

STATE OF MAINE

COUNTY OF YORK

CITY OF SACO

**I. CALL TO ORDER** – On Monday, October 19, 2015 at 7:00 p.m. a Council Meeting was held in the City Hall Auditorium.

**II. ROLL CALL OF MEMBERS** – Mayor Donald Pilon conducted a roll call of the members and determined that the Councilors present constituted a quorum. Councilors present: David Precourt, Leslie Smith Jr., Thomas Roughan, Kevin Roche, Arthur Tardif, Eric Cote and Nathan Johnston. City Administrator Kevin Sutherland was also present this evening.

**III. PLEDGE OF ALLEGIANCE**

**IV. GENERAL**

**PROCLAMATION: EXTRA MILE DAY**

**CITY OF SACO, MAINE  
RESOLUTION IN SUPPORT OF “EXTRA MILE DAY”  
VOLUNTEERISM AND SERVICE – NOVEMBER 1, 2015**

**WHEREAS**, Saco, Maine is a community which acknowledges that a special vibrancy exists within the entire community when its individual citizens collectively “go the extra mile” in personal effort, volunteerism, and service; and

**WHEREAS**, Saco, Maine is a community which encourages its citizens to maximize their personal contribution to the community by giving of themselves whole heartedly and with total effort, commitment, and conviction to their individual ambitions, family, friends, and community; and

**WHEREAS**, Saco, Maine is a community which chooses to shine a light on and celebrate individuals and organizations within its community who “go the extra mile” in order to make a difference and lift up fellow members of their community; and

**WHEREAS**, Saco, Maine acknowledges the mission of Extra Mile America to create 550 Extra Mile cities in America and is proud to support “Extra Mile Day” on November 1, 2015.

*NOW THEREFORE, I, Donald Pilon, Mayor of the City of Saco, Maine, in recognition of this event, do hereby proclaim **November 1, 2015**, to be “**Extra Mile Day**”. I urge each individual in the community to take time on this day to not only “go the extra mile” in his or her own life, but to also acknowledge all those who are inspirational in their efforts and commitment to make their organizations, families, community, country or world a better place.*

*Adopted by the City of Saco on the 19<sup>th</sup> day of October, 2015*

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Mayor, Donald Pilon

**V. PUBLIC COMMENTS**

Barbara Colman, Stockman Ave. - Ms. Colman addressed the Stackpole Bridge issue which has been ongoing for over 13 years. She contacted the Town of Buxton and found that the only time Saco contacts them is when something significant happens. She noted that both communities do work together to cover both the Simpson Rd and the Tapley Rd. Back in 2006 it was a \$750,000 resolution for the bridge and now it is \$990,000 with the possibility of another \$360,000 additional the Council is being asked to approve. She asked the Council to make a final decision one way or another tonight. This request is now personal in nature. Had the bridge been functional a young lady would more than likely have traveled home on Oct. 15<sup>th</sup> to her house on Lord Road on the Buxton side, using the Simpson Rd. Instead she had to loop around to get to her home using the Buxton Rd. She fell asleep at the wheel of her car and hit my childhood home taking out a large corner of the living room. Luckily she missed the monitor heater, my disabled brother, the power supply and her car didn't produce any spark. This could have

been a real tragedy all around.

Councilor Smith called a point of order on the public comments stating that they were originally intended to be on items that were not on the agenda and they were supposed to be for 2-3 minutes only and asked the Mayor to enforce the rules.

## **VI. AGENDA**

### **A. CONTRACT ZONE: 15 OCEANSIDE DRIVE – (PUBLIC HEARING)**

Applicants George and Nancy Driscoll propose to clarify through the contract zoning process that their property at 15 Oceanside Drive is regarded as two lots: one developed and one eligible for a building permit. Two lots were established as part of the Kinney Shores subdivision in 1914, and were acquired by the Driscolls in 1980, but were combined as a result of a 1985 amendment to the Zoning Ordinance. Today the City regards and taxes the property as a single parcel.

This item was reviewed by the Planning Board during its September 1<sup>st</sup> meeting. The Board arrived at a negative finding on the four standards found in Sec. 1403-6, and voted to forward a negative recommendation to the Council. The City Council discussed during Workshop on September 21, and the First Reading on October 5th.

On October 7<sup>th</sup>, Councilor Roughan emailed Saco's Code Enforcement Officer and City Planner to clarify the language in Section I, subsection 16, that states "established as two separate, buildable lots." Whereas, there is no guarantee that a building permit will be issued for this lot since there are many considerations beyond zoning, Councilor Roughan suggested modifying the language from "buildable" to "conforming". This amendment is highlighted on the following page.

Councilor Roche moved, Councilor Precourt seconded to open the Public Hearing on the document entitled "Contract Zone Agreement By and Between J. George and Nancy S. Driscoll and the City of Saco" dated Sept. 1, 2015", with the following amendment: I.16. Recognizing the limitations of the Subject Property, and the requirements of the Zoning Ordinance, the Applicants hereby make application for a Contract Zone that would allow the Subject Property to be legislatively established as two separate, ~~buildable~~ conforming lots.

Sandra Guay, 52 Cumberland Ave. – Ms. Guay noted that she was on the Saco Planning Board for 12 years and had to step down last year. She is also a Land Use Attorney and also an instructor at the Muskie School in the Planning Course for the graduate planners. I say this because what I'm going to say is based on my knowledge of State and Case Law with respect to contract zones in general and this one in particular. Contract zoning should be used only in the most unusual circumstances to promote projects that are beneficial to the city and citizens of Saco. Contract zones for particular properties to change the zoning which would otherwise apply to that property for one particular owner does not serve the citizens, in fact it is a disservice to the citizens of Saco. Particularly the others that live in that neighborhood who buy property with the understanding of what is allowed and what is not allowed and what they are allowed to do with their homes and not allowed to do with their homes and what they expect their neighbors to do or not to do. The proposal that is before you this evening has nothing unique or special about this property. There are all of properties that were combined as a result of zoning ordinances everywhere combining lots that were non-conforming lots as of the date of the zoning ordinance. In fact this lot is in the Shore Land Zone and Saco's ordinance like many others meets the minimum requirements in the State of Maine which requires lots when there are 2 lot that are non-conforming, one is built and one is not, to be merged so that the condition becomes more conforming and not less conforming. This proposal is taking a non-conforming condition of property and proposing to make it even more non-conforming than it already is. The purpose of zoning is to reduce zone non-conformities and to eliminate non-conformities and not to create more non-conformities. Because there are so many properties that are similar to this both in the Shore Land Zone and not in the Shore Land Zone where there were 2 lots of record at one point in time. One lot was built and one lot wasn't the lots merged under the zoning ordinances. If you allow this property to be separated by a contract zoning, it would be difficult to not allow the next person and the next person and the next person and this is not common or unique and it happens all over the city and to also allow them to separate their lots and build it. If you are doing that you are circumventing the zoning ordinance and you might as well amend the zoning ordinance because there is no limitation on the number

