

STATE OF MAINE

COUNTY OF YORK

CITY OF SACO

The following are minutes of the City Council Meeting held on Jan. 5, 2009.

- I. **CALL TO ORDER** – On Monday January 5, 2009, at 7:00 p.m. a Council meeting was held in the City Hall Conference Room.
- II. **ROLL CALL OF MEMBERS** - Mayor Roland Michaud conducted a roll call of the members and determined that the Councilors present constituted a quorum. Councilors present: Margaret Mills, Leslie Smith, Jr. Ronald Morton, Sandra Bastille, Arthur Tardif, Eric Cote and Marston Lovell.

Mr. Richard R. Michaud, City Administrator and Lucette S. Pellerin, City Clerk were also in attendance this evening.

III. **PLEDGE OF ALLEGIANCE**

IV. **GENERAL:**

V. **APPROVAL OF MINUTES:** *December 1, 2008*

Minutes were approved as written.

VI. **AGENDA ITEMS:**

A. **Saco Bay Management Plan**

In response to the April 15, 2008 Legislative Resolve that a moratorium on development in Saco Bay be established, a “Report from the Saco Bay Working Group” has been prepared, a collaborative effort produced by the City of Saco and the Town of Old Orchard Beach “...to examine municipal boundaries, regulatory jurisdictions and parameters for future development in Saco Bay.”

While the report has been jointly produced, the text reflects a divergence of opinions on current status of boundaries and jurisdiction. A few additional documents will be provided to the State and Local Government Committee that provide information on Saco’s regulation of marinas, and efforts to identify needs and resources related to Saco Bay.

MAIN MOTION: Councilor Cote moved, Councilor Bastille seconded, that it be Ordered that the City Council accept the report titled, ‘**Report from the Saco Bay Working Group to the 124th Legislature State and Local Government Committee – January 2009**’ and supporting documents – to be submitted to the Legislature. Further move to approve the Order. The motion, as amended, passed with seven (7) yeas.

AMENDMENT TO MAIN MOTION: Councilor Cote moved, Councilor Bastille seconded, that in the **Findings of Which we are all in agreement are as follows** paragraph four (4) , second sentence (That legislation recognized and described the easternmost corner of Saco as the low water mark on the then

Saco/Scarborough town line (see Map #2 in appendix)) be struck. The motion passed with six (6) yeas and one (1) nay. Councilor Smith voted in the negative.

SECOND AMENDMENT TO MAIN MOTION: Councilor Cote moved, Councilor Mills seconded that Saco work with Old Orchard Beach as stated by Sandy Guay. The statement read ‘It remains to be seen whether Saco’s best use of its resources is in fighting this battle, or in working with Old Orchard Beach, Scarborough and Biddeford to develop a joint plan for the proactive protection of, and for any further development of the significant and common resources of Saco Bay. The motion passed with six (6) yeas and one (1) one nay. Councilor Smith voted in the negative.

B. (First Reading) Contract Zone – Veterans Housing at 333 Lincoln Street

The Volunteers of America, Northern New England (VOANNE) proposes a contract zone that would allow an 11-unit apartment for homeless veterans to be established in the west wing of the Kimball Health Center. Veterans would occupy ten units, while the 11th would be an apartment for a live-in staff member. There is a history to this project: the VOANNE originally sought and received conditional use and subdivision approval from the Planning Board for an 11-unit multi-family dwelling over the summer. However, abutter Bill Kany subsequently appealed the determination that the use should be classified as a “multi-family dwelling,” and the ZBA upheld the appeal. So, the conditional use approval was overturned.

Councilor Morton moved, Councilor Lovell seconded, that the City of Saco hereby Ordains and Approves the First Reading of the document titled, ‘**Contract Zone Agreement By and between Volunteers of America Northern New England, Inc. and the City of Saco,**’ dated Dec. 2, 2008; and to schedule a Public Hearing for January 20, 2009. The motion passed with seven (7) yeas.

