

CITY OF LEWISTON

CITY COUNCIL

MARCH 16, 2004

WORKSHOP SESSION HELD IN THE COUNCIL ROOM AT 6:00 P.M.

PRESENT: Mayor Guay, Councilors Mendros, O'Brien, Jean, Connors, Paradis, Rousseau, City Administrator James Bennett, and City Clerk Kathleen Montejo. Councilor Bernier was absent/excused from the meeting.

Mayor Guay opened the workshop session for the Councilors to review and discuss the streetscape and road changes in the Southern Gateway project area. City Administrator James Bennett reviewed the various plans with the Council.

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

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

PRESENT: Councilors Mendros, O'Brien, Jean, Connors, Paradis, Rousseau, City Administrator James Bennett, and City Clerk Kathleen Montejo. Councilor Bernier was absent/excused from the meeting.

Pledge of Allegiance to the Flag.
Moment of Silence.

AWARD PRESENTATION

Police Chief William Welch and Deputy Police Chief Michael Bussiere were presented with the "My Boss is a Patriot Award" from the Maine Committee for the Employer Support of Guard and Reserves. They were nominated for the award by Patrol Officer Ryan Guay who was called to active duty with the Marine Reserve Unit from January 2003 - January 2004. The award is presented to employers who go above and beyond what is required when an employee is activated and must leave his/her work and family.

UPDATE FROM YOUTH ADVISORY COUNCIL

Tarrah Bowen announced that they are partnering with the Fire Department to work together on an information campaign called "Is Your Number Up?" to encourage people to put their house numbers on their homes so in the event of an emergency their homes can be located. She also said the group is still seeking historical items to decorate around the area of the City Hall clock tower, once the restoration process is completed.

APPROVAL OF REAL ESTATE PURCHASE AND SALE AGREEMENT FOR 500 CANAL STREET AND 501 LISBON STREET

Councilor Paradis recused himself from this item due to a potential conflict of interest. The City Administrator stated that this agreement keeps the project on target and moving forward,

and noted that agenda item number two for the purchase of 1522 Lisbon Street will be the final relocation of the business.

VOTE (88-2004)

Motion by Councilor Jean , seconded by Councilor Connors:

To authorize the City Administrator to purchase the properties located at 500 Canal Street and 501 Lisbon Street for the purchase price of \$540,000.00, with the funds to purchase these properties to be allocated from the Southern Gateway Account, to approve the acquisition of the properties as defined in the Purchase and Sale Agreement, and that the City Administrator be and hereby is authorized to make, execute and deliver such deeds and other documents as he, in his discretion, may deem necessary or convenient to the accomplishment of such transaction. Passed - Vote 5-0-1 (Councilor Paradis abstained.)

**APPROVAL OF REAL ESTATE PURCHASE AND SALE AGREEMENT FOR
1522 LISBON STREET**

Councilor Paradis recused himself from this item due to a potential conflict of interest. Councilor Jean inquired about the costs, and the City Administrator noted that one hundred seventy five thousand dollars is for the land, and this is part of the five hundred forty thousand dollars and includes the cost of constructing the new building as well. This is one of the final phases that is needed to be completed for the southern gateway area, which has generated additional interest from businesses wanting to relocate to this area.

VOTE (89-2004)

Motion by Councilor Jean, seconded by Councilor Rousseau:

To authorize the City Administrator to purchase the property located at 1522 Lisbon Street for the purchase price of \$175,000.00, with the funds to purchase this property to be allocated from the Southern Gateway Account, to approve the acquisition of the properties as defined in the Purchase and Sale Agreement, and that the City Administrator be and hereby is authorized to make, execute and deliver such deeds and other documents as he, in his discretion, may deem necessary or convenient to the accomplishment of such transaction. Passed - Vote 5-0-1 (Councilor Paradis abstained.)

RESOLUTION OF CONDEMNATION FOR PROPERTY AT 500 CANAL STREET

During the March 2, 2004 meeting, the following motion was postponed to this meeting, and the motion was originally moved by Councilor Jean and seconded by Councilor Connors:

To approve the Resolution of Condemnation for the property at 500 Canal Street, and to authorize the City Administrator to make, execute and deliver such related documents as he, in his discretion, may deem necessary or convenient to the accomplishment of such transaction.

Councilor Paradis recused himself from this item due to a potential conflict of interest.

This motion is now back on the floor for consideration and action. Councilors noted that in light of the passage of agenda items number one and two, this motion is no longer necessary.