of people that could then do it. Maine Law Court has actually with our neighboring City of Biddeford had a case with the law court where they looked at this kind of a situation where there are existing lots of record that pre-date the Zoning Ordinance and the question was whether for the purposes of being able to get a building permit those lots have merged and had to be treated as one lot because of the deed describes them as one lot or otherwise and the court said “no, not necessarily”. You have existing lots and those lots do not lose just because they are shown on one deed. What does cause them to lose their uniqueness is the Zoning Ordinance. So you can’t just look at the deed, you need to look at the Zoning Ordinance. In this case Saco’s Zoning Ordinance like most others merges lots that have one lot that is constructed and one lot that is not and that is consistent with Maine Law. That is really all I have to say. I have been before this Council before discussing Contract Zoning and I know in the past that the Council has approved Contract Zoning where it is for individual properties and my feeling is that if you are going to be doing that you should be looking to change the underlying zone and allowing uses that may be appropriate for instance in the downtown areas. This particular request doesn’t even ask for a use that is not allowed. It asks for something that specifically is disallowed in the Zoning Ordinance. My last point is that I notice that it says this is to clarify the Contract Zoning process that one lot is developed and one lot would be eligible for a building permit. The purpose of Contract Zoning is not to clarify what is in the Zoning Ordinance. The Zoning Ordinance is perfectly clear, it doesn’t need clarification. The Zoning Ordinance says you cannot do this. There is no clarification to that, there is no misunderstanding in the terms, it says what it says.

Jim Godbout, Ward 4 Kinney Shores – Mr. Godbout noted that Ms. Guay spoke very well about the zoning and hopefully you all understand this. My only fear is that we have all been down there and done a lot of work to our homes down there. We have had strict guidelines and we all have had to abide by the Planning Board, Code Enforcement and Environmental Protection. I don’t know the Driscoll’s at all. They have a very nice piece of property down there and I think the whole community has done very well at this point in time. If we start to set precedence by letting additional building happen on non-conforming lots, and I’m not even sure how to get a building permit anyway because I don’t believe the DEP is going to allow this as you can’t go beyond 20% coverage. I want to make sure that you all really investigate this very heavily because you are going to set precedence for a lot of other people in our community.

Chuck Driscoll, 33 Cove Ave – Mr. Driscoll noted that his parents are George and Nancy Driscoll. This piece of property I think is very unique. I don’t know how many of you have seen it. It has its own seawall, sewer connection, and does fall within guidelines of the density of the area. If when granted this does become a structure, it will still follow those guidelines. The existing structure that is there will always remain the same. Granting a Contract Zone will not change the setbacks what so ever on that existing lot. I think as part of the character of the seaside area that it would be very nice and I think that the vision of the town should allow this to happen. I think it is the best thing for the community. The tax rate down there we know is very high and it would be good for the community.

Mary Ann Florek, Manchester, Maine & formerly from Ocean Park – Ms. Florek noted that George and Nancy Driscoll are her parents as well. Something that I feel is not being mentioned out loud here is that when this removing of the lot line between the 2 parcels of land was that there were 2 separate deeds in place. Throughout my research in anything that I have looked up is that a deed is what defines a piece of land. Most of us have a deed and the bank may own most of it, but we have a deed and we count on that to prove this is what we own. When these 2 parcels were merged through the ordinance in effect they took away Nancy’s land and gave it half to George. Now if they were divorced I don’t think anyone would sit still for that for a minute. They are not divorced yet, but with this process who knows. That is a salient point. A legal deed under a separate name should never have been merged together. I know that is really not the purpose of the Contract Zone but that comes down to the fundamental issue here. That they each own a separate deed and they can sell that unless the city is telling them they can’t sell what they own by deed and I don’t think that is the case. But, if one of them decides to sell their part isn’t the city going to have to split that tax record again? For years it was 2 tax records and that is why because it was 2 pieces of property, 2 deeds. One owned by Nancy and one jointly owned by both and I think that is very important to the fundamental issue here. A Contract Zone is a way to set things back on track the way they should have been.

Carl Walker, 22 Cottage Ave – Mr. Walker noted that he had been here for about 15 years now. He is there to

support George and Nancy. He has known them his whole life. This whole thing seems to me a bit from looking on the outside a big colossal screw up. I understand that they have been getting taxed by separate tax bills for this property up until about 6 months ago. Way before this process even started so in the eyes of Saco they were by default saying that these are 2 separate pieces of property, their deeds had 2 separate names on them and at the last minute to come in and say that it is no longer 2 separate properties, I don't understand that. I would just like to give them my support.

Diane Sparrow, 96 Oceanside Dr. –Ms. Sparrow just wanted to reiterate what Mr. Walker said. I have know the Driscoll's for a long time and it always seemed like it was 2 separate deeds and 2 separate tax bills for that property and it only seems fair to me that their request go forward and use the Contract Zoning.