**Contract Zone Agreement By and Between
Volunteers of America Northern New England, Inc. and the City of Saco**

December 2, 2008

THE CITY OF SACO HEREBY ORDAINS:

I. That the Zoning Ordinance of the City of Saco, dated January 2, 1985, and amended through October 20, 2008 is hereby amended by adopting this contract by and between the City of Saco and Volunteers of America Northern New England, Inc. (VOANNE) (Applicant).

1. The Applicant proposes to establish ten (10) efficiency apartments for homeless veterans, with one (1) apartment for an on-site manager, in a portion of the Kimball Health Center.
2. The Applicant has established right, title and interest with the submittal of an Option and Purchase Agreement dated February 20, 2008, and an Extension Agreement dated Nov. 4, 2008, wherein the Kimball Health Center, a Maine nonprofit corporation grants to the Veterans VOANNE Housing Corporation, a Maine nonprofit corporation the option to purchase the West Wing of the building located at 333 Lincoln Street, Saco, Maine.

3. Said property is identified as Tax Map 65, Lot 19-1 on City of Saco tax maps.
4. Said property is in the R-2 zoning district.
5. The proposed use was initially identified as a Multi-Family Dwelling by the City's Zoning Officer. A Multi-Family Dwelling is a Conditional Use in the R-2 district.
6. The Applicants submitted a Conditional Use application to the City Planning Department on June 19, 2008.
7. The Planning Board, acting on the Zoning Officer's interpretation of the use as a Multi-Family Dwelling, granted approval for the Conditional Use on August 19, 2008.
8. Appellants William and Holly Kany submitted an administrative appeal to the Zoning Board of Appeals (ZBA) on September 5, 2008, contending that "Error was made in a finding by the Code Enforcement Officer and Planning Board that the proposed Volunteers of America project in Kimball Health Center constitutes a multi-family dwelling."
9. The ZBA considered said appeal at meetings on October 6 and October 27, 2008. At the latter meeting, the ZBA voted on a motion to deny the appeal of the Planning Board's decision, said motion failing of passage, 1-5. The ZBA then voted on a motion to grant the appeal as submitted based on an error of law that the Zoning Officer misinterpreted the definition of "Multi-Family Dwelling," said motion approved, 5-1.
10. As a result of the ZBA action, the Applicant hereby makes application for a Contract Zone that would allow the proposed ten efficiency apartments for homeless veterans and one (1) apartment for an on-site manager, in the West Wing of the Kimball Health Center, to be established and to operate at 333 Lincoln Street.

II. This contract amends the Saco Zoning Ordinance as follows:

This Contract Zone, specifically and exclusively for the parcel at 333 Lincoln Street, would allow the Applicant to establish ten efficiency apartments for homeless veterans , and one (1) apartment for an on-site manager, in the West Wing of the Kimball Health Center, subject to the following conditions and restrictions, as provided for in Section 1403 of the Saco Zoning Ordinance:

- a. Ten (10) efficiency apartments for homeless veterans and one (1) apartment for an on-site manager, in the West Wing of the Kimball Health Center, as proposed and described by the Applicant shall be allowed to operate as a permitted use on the parcel identified herein: Tax Map 65, Lot 19-1, also referenced as 333 Lincoln Street.