VOTE (90-2004)

Motion by Councilor Connors, seconded by Councilor Mendros:

To postpone this item indefinitely. Passed - Vote 5-0-1 (Councilor Paradis abstained.)

PUBLIC HEARING AND FIRST PASSAGE FOR LAND USE CODE AMENDMENTS FOR LOCATIONAL CRITERIA FOR ADULT BUSINESS ESTABLISHMENTS

During the March 2, 2004 meeting, the following motion was postponed to this meeting, and the original motion was moved by Councilor Jean and seconded by Councilor Paradis:

That the proposed amendments to Appendix A, Article XII "Performance Standards", Section 9, "Adult amusement and business establishments", of the City Zoning and Land Use Code, concerning the locational criteria of adult business establishments in the Centreville district, receive first passage by a roll call vote and that the public hearing for said ordinance be continued to the meeting of March 16, 2004 for final passage.

This item is now back on the floor for consideration and action. Mayor Guay opened the public hearing to receive citizen input and comment. No members of the public spoke for or against this issue. Mayor Guay then closed the hearing.

VOTE (91-2004)

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

To strike out the words March 16, 2004 and to insert the words April 6, 2004.
Passed - Vote 6-0

Councilor Paradis reminded the Council this issue was discussed during the joint Planning Board/Council workshop in January, and this change is a tool that can be changed later if needed, but is something to work with as a foundation. Councilor Mendros feels this is a prohibition against a place with dancing. Councilor Rousseau noted this change is a starting point so the moratorium can be lifted.

VOTE (92-2004)

Motion by Councilor Jean, seconded by Councilor Paradis:

That the proposed amendments to Appendix A, Article XII "Performance Standards", Section 9, "Adult amusement and business establishments", of the City Zoning and Land Use Code, concerning the locational criteria of adult business establishments in the Centreville district, receive first passage by a roll call vote and that the public hearing for said ordinance be continued to the meeting of April 6, 2004 for final passage.
Passed - Vote 4-2 (Councilors Mendros and Connors opposed.)

**PUBLIC HEARING AND FINAL PASSAGE FOR LAND USE CODE AMENDMENTS
REGARDING DEFINITIONS OF ADULT BUSINESS ESTABLISHMENTS**

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

VOTE (93-2004)

Motion by Councilor Jean, seconded by Councilor Paradis:

That the proposed amendment to Appendix A, Article II “Definitions”, of the City Zoning and Land Use Code, concerning definitions of adult business establishments and eating and drinking establishments, receive final passage by a roll call vote. Passed - Vote 6-0

**PUBLIC HEARING AND FINAL PASSAGE FOR LAND USE CODE AMENDMENTS
TO PROHIBIT ADULT BUSINESS ESTABLISHMENTS AND ADULT
AMUSEMENT ESTABLISHMENTS IN CERTAIN ZONES**

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

VOTE (94-2004)

Motion by Councilor Jean, seconded by Councilor Paradis:

That the proposed amendments to Appendix A, Article XI “District Regulations”, Section 13, “Centreville District” and Section 16. “Urban Enterprise District”, of the City Zoning and Land Use Code, concerning the prohibition of adult business establishments and adult amusement establishments, receive final passage by a roll call vote. Passed - Vote 5-1 (Councilor Mendros opposed.)

**PUBLIC HEARING AND FINAL PASSAGE FOR LAND USE CODE AMENDMENTS
REGARDING OFF PREMISE SIGNS**

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

VOTE (95-2004)

Motion by Councilor Connors, seconded by Councilor Jean:

That the proposed amendments to Appendix A, Article XII “Performance Standards”, Section 16, “Signs”, of the City Zoning and Land Use Code, to allow ground signs on an adjacent, off-premise easement, receive final passage by a roll call vote. Passed - Vote 6-0

**PUBLIC HEARING AND FIRST PASSAGE ON CODE AMENDMENTS FOR
PEDDLERS PERMITS**

It was noted that this information is still being reviewed by departments and this item should be moved to the next Council meeting for discussion and review.

VOTE (96-2004)

Motion by Councilor Paradis, seconded by Councilor Mendros:

To continue the public hearing for this issue to the Council meeting of April 6, 2004.