Elizabeth Johnston, 62 Pleasant St. – Ms. Johnston asked the Council to think about the very intelligent and well educated comments the first speaker made to you tonight. From my perspective although I will admit that I do not fully know the details of this particular situation, I have some idea of them. The understanding is that they have been turned down for this proposal by other organizations at maybe the State level, not sure. But, I really feel that although obviously this is not what these people had in mind and I don't want to particularly talk about them personally, but I understand they are hurting in this respect. But I really think that we have to respect our Zoning laws. I also think the Contract Zone for me in the last few years has taken on a really nasty connotation. I think it is a excuse for anybody to do anything anywhere. I would just like to say please consider the logic and the information that was shared with you by the first speaker and think about what flood gates we are opening when we say "yes" and we have to say "yes" again and again. That does not really make sense to me if we want to keep our city in a healthy situation.

Ed Radin, Seaside Ave. – Mr. Radin wanted to talk to the Council about "what is but not". The zoning has been alluded to as a fixed document without much variance. However, the definitions of what a buildable lot is and what is not, I'm referencing the dummy line, the railroad bed. I'm also referencing the use in considering setbacks for paper streets. At one time I received a letter from the City of Saco telling me I could not have a building permit to erect a structure on the dummy line because it was not a buildable lot. It was not set up for a lot to be built on. My count to date is that there are 11 structures in Kinney Shores which in some or in whole are on the dummy line. So since when I was turned down by the CEO the definition of what is buildable changed. The zoning didn't change, the set-backs didn't change the definitions changed. There is no bid discussion of that that I was aware of nor was there a definition of where the set-back is measured. At one time it was measured from the edge of the paper street. Now the paper street doesn't exist. So keeping this in mind, I keep telling George and Nancy to have hope because someday the definition will change. With the DEP the lots may become buildable which aren't buildable now. The zoning won't change, it is just another way to interpret the word differently. So I'm really kind of, I think this may be their only chance to correct somebody else's definition of why we should put 2 lots together. There are allot of small lots that have nice houses on them and I don't have a problem with that.

Councilor Roche moved, Councilor Johnston seconded to close the Public Hearing and "Be it Ordered that the City Council set the Second and Final Reading for November 2, 2015." Further move to approve the order. The motion passed with seven (7) yeas.

Contract Zone Agreement By and Between  
J. George and Nancy S. Driscoll and the City of Saco

September 1, 2015

THE CITY OF SACO HEREBY ORDAINS:

**I. That the Zoning Ordinance of the City of Saco, dated January 2, 1985, and amended through August 3, 2015 is hereby amended by adopting this contract by and between J. George and Nancy S. Driscoll (Applicants) and the City of Saco.**

1. The Applicants seek a single family residential building permit to be issued for a portion of the parcel they own at 15 Oceanside Drive (Subject Property).

2. Said parcel is improved with a single family dwelling, a permitted use.
3. Said property is identified as Tax Map 11, Lot 116 on City of Saco tax maps. The current lot (Map 11, Lot 116) was transferred to the Applicants as two separate parcels in 1980, was formerly taxed by the City as two separate parcels, but was merged together when Saco adopted its Zoning Ordinance in 1985.
4. Said property is in the R-1c and Shoreland Overlay zoning districts.
5. The Applicants contend that the Subject Property is actually two parcels, and have submitted a surveyed plan to that effect dated November 1, 2005.
6. The Applicants submitted an application for a building permit to the Code Enforcement Office on August 27, 2009 for the construction of a single family dwelling.
7. The Building Inspector, Richard Lambert, denied the application in a letter to the Applicants dated August 27, 2009.
8. An Administrative Appeal and Variance application was submitted to the City on August 18, 2009.
9. A hearing was held on Sept. 14, 2009 by the Zoning Board of Appeals; review was tabled due to missing factual information.
10. The ZBA meeting continued on Oct. 26, 2009, with updated copies of Section 7.1, Shoreland Zoning of the Zoning Ordinance, and with copies of the pending variance notice sent to the Maine Department of Environmental Protection on Sept. 16, 2009 via certified mail.
11. The ZBA voted unanimously to deny the administrative appeal of the Building Inspector's decision based on the merger of the vacant lot with the developed lot pursuant to the Board's understanding of Section 501-2(1) of the Zoning Ordinance.
12. The ZBA continued the meeting on Nov. 30, 2009 to consider the Applicants' request for space and bulk variances, and voted unanimously to deny said requests.
13. The Applicants subsequently appealed the ZBA decisions to Maine Superior Court, which issued a denial of the appeal dated Oct. 5, 2010.
14. The Applicants subsequently appealed the Superior Court decision to the Maine Supreme Judicial Court, which issued a denial of the appeal on Sept. 22, 2011, concluding the two lots had merged.
15. The Applicants have continued to weigh options that may allow them to legally establish the Subject Property as two separate, buildable lots. In so doing, they cite Article 14 of the Zoning Ordinance, which addresses contract zoning.
16. Recognizing the limitations of the Subject Property, and the requirements of the Zoning Ordinance, the Applicants hereby make application for a Contract Zone that would allow the Subject Property to be legislatively established as two separate, conforming lots.

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

This Contract Zone, specifically and exclusively for the parcel at 15 Oceanside Drive, would allow the Applicants or their designees, upon making application to the City of Saco Code Enforcement Office, a single family residential building permit for "Lot 202," or as previously identified by the City of Saco as Tax Map 11, Lot 116-1, subject to the following conditions and restrictions, as provided for in Section 1403 of the Saco Zoning Ordinance:

- a. The parcel identified by the City of Saco Assessor's Office as Tax Map 11, Lot 116 is hereby
- b. reconfigured into two separate parcels, henceforth to be labeled as Tax Map 11, Lot 116 and Tax Map 11, Lot 116-1.