- b. Approval for Preliminary Subdivision and Final Subdivision plans was granted by the Planning Board on August 19 and September 2, 2008. Said approvals remain in effect and are valid as noted in the Findings of Fact dated August 19, 2008, and Findings of Fact and Conditions of Approval dated September 2, 2008.
 - c. In that the project has been reviewed as a subdivision, and subdivision approval has been granted based on the review of issues including but not limited to traffic, stormwater management, lighting, landscaping, parking and sidewalks, notwithstanding Section 1403-9, the apartment project proposed by the Applicant shall not be subject to site plan review.
 - d. Notwithstanding Section 412-6, the conversion of the west wing of the Kimball Health Center to an eleven unit apartment project need not comply with the minimum lot area and minimum lot area per dwelling unit requirements in Table 412-1, Lines A and B.
 - e. The Applicants shall adhere to all other applicable provisions of the R-2 zoning district and of the City of Saco Zoning Ordinance and terms of Subdivision approval.
 - f. The apartment facility will be staffed 24 hours per day, seven days per week.
 - g. The apartment facility shall be operated as outlined in materials developed by the Applicant, including but not limited to a program service manual, housing manual, and covenants.
- 1.
- h. All details as shown on the submitted plans and included in the submitted applications are hereby incorporated into this contract by reference. The proposed use shall be operated substantially in conformance with those plans. Minor changes may be approved by the staff of the City of Saco. Any changes determined by the staff to be "major" shall be submitted to the Planning Board for review. If it is determined that the changes constitute a change in the contract, then the developer shall also be required to obtain City Council approval of the changes.
 - i. This contract and its provisions shall specifically and exclusively apply to the Contract Zone request submitted by the Applicant, as approval of this Contract Zone is in part based on the financial and technical qualifications of the Applicant as submitted to the City.
 - j. Failure of the Applicant to establish the proposed use as described in application materials for this Contract Zone within two (2) years from the date of approval shall render this approval and Contract null and void. A one (1) year extension of this approval may be requested of the City Council if submitted prior to expiration of the original two year approval.
 - k. Breach of these conditions and restrictions by the Applicant shall constitute a breach of the contract, which shall constitute a zoning violation, subject to enforcement action.

III. Pursuant to authority found in 30A M.R.S.A. Section 4352 (8), and the City of Saco Zoning Ordinance, Section 1403, and by vote of the Saco Planning Board on December 2, 2008, and the Saco City Council on ____, 2009, the following findings are hereby adopted:

A. City Tax Map 65, Lot 19-1 is a parcel of an unusual nature and location, for the following reasons:

1. The unique character of the parcel dates back to the early 20th century. Lucia Kimball Deering died in July of 1916. Her will provided that her estate, valued at \$87,287.12, would go to the City of Saco for the purpose of constructing a full service hospital. The Maine State Legislature amended the Saco City Charter by a Private and Special Law enacted in 1917, authorizing the City to accept the funds from the Deering estate and to use those funds “to purchase a suitable building with the land on which it stands, or to purchase a suitable lot and erect a hospital building thereon.” Litigation initiated by the heirs of Lucia Kimball Deering, contesting her will based on lack of capacity, was settled in January of 1918 with an agreement that allowed the City of Saco “to defer the construction and maintenance of a hospital. . . in order to allow the income from the fund to accumulate and become a part of the principal, to the end that said hospital. . . shall be a more suitable memorial. . .”.

By 1975 the Lucia Kimball Deering Fund had grown to \$835,617.69, still short of the costs of establishing and maintaining a hospital. The City and the Deering heirs returned to court, where it was ultimately determined that the “general charitable intent” of Ms. Deering’s will presented a “concept painted with a broad brush” that would allow for the construction of a “community health center” rather than a hospital. The Kimball Health Center is that community health center. The court described the scope of the community health center as “non-duplicative and non-competitive” with area hospitals; as “bringing together under one roof and coordinating the work of various health services now scattered in the area;” as adding services not otherwise available; as addressing “both mental and physical health problems;” and as “preventing many residents from becoming hospital cases.”

The Kimball Health Center was completed in 1981. Historically, KHC has offered many medical and social services including screening for various illnesses and conditions, home health care, Meals on Wheels, public health education, mental health counseling, outpatient services and preventive care. Today the Kimball Health Center is occupied by uses such as Community Dental Health, the Truslow Adult Center, an ophthalmologist, a podiatrist, social work and counseling services, and a massage therapist.