Passed - Vote 6-0

**PUBLIC HEARING AND FINAL PASSAGE FOR CONDITIONAL REZONING OF
PROPERTIES AT 121 EAST AVENUE AND 6 AND 8 MALO STREET**

The City Administrator stated that the conditional rezoning is the first step in this process, and then a feasibility study would be done by the applicant. He noted that this is an appropriate use for rezoning and said a restaurant with liquor license is an accessory use to a hotel. Deputy Development Director Lincoln Jeffers said this parcel is split zoned and this amendment is to add two extra uses - hotel and restaurant. He noted there have been numerous neighborhood meetings and said the hotel would be located where the Guest House is now and the restaurant would be either in the hotel or a separate building on East Avenue. Councilor Connors inquired about traffic patterns and property access. Councilor Rousseau said he would like to see the restaurant located inside the hotel.

Mayor Guay opened the public hearing to receive citizen input and comment. Gregory Cunningham, Esq. stated that he is the attorney for Floyd and Kathy Jenkins of 111 East Avenue and they did not receive a notice of this meeting as an abutter, as required by state law. Councilor Paradis mentioned that three neighborhood meetings and two Planning Board public hearings were held previously and notices were distributed for these meetings as well. Staff stated that Mr. and Mrs. Jenkins did receive notices and were in attendance at least one Planning Board meeting. Mr. Cunningham stated the Jenkins are opposed to the rezoning, citing a violation of state statutes, noting that under state law, a proposed rezoning must be consistent with the current zones and he said the uses in the Neighborhood Conservation A zone must be consistent with uses in the current zone. He said that going from an eight room lodging unit to a 120 room hotel is not consistent or similar, and therefore should not be permitted. Attorney Cunningham noted that his client's property is surrounded by the property that is proposed for development and he is asking for full information from the developer regarding a full disclosure of all proposed development before the rezoning is approved. He noted that the Council is about to approve a change to the zoning to allow a hotel in this area, but the developer has not done a feasibility study yet to know if a hotel would even work in this area, not to mention the undetermined issue of a restaurant which may be located within the hotel building or as a separate building on the property. He asked that the developer present a complete plan, rather than just a concept which is what is currently being presented.

The Mayor then invited members of the public to speak.

Leo Baillargeon, 29 Pearl Street - He is an abutter and opposed to the project, noting that he has lived next door to the applicants for over twenty years and that many projects are not completed and create an eyesore for the neighborhood, such as incomplete foundations with no buildings on top, much debris in the yard and projects that do not match the original plan. He requested that if the Council does approve this, that requirements are in place for landscaping and screening of the project from the neighbors.

Arthur Greiner, 21 Malo Street - Stated this area is a nice neighborhood and this hotel would disrupt the neighborhood, mentioned concerns for public safety with many children in area and the increased traffic. He also said he has experience with the applicant for not following through with projects and having half completed projects that create a mess.

Roger Plourde, 45 Pearl Street - Asked that Council not approve the rezoning, saying that it is an unorganized plan with no confirmed funding, no architect drawings, etc. Too many unknowns and the Council should see a solid plan before approving the rezoning.

Ken Wagner, 21 Pearl Street - Expressed concerns with safety in the neighborhood if the hotel is built and the increased vehicles, mentioned there are daycares in the area. He said that at a recent neighborhood meeting, fifty percent of the neighbors were opposed to the project, and he also expressed concerns that no specific details are being provided prior to the change in zoning.

Pamela Morin, resident of Sabattus - Spoke in support of development, noting that many of the family and friends of the Maineiacs players who come to visit must stay in Portland due to lack of hotel space in the area. She said that East Avenue is not a quite neighborhood currently, noting the traffic, the high school, sporting events and so forth.

Diane Dubois, 71 East Avenue - She lives in the neighborhood and owns a business in the neighborhood, and is in support of this project, saying that East Avenue has been growing for years and this is the natural next phase, she said she is excited about the new development.

Mayor Guay then closed the hearing. Councilor Rousseau expressed concerns about whether the proper notifications were done for the neighborhood.

VOTE (97-2004)

Motion by Councilor Rousseau, seconded by Councilor Connors:

To postpone this item to the next Council meeting. Failed - Vote 2-5 (Councilors Connors and Rousseau in favor, others opposed.)