- c. The parcel identified as Tax Map 11, Lot 116 shall be configured as shown on a surveyed plan produced by Dow and Coulombe, dated Nov. 1, 2005, with an area of 5,293 square feet, and 50.10 linear feet of frontage on Oceanside Drive, a City way.
- d. The parcel identified as Tax Map 11, Lot 116-1 shall be configured as shown on a surveyed plan produced by Dow and Coulombe, dated Nov. 1, 2005, with an area of 5,450 square feet, and 50.10 linear feet of frontage on Oceanside Drive, a City way.
- e. Minimum Lot and Yard Requirements set forth in Table 412-1 of the Zoning Ordinance shall be modified for the Subject Property as follows:

For Tax Map 11, lot 116:

- 1. A reduction in the minimum lot size requirement from 7,500 square feet to 5,293 square feet.
- 2. A reduction in the minimum lot area per dwelling unit from 7,500 square feet to 5,293 square feet.
- 3. A reduction in the minimum street frontage requirement from 75 feet to 50 feet.
- 4. A reduction in the minimum shore frontage requirement from 100 feet to 50 feet.
- 5. A reduction in the minimum width requirement from 100 feet to 50 feet.
- 6. A reduction in the minimum width of the side yard setback requirement on the north side from fifteen feet to one foot.
- 7. An increase in the maximum lot coverage requirement from 20% to 54%.

For Tax Map 11, lot 116-1:

- 1. A reduction in the minimum lot size requirement from 40,000 square feet to 5,293 square feet.
  - 2. A reduction in the minimum lot area per dwelling unit from 20,000 square feet to 5,293 square feet.
  - 3. A reduction in the minimum street frontage requirement from 75 feet to 50.10 feet.
  - 4. A reduction in the minimum shore frontage requirements from 100 feet to 50 feet.
  - 5. A reduction in the minimum width requirements from 100 feet to 50 feet.
- f. The Applicants shall adhere to all other applicable provisions of the R-1c and Shoreland Overlay zoning districts and of the City of Saco Zoning Ordinance.
  - g. All details as shown on the submitted plans and included in the submitted application are hereby incorporated into this contract by reference. The proposed use shall be operated substantially in conformance with those plans.
  - h. 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. Upon approval of this contract by the City Council, the Applicants shall submit an application for site plan review to the Planning Office in order that the project may be reviewed by the Planning Board. Failure of the Applicants to secure site plan approval from the Planning Board within one year of the approval of this Contract by the Saco City Council shall render this Contract null and void. In the event that permits or approvals are delayed due to circumstances beyond the control of the Applicants, this one year deadline may be extended by one year upon written request to the City Council.
  - j. This contract and its provisions shall specifically and exclusively apply to the Contract Zone request submitted by the Applicants. Approval of this Contract Zone is in part based on the financial and

- k. technical qualifications of the Applicants as submitted to the City.
- l. Failure of the Applicants, or buyers of a second lot that is created by virtue of this Agreement, to seek a single family dwelling building permit 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. This two year deadline may be extended by one year upon written request to the City Council.
- m. Breach of these conditions and restrictions by the developer shall constitute a breach of the contract, and the developer shall be required to apply for a contract modification. Failure to apply for or to obtain a modification 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 September 1, 2015, and the Saco City Council on \_\_\_\_\_ 2015, the following findings are hereby adopted:

- A. City Tax Map 11, Lot 116 is a parcel of an unusual nature and location, for the following reasons:
  - 1. The parcel is one of 131 in Saco with beach frontage.
  - 2. A portion of the parcel (the former Lot 202) has been previously prepared in anticipation of building a residence with the installation of a 50 foot seawall and plantings of sea grass, as well as a second sewer service to the property.
  - 3. The parcel dates to 1914, identified as Lots 201 and 202 on a “Plan of Land for M.H. Kinney, Saco, ME called Kinney Shores” and existed for several decades as two separate lots.

B. The proposed rezoning is consistent with the Saco 2011 Comprehensive Plan, based on the following goals:  
 Chapter 3, Section D. Marine Resources --  
 Saco’s coastline, in the face of mounting development pressure in southern Maine, has managed to stay relatively undeveloped. Marine industries still have a foothold in Saco. To help maintain that foothold, commercial development should generally be limited to marine and tourism related uses at Camp Ellis. Development on the bulk of the beach area should be limited to primarily small-scale residential uses.

Chapter 5, Section A. Population and Demographics

- 1. The City should assure that residential growth is accommodated in appropriate locations that are properly zoned and able to be provided with public services.

Chapter 6, Land Use Goals and Policies

Limited growth areas are the parts of the community where the City desires a limited amount of growth and development over the next ten years (see Figure 6.1). Limited growth areas include two types of environments:

*Established Residential Neighborhoods* – areas that are essentially fully developed and therefore have limited development potential where the City’s objective is to maintain the current land use pattern while allowing limited infill or redevelopment that is in character with the neighborhood...

C. The proposed use is consistent with the existing uses and permitted uses within the original zone. The original zones are, a) the Residential-1c (R-1c) zone, a low density residential district “. . . designated for areas which are predominately single-family residential in character. It includes both sewered and unsewered land, with appropriate lot size requirements for each situation. New land uses in this district are restricted to low-density residential and associated uses.” (Zoning Ordinance, Section 405-1.) Among the permitted and conditional uses allowed in the R-1c zone are single and two-family dwellings, churches, daycare centers, elderly congregate housing and bed and breakfast establishments. And, b) the Shoreland Overlay zone, which “. . . is intended to assure that activities that occur within close proximity of the waterbodies subject to state mandated shoreland zoning are carried out in a manner that protects water quality, promotes wildlife movement, and preserves the scenic quality of these shorelands.”

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 \_\_\_\_\_ 2015.

by \_\_\_\_\_  
Kevin L. Sutherland  
City Administrator

by \_\_\_\_\_  
J. George Driscoll  
Applicant

by \_\_\_\_\_  
Nancy S. Driscoll  
Applicant

## **B. STACKPOLE CREEK BRIDGE FUNDING**

On August 3, 2015 the City Council voted to terminate the conditional contract award from the May 2015 bid process for failure to arrive at a signed contract with the City in a timely manner. Since that time, per Council direction, City staff has further explored rehabilitation alternatives and provided options and clarifications with regard to the performance and funding gaps between replacement, a value-engineered rehabilitation, and a full rehabilitation of the bridge.