The purposes identified by the Superior Court in 1978 describe not only the services that KHC has provided in the past and continues to provide, they describe equally well the services that VOA proposes to provide through its residence for homeless veterans. VOA’s proposed use may not fit neatly into the zoning ordinance’s definition of “Multi-Family Dwelling” or “Community Living Use.” It does, however, fit squarely within the directives contained in the will of Lucia Kimball Deering; the 1917 Private and Special Law enacted by the Maine State Legislature; the 1919 and 1929 City of Saco ordinances that implement the 1917 legislative action; and the judgment issued by the York County Superior Court in 1978. Those private and governmental actions and directives restrict and define the Kimball Health Center property to a degree that qualifies the property as truly unique and therefore appropriate for contract zoning.

B. The proposed rezoning is consistent with the Saco Comprehensive Plan, based on the following goals:

Chapter 17, Section B. Local Economy.

Local Goals: To assure that a diversity of people is able to continue to live in Saco.

Chapter 17, Section F. Land Use

Local Goals: To encourage a pattern of land use that can be served efficiently and that does not impose an undue burden on the Town’s financial resources.

Residential Development: In its role as a regional service center, Saco is a desirable location for housing to meet the needs of many segments of the population including the elderly and disabled. The City should allow the construction of housing to meet the needs of these groups in designated residential areas of the City at densities that are compatible with the intensity of other development.

Chapter 17, Section H. Housing.

Local Goal: To provide a diversity of housing to meet the needs of a wide range of residents.

The City should continue to work with nonprofit organizations and private developers to expand the supply of housing that is affordable to lower income households. The City should continue using contract zoning and similar techniques to allow case by case consideration of proposals for new affordable housing.

C. The proposed use is consistent with the existing uses and permitted uses within the original zone. The original zone is the Residential-2 (R-2) zone, a medium density residential district “. . . designated for land central water and sewer facilities are available or where the installation of these facilities is feasible, and where new multi-family developments can be harmoniously located within existing neighborhoods.” (Zoning Ordinance, Section 405-2.) Among the permitted and conditional uses allowed in the R-2 zone are single, two-family and multi-family housing, churches, daycare centers, hospitals and clinics, boarding houses, elderly congregate housing and community living uses.

Examples of uses that exist in the R-2 zone include a 10 unit condominium under construction across Lincoln Street, the Evergreen Manor senior housing facility, several subdivision and condominium developments, and assorted nonconforming commercial entities.

D. The conditions proposed are sufficient to meet the intent of Section 1403. Contract Zoning, of the Saco Zoning Ordinance.

IV. Based on the above findings, conditions and restrictions, the City Council hereby incorporates this Contract Zoning agreement into the Saco Zoning Ordinance by reference. By signing this contract, both parties agree to abide by the conditions and restrictions contained herein.

Adopted by the Saco City Council on _____2009.

by _____

by _____

Richard Michaud
City Administrator

New England, Inc.

June Koegel, President/CEO
Volunteers of America Northern

Applicant

C. Confirm Special Attorney Appointments

Pursuant to City Code §5.06. City Solicitor – there shall be a city solicitor who shall be appointed by the City Administrator and the City Council. The city solicitor shall serve at the will of both the Mayor and the City Council. The city solicitor shall serve as chief legal advisor to the Mayor and the City Council, the City Administrator, and all City departments, boards, agencies, committees and commissions. The city solicitor shall represent the City in legal proceedings and shall perform any other duties prescribed by ordinance and law. The City Council shall have the right to employ or retain special attorneys, if it deems it to be in the best interest of the City.

Listed on Schedule 1 are the special attorneys that work for the City of Saco in differing capacities.