The City Administrator noted that there are a few factors for the Council to consider when making this determination. The applicant's may not have the financial resources to have a comprehensive detailed plan created, unless the property is sold for development. The Council has the right to require project specifics before approving the rezoning, but it is not

necessary. The only question before the Council now is a policy issue - would this section of the City be suitable to have a hotel located in this area? There is commercial activity currently in the neighborhood now. The Council also needs to determine if the use of a hotel is consistent with the other types of activities that are currently allowed in the existing zone, and the city staff feels it is. Regarding the notice requirement, the city staff did complete the proper notice requirements are required by state statutes, so this is a non-issue. Councilor Rousseau expressed his concerns about wanting to be sure that both the rights of the applicant and the rights of the abutters are protected. Councilor Paradis reminded the Council that they have approved rezoning requests in the past without asking for a full business plan in advance, such as Shaw's Supermarket, Butler Brothers, and Walmart to name a few. He said that the City needs more of a tax base for the community and cautioned about too many locations with an outlook of "not in my backyard", then there would be no place for development to occur. He noted that everyone needs to work together to make this work. Councilor Mendros did comment about the restaurant piece, saying that it would make a large difference in impact if it is within the hotel building as opposed to a separate building.

VOTE (98-2004)

Motion by Councilor Mendros, seconded by Councilor Rousseau:

To insert the following amendment: To establish a thirty six month time frame if the hotel is not built, then the zoning reverts back to the original zone, and to require that the restaurant or any eating and drinking establishment be located within the main structure of the hotel, and not be a separate building. Passed - Vote 4-2 (Councilors Jean and Connors opposed)

VOTE (99-2004)

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

To approve final passage of the amendment to the Zoning and Land Use Code and Map to conditionally rezone the properties at 121 East Avenue and 6 and 8 Malo Street, from the Office Residential (OR) District and Neighborhood Conservation "A", (NCA) to the Community Business (CB) District, subject to a conditional agreement, and to establish a thirty six month time frame if the hotel is not built, then the zoning reverts back to the original zone, and to require that the restaurant or any eating and drinking establishment be located within the main structure of the hotel, and not be a separate building. Passed - Vote 6-0

**PUBLIC HEARING ON LIQUOR LICENSE APPLICATION FOR
BARNIE'S PLACE, 1065 SABATTUS STREET**

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

VOTE (100-2004)

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

To authorize the City Clerk's Office to approve the applications for a liquor license and special amusement permit for dancing and entertainment for Bernie's Place, 1065 Sabattus Street. Passed - Vote 6-0

**PUBLIC HEARING FOR THE FISCAL YEAR 2005
CAPITAL IMPROVEMENT PROGRAM**

City Administrator James Bennett presented the recommendations for the FY2005 Capital Improvement Program budget. Mayor Guay opened the public hearing to receive citizen input and comment. No members of the public spoke for or against this issue. Mayor Guay then closed the hearing. Mr. Bennett noted the CIP is a planning document, not a funding document and funding for the projects need to be integrated into the FY05 budget. A total of \$1,816,513 in capital projects is included in the CIP. The City Administrator then discussed the impact that the MMA Tax Reform vote scheduled for June will have, as well as the impact that November's vote on the Tax Cap proposed by the Maine Taxpayer's Action Network/Carol Palesky will have on the City budget. He then outlined the recommended projects of road project funding and the water and sewer recommendations for projects. Mr. Bennett concluded by outlining the funding sources such as city bonds, city operating budget, CDBG funds, federal and state money, sewer bond, sewer operating budget, water bond and water operating budget.

**PUBLIC HEARING ON A \$300,000 BOND ISSUE FOR A GUARANTEE BOND TO
THE LEWISTON DEVELOPMENT CORPORATION**

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

VOTE (101-2004)

Motion by Councilor Jean, seconded by Councilor Rousseau:

To conduct a Public Hearing to receive citizen input, and to approve the attached Order to finance a guarantee bond for the Community Facility Corporation, to the Lewiston Development Corporation, through a bond issue in the amount of \$300,000:

ORDERED, That the Finance Director is authorized to issue bonds in a principal amount not to exceed \$300,000 in order to assist in the financing of improvements to the Colisee, by providing a loan guarantee to the Lewiston Development Corporation or otherwise assisting in such financing;

FURTHER ORDERED, That the Finance Director is authorized to negotiate the issue of the bonds;

FURTHER ORDERED, That the bonds shall be signed by the City Treasurer and Mayor;

FURTHER ORDERED, That the date, maturities, denominations, interest rate or rates, place or places of payment, form or other details of the bonds and of the provisions for the sale thereof shall be determined by the Finance Director;

FURTHER ORDERED, That bonds hereunder may be subject to call for redemption on such terms as may be determined by the Finance Director.