To provide a fully rehabilitated bridge that provides close to the same performance of a new bridge would cost the City over \$1.5 million, while a complete bridge replacement would cost approximately \$990,000. A “value-engineered” rehabilitation is an option that could afford the City many of the same benefits as a new structure with some concessions to longevity, flood mitigation, and maintenance requirements, for approximately \$1.35 million. Staff maintains that the most cost effective and viable option for the transportation network would be to replace the bridge with current funding. However, if Council selects rehabilitation for historic preservation reasons, City staff and engineering consultants are confident that the value-engineered approach for \$1.35 million could be carried out successfully.

During Council Workshop on October 5th, supplemental funding options for rehabilitation were discussed. One option, allocating between \$270,000 and \$370,000, from the FY 2016 road paving program would reduce the amount of paving to below sustainable levels. If reallocated for the bridge project, these funds could be considered for addition to the FY 2017 budget to restore approximately 3 miles of paving that was scheduled for spring 2016.

Councilor Precourt moved, Councilor Roche seconded “The City of Saco hereby authorizes an amount not to exceed \$370,000 be transferred from the Public Works FY 2016 road paving budget account (10486-500910-03702) to the Stackpole Creek Bridge capital account (10670-500910-03827), to supplement bond approved project funds, for a rehabilitation of the existing Stackpole Creek Bridge.

AMENDMENT - Councilor Roche moved, Councilor Johnston seconded to only borrow \$495,000 at 1% interest which is roughly \$50,000 in interest that we will be paying in the future and \$495,000 to come from the General Fund and \$208,000 comes from the paving budget. That adds up to basically \$1.2 million. Then you get \$32,000 from the Bridge Preservation and \$20,000 from the Capital Improvement, which gets it up close to \$1.25 - \$1.3 million.

City Administrator Kevin Sutherland noted that it takes five (5) years to transfer money in a budget.

Finance Director Cheryl Fournier noted that the Maine DOT money was 1% over prime and the bonding rate would be a average of 3.2%, which would be cheaper than MDOT.

City Administrator Kevin Sutherland noted that if the city was to bond \$990,000 at 3.2% for 20 years that is \$1.34 million.

AMENDMENT TO THE AMENDMENT – Councilor Roche moved, Councilor Johnston seconded “The City of Saco hereby authorizes the Finance Director to use \$495,000 of the Fund balance and an amount not to exceed \$325,000 transferred from the Public Works account into the Capital Account and to supplement the bond of \$495,000”. The motion failed with three (3) yeas and four (4) nays – Councilors Precourt, Smith, Tardif and Cote.

TABLED – Councilor Cote moved, Councilor Smith seconded to table this item to talk about it some more and get more information. The motion passed with four (4) yeas and three (3) nays – Councilors Precourt, Roughan and Tardif.

## MEMORANDUM

TO: Mayor Pilon and Councilmembers  
FROM: Kevin Sutherland, City Administrator  
DATE: October 14, 2015  
RE: CA Recommendation on the Stackpole Bridge

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I'd like to share my recommendation on the matter of the Stackpole Bridge on Simpson Road.

The item commentary provided by staff offers a recommendation that either moves forward with a bridge replacement under the current bond approval of 990,000 or would move roughly 370,000 out of the pavement/asphalt line (a budget adjustment) and into the capital account tied to the bridge project.

The option to rehabilitate the bridge by moving money otherwise earmarked for paving will put the city further behind its pavement replacement goals – taking money away from areas around the city that are in greater need and experience higher traffic volume. If council chooses to go this route, I will be back in the 2016/2017 budget asking for this line item to be increased in order to offset the loss in the current budget.

The question of finding additional grant money has been asked, but we believe the current time frame would further stall council from making a decision. In addition, support for this will be extremely difficult as it is not a widely traveled road and access to view the bridge is off of private land.

After a rain storm, a public works crew and equipment is required to remove debris that gets clogged against the arched opening. A replaced bridge would alleviate the frequency of this need and staff time would be better utilized elsewhere. Finally, the bridge can be replaced within or very close to within the amount that went to the voters for bond issue. From a financial and staff resource standpoint, replacement is the most feasible option and one that I urge council to make.

### **Stackpole Creek Bridge Options Summary**

September 29, 2015

#### **Where are we now?**

On August 3, 2015 the City Council voted to terminate the conditional contract award from the May 2015 bid process for failure to arrive at a signed contract with the City in a timely manner.

CDM Smith, the City's review engineer for Stackpole Creek Bridge, was asked by the City to evaluate the feasibility of rehabilitation, and the costs that would be associated with a fully functional rehabilitation project. CDM then performed a site visit and completed review of all available documentation and is confident that rehabilitation is a feasible alternative. They also concluded that CPM's bid package was the closest to conforming

with what they would consider to be a complete rehabilitation. However, CDM estimates that enhancements to CPM’s proposal for a complete rehabilitation project (design and construction) would have a total project cost of \$1,500,000 to \$1,900,000.

Discussions following the September 8<sup>th</sup> Council Meeting between City staff, CDM Smith, CPM, and CPM’s designer Structures North, have produced positive results, with an understanding that a “value-engineered” rehabilitation may be the most cost effective, viable approach. With limited concessions on the City’s part, and the willingness of CPM’s team to work with the City, a value-engineered rehabilitation could cost \$1,250,000 to \$1,375,000.

Funding in the amount of \$990,000 for this project exists through the approval of a bond question on November 4, 2014. City Staff is confident that this funding will still be enough to complete a full replacement of the Stackpole Creek Bridge. If rehabilitation is selected, and the City moves forward with the value engineered approach, supplemental funding in the range of \$260,000 to \$385,000 will be necessary.

**What are the City’s options to move forward?**

Before moving forward on final project selection the City Council must make the fundamental decision of whether or not a rehabilitation project is worth allocating additional City funds towards, beyond those approved in the bond, to rehabilitate the existing structure.

If **YES** to approving additional funding:

- Determine source of additional funds (2017 Capital Plan, General Fund, 2017 Operation Budget, Private).
- Reach out to CPM, under previous bid, OR rebid a City designed rehabilitation Project.