Schedule 1 – Special Attorney Appointments, dated December 15, 2008

<u>Firm</u>	<u>Key Contact</u>	<u>Specialty</u>
Preti Flaherty Beliveau Pachios & Haley	David Van Slyke	Superfund Site & Lund Road
Bernstein, Shur, Sawyer & Nelson	Linda McGill	Labor & Worker's Comp
Drummond, Woodsum, MacMahon	Richard A. Spencer Election	Bond Council, School
	Bill Stockmeyer	Bond Council
Jensen, Baird, Gardner, Henry	Ken Cole has conflict), Natalie Burns	Special Land Use (when Tim Saco Island TIF, FEMA Special Land Use
August & Epstein	Bill August	Cable Franchise
Skelton, Taintor & Abbott	Alan Stone	PUC
Smith Elliott Smith & Garmey, PA	Bill Kany	Title Work
Ingraham & Levi	Bryce Ingraham	Title Work

Councilor Mills moved, Councilor Bastille seconded, that it be Ordered that the City Council deems it to be in the best interest of the city to employ or retain the special attorneys listed on the document titled, 'Schedule 1 – Special Attorney Appointments, dated December 15, 2008'. Further move to approve the Order. The motion passed with six (6) yeas and one (1) nay. Councilor Smith voted in the negative.

D. Confirm Registrar Appointment

Pursuant to Title 21-A, Maine Law on Elections §101 “ The municipal officers of each municipality shall appoint in writing a qualified Registrar of Voters by January 1st of each off-numbered year.

Councilor Tardif moved, Councilor Bastille seconded, that it be Ordered that the City of Saco appoint Lucette S. Pellerin, as Registrar of Voter, for a term of two (2) years. Said term shall be from January 1, 2009 to January 1, 2011. Further move to approve the Order. The motion passed with seven (7) yeas.

E. Asset Forfeiture

The Office of the Attorney General requires the legislative body of the municipality involved in any asset forfeiture to publicly vote to approve the acceptance of the assets each and every time the courts make them available for disposal.

Typically, the forfeiture is in the form of cash assets. In this instance, it is in the form of firearms seized during the service of a search warrant arising out of an investigation in the matter of “State of Maine v. Russell E. Korpaczewski, Jr.” (Docket # CR-07-2264)

Under Maine law, seized firearms may be destroyed, used for training purposes, or sold. *If the Court grants the seizure*, we will evaluate these firearms prior to making a decision regarding their disposal.

Councilor Bastille moved, Councilor Mills seconded, that it be Ordered that the City Council does hereby approve with reference to Superior Court Docket #CR-07-2264, of the transfer of the Defendant(s) in Rem, namely several firearms, pursuant to 15 M.R.S.A. §5824(3) and §5822(4)(A). Further *move to approve the order*. The motion passed with seven (7) yeas.

F. Adopt the Resolution - PACTS

The Portland Area Comprehensive Transportation System (PACTS) policy committee is seeking the City Council support for three ‘High Priority Projects’, the Veterans Bridge rehabilitation/reconstruction project (\$56,000,000), the purchase of 61 public transportation vehicles (\$25,000,000), and to make commuter service improvements in the ‘Portland North’ corridor (\$90,000,000). The high priority project list will be submitted to our Congressional Delegation in March 2009.

Councilor Cote moved, Councilor Morton seconded, that it be Ordered that the City Council adopt the Resolution titled, ‘**Portland Area Comprehensive Transportation System (PACTS) High Priority Projects**’. Further *move to approve the Order. The motion passed with seven (7) yeas.*

- VII. **Councilor Bastille moved, Councilor Mills seconded that it be Ordered that the City Council, Pursuant to [1 M.R.S.A. Chapter 18, Subchapter 1, §405 (6) (A)] move to enter into Executive Session:** to discuss appointment of the City Administrator. The motion passed with seven (7) yeas. TIME: 9:20 p.m.

a. Report from Executive Session

Upon return from the executive session Mayor Roland Michaud conducted a roll call of the members and determined that the Councilors present constituted a quorum. Councilors present: Margaret Mills, Leslie Smith, Jr. Ronald Morton, Sandra Bastille, Arthur Tardif, Eric Cote and Marston Lovell.

A report was given pertaining to the Executive Session.

VIII. ADJOURNMENT

The meeting was adjourned, by unanimous consent, at 10:30 p.m.

ATTEST: _____

Lucette S. Pellerin, City Clerk