Passed - Vote 6-0

**PUBLIC HEARING ON A BOND ISSUE TO RETIRE EXISTING DEBT ASSUMED
BY THE COMMUNITY FACILITY CORPORATION IN THE ACQUISITION OF
THE COLISEE**

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

VOTE (102-2004)

Motion by Councilor Jean, seconded by Councilor Rousseau:

To conduct a Public Hearing to receive citizen input, and to approve the attached Order to finance the retirement of existing debt assumed by the Community Facility Corporation in the acquisition of the Colisee, through a bond issue in the amount of \$3,040,000:

ORDERED, That the Finance Director is authorized to issue bonds in a principal amount not to exceed \$3,040,000 in order to retire existing debt assumed by the Community Facility Corporation in their acquisition of the Colisee from the Lewiston-Auburn Hockey Arena, Inc.;

FURTHER ORDERED, That the Finance Director is authorized to negotiate the issue of the bonds;

FURTHER ORDERED, That the bonds shall be signed by the City Treasurer and Mayor;

FURTHER ORDERED, That the date, maturities, denominations, interest rate or rates, place or places of payment, form or other details of the bonds and of the provisions for the sale thereof shall be determined by the Finance Director;

FURTHER ORDERED, That bonds hereunder may be subject to call for redemption on such terms as may be determined by the Finance Director.

Passed - Vote 6-0

**PUBLIC HEARING ON A BOND ISSUE TO ISSUE REFUNDING BONDS FOR ALL
OR PART OF THE CITY'S 1997 AND 2000 PUBLIC IMPROVEMENT BONDS**

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

VOTE (103-2004)

Motion by Councilor Jean, seconded by Councilor Paradis:

To conduct a Public Hearing to receive citizen input, and to approve the attached Order to finance the refunding bonds for the City's 1997 and 2000 Public Improvement Bonds, through a bond issue in an amount not to exceed \$2,550,000:

ORDERED, That the Mayor and City Treasurer are authorized to issue refunding bonds in a principal amount not to exceed \$2,550,000 in order to refund all or part of the principal of and interest on the City's Public Improvement Bonds dated June 1, 1997 and Public Improvement Bonds dated March 1, 2000, and to pay any redemption premium thereon and costs of issuance;

FURTHER ORDERED, That the City Council instruct the Finance Director to advertise for bids for the Bonds or negotiate the sale of the Bonds with any qualified purchaser; to award the loan; and to employ Palmer & Dodge LLP to furnish the legal opinion for the same;

FURTHER ORDERED, That the bonds shall be signed by the City Treasurer and Mayor;

FURTHER ORDERED, That the date, maturities, denominations, interest rate or rates, place or places of payment, form or other details of the bonds and of the provisions for the sale thereof shall be determined by the Finance Director;

FURTHER ORDERED, That bonds hereunder may be subject to call for redemption on such terms as may be determined by the Finance Director.

Passed - Vote 6-0

STREET ACCEPTANCE FOR A PORTION OF ALFRED A. PLOURDE PARKWAY

VOTE (104-2004)

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

ORDERED, That a portion of Alfred A. Plourde Parkway, with the boundaries and measurements of the same, as laid out and reported by the legal description, be hereby accepted, allowed and established as a public street or public way for the use of the City of Lewiston. Passed - Vote 6-0

CONDITIONAL DISCONTINUANCE OF A PORTION OF FOSS ROAD

VOTE (105-2004)

Motion by Councilor Connors, seconded by Councilor Paradis:

That the Conditional Order vacating and discontinuing a portion of Foss Road be adopted.
Passed - Vote 6-0

OTHER BUSINESS

Councilor Mendros reminded Council that he serves on the MMA LPC and he is committed to working with this group and the Council regarding the passage of Question 1 on the June ballot. He also stated that at a future meeting when it is not so late he will present a report to

Council on the NLC conference that he recently attended. Councilor Rousseau stated that he will work for the passage of the MMA Tax Reform ballot question and the defeat of the Palasky Tax Cap question in November.

The City Administrator reminded the Council about next week's budget presentation. Councilor Paradis said that a date and time need to be established for a Council workshop to review parking issues. Assistant City Administrator Greg Mitchell reminded the group about the upcoming joint workshop with the Auburn Council and the Portland Council to discuss service center community coalition issues.

VOTE (106-2004)

Motion by Councilor Jean, second by Councilor Connors:

To adjourn at 10:40 P.M. Passed - Vote 6-0

A true record, Attest:

Kathleen M. Montejo, CMC
City Clerk
Lewiston, Maine