If **NO** to approving additional funding:

- Commit to building a new structure.
- Allow City design engineering firm to complete final design and permitting, or negotiate with previous bidders.
- Put out to bid a construction only bid package administered by the City, or award to previous design/build bidder.

**Stackpole Creek Bridge  
Project Option Summary**

As of: September 29, 2015

**March 23, 2015 Bid Results Summary**

Project Category	Description	Proposal By	Base Bid Amount
Rehabilitation	Hybrid Design: Concrete deck and dry-laid stone walls	Chesterfield Associates	\$ 839,500
Replacement	36' Precast Arch Center Span with precast wing walls	Maritime Construction & Engineering	\$ 856,600
Replacement	20-foot Precast Conspan Arch on cast-in-place stem walls	Shaw Brothers Construction	\$ 934,000
Rehabilitation	Hybrid Design: Lightweight concrete slab, 16 micropiles	CPM Constructors	\$ 1,192,756

**Project Estimates for 2016**

Project Type	Description	Design Review and Inspections	Construction Costs	Total Project Cost
<i>Full Rehabilitation</i>	A City designed and Construction bid project fully addressing all structural and hydraulic Improvements comparable to a new structure.	\$250,000 to \$290,000	\$1,250,000 to \$1,610,000	\$1,500,000 to \$1,900,000
<i>Value-Engineered Rehabilitation</i>	Negotiation with Existing bidder (CPM) based on preliminary design submissions with reduction to hydraulic benefits and scour protection	\$115,000	\$1,200,000 to \$1,300,000	\$1,250,000 to \$1,375,000
<i>Replacement Structure</i>	Full structure replacement with concrete arch at 1.2 times the stream width and aesthetic treatment to wall faces	\$95,000	\$860,000 to \$930,000	\$955,000 to \$1,025,000

Approach work to the bridge (including drainage swales, culverts, paving, and guardrail) have been removed from the project costs and will be performed by Public Works. This work will utilize department operating line items totaling approximately \$50,000.

## Funding Gap for Rehabilitation Project

Updated: 10-5-15

<u>Expenses</u>	Low	High
Value Engineered Rehab Construction	\$1,200,000	\$1,300,000
Design Review and Construction Inspection	\$115,000	\$115,000
<b>Total Project Cost</b>	<b>\$1,315,000</b>	<b>\$1,415,000</b>
 <b>Funding</b>		
Bond Approved Funds	\$990,000	\$990,000
Private Funds	\$32,000	\$32,000
Capital Funds	\$20,000	\$20,000
<b>Total Funding to Date</b>	<b>\$1,042,000</b>	<b>\$1,042,000</b>
<b>Funding Gap</b>	<b>\$273,000</b>	<b>\$373,000</b>
<i>For Discussion purposes</i>	<i>\$325,000</i>	<i>approximately</i>

### Funding Options for Council Consideration:

**1. Allocate \$325,000 from this year's (FY 16) paving budget**

On average \$325k paves 3 to 3.5 miles of road

Council should consider adding an additional \$325k to the FY 17 paving program to cover the deferred projects from the FY 16 paving list

**2. Budget amendment to make a \$325,000 draw on fund balance**

A budget amendment to the current budget would require a 5 - 2 Council vote.

A budget amendment by February should allow the project to be completed next construction season, and also help keep total costs down.

*Note: Additional grant funding possibilities are limited due to:*

- *The need to get this project option completed next construction season*
- *Limited impact to the City's transportation network*

### CITY OF SACO BUDGET AMENDMENT #2 - REQUEST FORM APPROPRIATION

October 19, 2015

Capital and Public Works Department

<u>Date</u>		<u>Department</u>			
Current Budget 2015-2016	Expended To Date	Amount of Adjust. Requested	Revised Budget Amount	Account Title	Account Number
\$785,000	\$151,599	(\$370,000)	\$415,000	Economic Development Fund	200705/500400
\$26,480	\$5,205	\$370,000	\$396,480	Capital Improvement – Roads and Infrastructure	10670/500910

**C. ZONING ORDINANCE AMENDMENT: TABLE 707 – (SECOND & FINAL READING)**

The Code Enforcement Office recognized recently that the adoption of mixed use zones including MU-1, MU-3 and MU-4, did not include being added to Table 707 of the Zoning Ordinance. It was an oversight at the time, and has been corrected in the attached table.

The Planning Board considered this in workshop and held a public hearing on May 19, 2015. The Board recommends that the amendments be adopted as proposed. City Council discussed in Workshop on September 8, 2015; held the First Reading on Sept. 21; and the Public Hearing on Oct. 5.

Councilor Cote moved, Councilor Smith seconded “The City Council hereby ordains and approves the Second and Final Reading of the document titled, ‘Amendments to Table 707 – Signs in Mixed-Use, Business and Industrial Zones, Amended July 7, 2015’”. The motion passed with seven (7) yeas.

