. Peters asked staff to put this in proper form and this should be given to the City Council with a negative recommendation and the new proposal in the same packet - keep the code the way it exist today. J. Lysen said when he sees a standing committee, he sees it as a hierarchy. He said it was the City Council, then the standing committee, then the Planning Board. D. Theriault disagreed and said that the standing committee has three council members and that the Planning Board's authority comes from the charter and Zoning and Land Use Code. D. Theriault said the Board was not under the administrative code of the City. H. Milliken referred back to his August letter - he outlined that the Planning Board reviews the Land Committee recommendation and then

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forwards it to the City Council. D. Theriault argued that the Land Committee does not supercede the Planning Board and that Charter and Land Use Code dictates that Planning Board send its recommendations to the City Council. J. Lysen disagreed and said the Charter does not establish Planning Board any higher than a standing committee. H. Milliken said the Planning Board needs all of the information in front of them in order to make the proper recommendation, this includes input from the Land Committee.

MOTION: by T. Peters, seconded by M. Paradis to send a negative recommendation to the City Council on the proposed amendments by staff concerning Policy No. 38 -- Procedures for the Sale or Acquisition of Land dated 3/2/98 and to forward to the City Council the proposed changes to the Procedures for the Sale or Acquisition of Land, Policy No. 38 as originally forwarded to the City Council by letter of August 18th from Chairperson Harry Milliken.

VOTE: 6-0.

MOTION: by D. Theriault, seconded by D. Knowlton that the City Clerk's office notify Planning Board members when the above items will be scheduled for hearing before the City Council so that Planning Board members may attend the meeting and explain their position and motions.

VOTE: 6-0.

B. Old Business:

1. Review and discussion of the applicability of the Bates Mill Complex/Municipal Buildings & Facilities for Development Review.

D. Theriault has not seen anything in code that says the Board should not review this. H. Milliken said the city attorney doesn't agree. He said that the Board's letter sent to MMA requesting further clarification by the Planning Board was denied. He asked if the Board wanted to pursue this, and if so, the only avenue was to seek an opinion from an independent attorney, or go directly to the city council. D. Theriault said if everyone was reading the code the same way he was, then the Board does have authority to review and as of this date the Board has review authority over municipal building. D. Theriault then quoted the Maine Municipal Handbook for Planning Boards--A Legal Perspective, page 32, Authority of Municipal Officer which states; "The municipal officers do not have the authority to hear appeals and override a decision of the Planning Board (or Board of Appeals) unless an ordinance provision expressly gives them that authority." L Zidle suggested that the Board send a letter to the City Council. H. Milliken wants to draft something up and review it at the next meeting and then take a motion on it to see if it is in proper language. This item needs to be carried forward to Other Business at the next meeting.

2. Review and discussion of the Maritimes & Northeast Pipeline proposal and scheduling of a

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Work Shop to discuss the proposal with the applicant - continued from the 2-24-98 mtg)

J. Lysen said he was anticipation a presentation on the 28th of April.

3. Proposed (Paper) Streets:

George said he received approximately 20 forms. He said he would bring it up at the next meeting to schedule these for a public hearing on April 14th.

4. Comprehensive Plan Update:

J. Lysen said there was no update on the Comp Plan at this time.

5. Proposed process to keep Planning Board informed on State & Local road improvements affecting development.

J. Lysen said he spoke with Jeremy Evans and Chris Branch. He reported that LACTS and Public Works receive notification on state roads and projects, but had not received one for over a year. Members of the LACTS tech committee said the City should push to get these reports.

6. Update on the proposed MDOT improvements on Sabattus Street between Campus Avenue and the Maine Family Credit Union.

D. Theriault said that the Board has been waiting since March, 1997 for a presentation from staff regarding this issue. J. Lysen said he has not seen any reports, but that the City Council had another presentation from C. Branch regarding this situation. He said he didn't know where the Board's request was on this.

7. Report and discussion on the Urban Enterprise District and allowed uses within the downtown area.

D. Theriault said that the Planning Board has been waiting since March, 1997 for a presentation from staff regarding this issue. J. Lysen said he would like to make a presentation regarding the UE district on April 14th. He also said he would like to schedule a workshop on that issue to get some feedback from the Board. H. Milliken said he wants input from staff to

discuss this. T. Peters reminded the Board that there was a committee formed for the downtown and these efforts should be coordinated.

H. Milliken said that CDBG may be presented at the next meeting and perhaps it should start at 6 o'clock.

C. Board of Appeals - Development Review Committee - Historic Preservation Review Board - State & Local Road Improvement Updates:

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D. Theriault asked about No name Pond. J. Lysen said he had proposed a neighborhood meeting for March 21st, but was waiting to hear back from the Assistant City Administrator.

VI ADJOURNMENT

MOTION: by D. Theriault, seconded by M. Paradis to adjourn the meeting.

VOTE: 6-0.

Meeting adjourned at 10:16 PM

Respectfully submitted,

Denis Theriault
Secretary

dlo