**“Amendments to Table 707 – Signs in Mixed-Use, Business and Industrial Zones, Amended July 7, 2015.”**

**Table 707 - Signs in Mixed-Use, Business and Industrial Zones**

	<b>B-3/B-5/MU-1/MU-4, B-4 if no planned development under 410-8</b>	<b>B-1/B-2c/I-1/I-2/I-3 and B-2D</b>	<b>B-2b/B-6/MU-3</b>	<b>B-2a</b>	<b>B-7</b>	<b>I-1, I-2, B-8 abutting Turnpike<sup>i</sup></b>
Overall Size Allowance per premise per foot of width of principal structure	2 sf to maximum of 100 sf	2 sf to maximum of 150 sf	2 sf to maximum of 200 sf	2 sf to maximum of 200 sf	2 sf to a maximum of 48 sf	2 sf to maximum of 350 sf
Number of signs per single occupancy premise	2 signs, only one of which may be freestanding, plus 1 additional wall sign not exceeding 12 sf	2 signs, only one of which may be freestanding, plus 1 additional wall sign not exceeding 12 sf	2 signs, plus 1 additional wall sign not exceeding 12 sf	2 signs, plus 1 additional wall sign not exceeding 12 sf	2 signs only one of which may be freestanding	3 signs, only one of which may be freestanding
<b>Multiple occupancy premises, number and type of signs:</b>						
For entire complex	1 freestanding or wall sign serving as a directory or anchor tenant sign not to exceed 50% of overall size allowance	1 freestanding or wall sign serving as a directory or anchor tenant sign not to exceed 50% of overall size allowance	1 freestanding or wall sign serving as a directory or anchor tenant sign not to exceed 50% of overall size allowance	1 freestanding or wall sign serving as a directory or anchor tenant sign not to exceed 50% of overall size allowance	2 signs only one of which may be freestanding	1 freestanding or wall sign serving as a directory or anchor tenant sign not to exceed 50% of overall size allowance
For each first floor occupancy	2 wall, projecting or awning signs per occupancy	2 wall, projecting or awning signs per occupancy	2 wall, projecting or awning signs per occupancy	2 wall, projecting or awning signs per occupancy	N/A	2 wall, projecting or awning signs per occupancy
Upper floor and basement occupancies:	1 wall or projecting sign not exceeding 12 square feet	1 wall or projecting sign not exceeding 12 square feet	1 wall or projecting sign not exceeding 12 square feet	1 wall or projecting sign not exceeding 12 square feet	N/A	

Size limits, individual sign types for all zones:						
Wall and awning signs maximum size	100 sf	100 sf	150 sf	150 sf	16 sf	If facing Turnpike, within 50 ft of Turnpike ROW, 150 sf. Greater than 50 ft from Turnpike ROW, 200 sf.
Freestanding and projecting signs maximum size per side	50 sf	75 sf	100 sf	100 sf	16 sf	100 sf
Minimum size allowance per premise			48 s.f.			

<sup>i</sup> Commercial and industrial structures with total floor area 40,000 s.f. and greater, on parcels with 200 feet or greater frontage along Turnpike ROW. Also subject to M.R.S.A. 23 §1913-A and 1914.

(Amended 9/3/13, ??/??/15)

**D. ZONING ORDINANCE AMENDMENT: SECTION 724 – PRIVATE ROAD – (SECOND & FINAL READING)**

The Planning Board reviewed earlier this year a subdivision that included a proposed 300-foot City Street. This led to discussion of a private road being substituted for the street. Longer serving Board members and City staff recall that the intent of Section 724 of the Zoning Ordinance is that a private road and a subdivision are two separate issues, and that the Council’s intent in 2001 was that the one is mutually exclusive from the other. The language addressing this in the Ordinance is perhaps not as clear as it could be, and is recommended for clarification.

The Planning Board considered this in workshop and held a public hearing on May 19, 2015. The Board recommends that the amendment be adopted as proposed. The City Council discussed in Workshop on September 8, 2015 and held the First Reading on September 21, 2015, and a Public Hearing on Oct. 5, 2015.

Councilor Smith moved, Councilor Precourt seconded “The City Council hereby ordains and approves the Second and Final Reading of the document titled, ‘Amendment to Section 724. Private Roads, Amended July 7, 2015’”. The motion passed with seven (7) yeas.

Exhibit 1:

**“Amendment to Section 724. Private Roads, Amended July 7, 2015”**

**Section 724. Private Roads** (Amended 10/5/01; 4/7/03)

- Nothing in this section shall override any requirement in the subdivision regulations that subdivisions and all lots within subdivisions be built on public streets. See Section 10.8, Subdivision Regulations. (Amended 7/7/15)

**E. CITY CODE CHAPTER 177: SEX OFFENDER RESIDENCY RESTRICTIONS – (SECOND & FINAL READING)**

Maine Revised Statutes 30-A MRS §3014 provides the legal basis for municipal ordinances regarding residency restrictions for sex offenders. The City recognizes that providing for the safety and welfare of children is of paramount importance to the community and proposes to establish residency restrictions for certain sexual offenders.

The proposed ordinance will not affect sexual offenders currently residing in Saco. However, sexual offenders moving to Saco who have been convicted of Class A, B or C offenses against persons who have not attained 14 years of age would have to comply with the new ordinance.

The City Council discussed during workshop on September 8, 2015, held the first reading on September 21<sup>st</sup> and a Public Hearing on October 5<sup>th</sup>.

Councilor Roughan moved, Councilor Johnston seconded “The City Council hereby ordains and approves the Second and Final Reading of the document titled, ‘City Code Chapter 177 Sex Offender Residency Restrictions’”.

AMENDMENT – Councilor Cote moved, Councilor Johnston seconded to add to section 177-6 Exceptions the following language: The Police Chief has the discretion in the chief’s judgment to waive the residency restrictions. The motion passed with six (6) yeas and one (1) nay – Councilor Tardif.

Mayor Pilon called for a vote on the main motion. The motion passed with six (6) yeas and one (1) nay – Councilor Tardif.

## **Chapter 177. SEX OFFENDER RESIDENCY RESTRICTIONS**

### **177-1. Title.**

This article shall be known as the “City of Saco Sex Offender Residency Restriction Ordinance.”

### **177-2. Findings and purpose.**

The City promotes and strives to create a safe environment for its citizens to live and raise families and considers the promotion of the safety and welfare of children to be of paramount importance. The City recognizes that sex offenders who prey upon children may have a high rate of recidivism, and for this reason extra protective measures are beneficial to the community and its children. Notwithstanding the fact that certain persons convicted of sex offenses or sexually violent offenses are required to register pursuant to the Maine Sex Offender Registration and Notification Act of 1999, 34-A M.R.S.A. § 11201 *et seq.*, as may be amended from time to time, the City finds that further protective measures are necessary and warranted to safeguard places where children play and congregate. The purpose of this ordinance is to provide such further protective measures while balancing the interests and residential needs of sex offenders.

### **177-3. Authority.**

This ordinance is adopted in accordance with the provisions of 30-A M.R.S.A. § 3001 and 30-A M.R.S.A. § 3014, as may be amended from time to time.

### **177-4. Definitions.**

*Designated Sex Offender(s)* - Person(s) convicted of Class A, B or C sex offenses committed against persons who had not attained 14 years of age at the time of the offense, regardless of whether the offense was committed in the State of Maine or another jurisdiction.

*Residence* – The temporary or permanent occupation or use of a place, including, but not limited to a domicile, for the purpose of living, residing or dwelling.

*Restricted Property* – (i) The real property comprising a public or private elementary, middle or secondary school; and (ii) the real property comprising a municipally owned property or State-owned property that is leased to a nonprofit organization for purposes of a park, athletic field or recreation facility that is open to the public where children are the primary users.

*Setback* - A 750 foot radius surrounding “Restricted Property.”

### **177-5. Restricted Property map; restrictions.**

(a) The Public Works Department, with the assistance of the Police Department, shall prepare and file with the City Clerk and Police Department an official map showing Restricted Property (to be called the “Restricted Property Map”) as defined by this ordinance. Said map is hereby incorporated herein and made a part of this ordinance. The Police Department shall, by July 1 of each year, recommend updates of the Restricted Property Map to the City Council to reflect any changes in the locations of any Restricted Property and Setbacks. The City Council shall review any proposed changes recommended by the Police Department at public hearing, and may thereafter amend the Restricted Property Map by Council Order. The official Restricted Property Map, and all

amendments thereafter shall be filed with the City Clerk and the Police Department. If the Police Department does not forward or recommend any changes or revisions to the Restricted Property Map, then the existing Restricted Property Map shall remain in force and effect until the succeeding July 1.

(b) No Designated Sex Offender shall reside within the Setback of any Restricted Property, except as may be permitted below pursuant to Section 177-6.

(c) Restricted Property List:

1. Thornton Academy, 438 Main Street
2. Middle School, 40 Buxton Road
3. Young School, 36 Tasker Street
  4. Burns School, 135 Middle Street
  5. Fairfield School, 75 Beach Street
  6. Community Center, 75 Franklin Street
  7. Pepperell Park, Beach Street
  8. Diamond Riverside Park, Irving Street
  9. Saco Little League Field, Summer Street
  9. Parks & Recreation maintained playgrounds and athletic fields at the following Locations:
    - Softball field, Franklin Street & North Street
    - Foss Road athletic fields
    - Plymouth Drive playground
    - Richards Way playground
    - Bruno Circle athletic field
    - Hillview Avenue playground
    - Lincoln Road playground
    - Ryan Road playground
    - Rosewood Drive playground

#### **177-6. Exceptions.**

A Designated Sex Offender maintaining a residence within the Setback of a Restricted Property is not in violation of this ordinance if the residence was established and consistently maintained as a residence prior to the date of adoption of this ordinance. A Designated Sex Offender is not in violation of this ordinance if the Restricted Property is created, moved or enlarged and such creation, movement or enlargement results in a Designated Sex Offender residing within the Setback of a Restricted Property, as long as the residence was in place and consistently maintained prior thereto.

#### **177-7. Publication and Notice.**

The Restricted Property Map shall be posted in the City Planning Department with all City Zoning Maps, and a copy shall also be posted at the Saco Police Station at a place easily visible by the public. The City shall also post the Restricted Property Map on the City's official web site. The City may, at its option, also mail a copy of the Restricted Property Map to the owners of all rental properties located within the City of Saco, so they are also on notice as to the location of all Restricted Properties.

#### **177-8. Violations and penalties.**

(a) A Designated Sex Offender who, thirty (30) days after actual receipt of written notice sent by regular mail or hand-delivered from the City, acting by and through its Police Department, is in violation of this ordinance shall be subject to an action brought by the City to enforce the requirements of this ordinance. The City may file a legal action against the violator seeking any and all remedies to which it is entitled pursuant to State and local laws, including, without limitation, declaratory and injunctive relief.

(b) The City may also seek a penalty in the minimum amount of \$500.00 per day. Each day of violation shall constitute a separate violation. In the event the City is the prevailing party in any action under this ordinance, it

shall be entitled to an award of its reasonable attorney's fees, court costs and the costs of any expert witness fees incurred by the City. All civil penalties shall inure to the benefit of the City of Saco.

**177-9. Severability.**

If any section, phrase, sentence or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**VII. CONSENT AGENDA**

Councilor Precourt moved, Councilor Smith seconded to approve consent agenda items # A, B and C as follows:

A. Be It ordered that the City Council approve the minutes for October 5, 2015 and further move to approve the order;

B. Be it Ordered that the City Council grant the applications for a License to Operate Games of Chance as follows: Daily Pool and Playing cards from January 1, 2016 to December 31, 2016 as submitted by the Fraternal Order of Eagles #3792. Further move to approve the Order;

C. Be it Ordered that the City Council approve the Notice of Election for the General & Referendum Election scheduled for November 3, 2015. Further move to approve the Order.

The motion passed with seven (7) yeas.

Note: The item commentaries for the above consent agenda as listed below.

**B. APPLICATION FOR A LICENSE TO OPERATE GAMES OF CHANCE – FRATERNAL ORDER OF EAGLES #3792**

Fraternal Order of Eagles #3792 has applied for Licenses to Operate Games of Chance as follows: Daily Pool and Playing cards from January 1, 2016 to December 31, 2016.

The applicant has submitted their application in accordance with the provisions of Title 17 M.R.S.A. Chapter 13-A, and in accordance with the Rules and Regulations promulgated by the Chief of the State Police governing the operation of Beano/Bingo or Games of Chance.

**C. NOTICE OF ELECTION – GENERAL & REFERENDUM ELECTION, NOVEMBER 3, 2015**

The Notice of Election is submitted to the Mayor and Council to authorize the General & Referendum Election scheduled for November 3, 2015.

The Clerk, as required by Title 21-A, Article §622-A, has prepared the Notice of Election which will be posted in all Wards on or before October 27, 2015.

**VIII. ADJOURN THE MEETING AND CONVENE THE WORKSHOP**

Councilor Roche moved, Councilor Precourt seconded to adjourn the meeting and convene the Workshop at 8:38 p.m. The motion passed with seven (7) yeas.

Attest: \_\_\_\_\_

Michele L. Hughes, City Clerk