CALL TO ORDER

PUBLIC COMMENT

AGENDA
A. Tax Increment Financing Presentation – Jim Damicis
B. Request for a Parking Space Lease with River Gate LLC
C. Contract Zone – Cutts Avenue, LLC
D. Route 112 Bypass Concept
E. Capital Program Process
F. Berry Road

COUNCIL DISCUSSION AND COMMENT

ADJOURNMENT
MEMORANDUM

TO: Mayor and City Council
FROM: William J. Mann, Economic Development Director
DATE: November 8, 2016
RE: Tax Increment Financing (TIF) Presentation

At the November 14, 2016 City Council Workshop, Jim Damicis, Senior Vice President of Camoin Associates will be join us to present an overview on Tax Increment Financing (TIF) including the fiscal implications of using TIF, the types of TIF programs, how TIF Revenues may be used, and why communities should consider integrating greater use of this local development tool with Economic Development and Fiscal Planning. Jim and Camoin Associates are highly regarded Economic Development Consultants who have worked with numerous Maine communities and businesses on a variety development projects including many TIF projects. Camoin has done the fiscal analysis on Saco’s more recent TIF projects.

City Administrator, Kevin Sutherland, has also asked that we invite the members of the City’s Economic Development Commission and Planning Board to join us for this presentation. The meeting is scheduled to begin at 6:00 p.m. and this will be the first item on the agenda.

cc: Jim Damicis, Senior Vice President of Camoin Associates
    Kevin Sutherland, Saco City Administrator
    Bob Hamblen, Saco City Planner
    Saco Economic Development Commission Members
    Saco Planning Board Members
MEMORANDUM

TO: Mayor Michaud and City Council
FROM: Kevin L. Sutherland, City Administrator
DATE: November 9, 2016
RE: Request for a parking space lease with River Gate LLC

The City acquired Unit 91 at 110 Main Street in a tax foreclosure which included roughly 40 parking spots on the ground level of the building. Legally speaking, when the city takes a property in tax foreclosure, all leases and liens are null and void. As city staff have worked to resolve some concerns over easements and emergency repairs, we’ve maintained relationships with the tenants renting space.

A request (attached) has come from River Gate LLC to negotiate a lease for 19 of the spots utilized by a tenant in Mill Building #2. Saco’s Purchasing Policy gives the Council the responsibility of approving property leases.

While the city is in the process of accepting bids for the sale and development/redevelopment of the property (see our website for the RFOP process), staff have concerns about negotiating a lease with a part of the property that is in the sale documents. On the other hand, we believe this entity and their tenant are the right fit for the use of the space. I bring this to council as an opportunity to meet Meredith Richardson owner of River Gate LLC (and new owner of Mill Building #2 on Saco Island) and offer him a chance to explain his predicament.
Date: October 31, 2016

To: Kevin L. Sutherland
   City Administrator
   City of Saco

From: Meredith Richardson
      Owner, River Gate LLC
      Building 2, Saco Island

Re: Parking Lease

Kevin:

Thank you for your time to discuss the parking lease for Saco Island.

River Gate LLC would like to enter into a new parking lease on the following terms:

1. PREMISES: Shown on Exhibit ‘A’ to this memo.
2. TERM: 10-year initial term. December 1, 2016 – November 30, 2026.
3. RENEWAL: Five (5) ten-year options, automatic renewal
4. RENT: $1,000 per month. Rent during the option terms shall increase annually by the CPI.
5. INSURANCE: Tenant to provide standard commercial insurance.
6. LEASE: Lease to be a standard commercial lease.
EXHIBIT A

LEASED PREMISES
SHADED AREA
COMMERCIAL LEASE

THIS LEASE AGREEMENT, entered into this _____day of November, 2016, by and between the City of Saco, a municipal corporation, 300 Main Street, Saco, Maine 04072 (the “City” or “Landlord” which may be used interchangeably) and River Gate LLC, a Maine Limited Liability Company, (hereinafter referred to as “Tenant”) and having a principal place of business at 110 Main Street, Suite ______, Saco, Maine, 04072, and Meredith Richardson of ______________________________ (“Guarantor”):

WITNESSETH:

1. SUBJECTS REFERRED TO. Each reference in this Lease to any of the following subjects shall be construed to incorporate the data stated for that subject in this Article.

(a) Landlord: City of Saco
   300 Main Street
   Saco, Maine 04072

(b) Tenant: River Gate, LLC
   110 Main Street, Suite ______
   Saco, Maine 04072

(c) Premises: Parking Garage Spaces located at Unit 91, 110 Main St, Saco, Maine. See Exhibit A.

(d) Permitted Uses: Parking for cars.

(e) Term Commencement Date: December 1, 2017.

(f) Term: 10 years

(g) Renewal Option: Not automatic. See Section 5 below for terms

(h) Base Rent: $1,000.00 per month as adjusted from time to time

(i) Security Deposit: $1,000.00

(j) Taxes, Insurance, Condominium Fees, Building Maintenance: Pro-rata share based on Tenant’s Square footage per Section 7 below.

(k) Utilities: Tenant is responsible for all utilities used or consumed on premises, including telephone, heat, sewer, water, internet and electricity.
(l) Property and Liability Insurance: Tenant shall obtain casualty, fire and other perils coverage, as well as comprehensive general liability coverage of not less than $1,000,000.00.

(m) Landlord Improvements: Property leased as is.

(n) Tenant Improvements: Tenant is not authorized to make improvements to the premises.

(o) Assignment/Sublease. No assignment of this Lease is allowed as per Section 14 below. Tenant may, however, rent out individual parking spaces to employees/parties who work at 110 Main Street.

2. LEASE. Landlord hereby leases unto Tenant, and Tenant hereby leases from Landlord the Premises described in Article 1 above, and shown on Exhibit A which constitutes ____ individual parking spaces.

3. TERM. Tenant shall have and hold the Premises for 10 years, unless sooner terminated, for the original term commencing on the Term Commencement Date.

4. RENT. The monthly rent is as set forth in Article 1 above. Said rent shall be payable on the 1st day of each month. Failure to pay this sum after 15 days written notice shall constitute a material breach of this Lease. Each year, on the anniversary of the execution, the Landlord shall adjusted the rent by a cost of living increase (“CPI”) using US Bureau of Labor Statistics, All Cities Index.

5. RENEWAL OPTION. There is no automatic renewal. If Tenant desires to renew the Lease, they must notice that intention not less than one year in advance of the termination. Landlord is not obligated to renew the lease, but will negotiate terms at that time.

6. SECURITY DEPOSIT. Tenant shall pay a security deposit for the faithful performance of all of Tenant’s obligations hereunder. Tenant, at the end of the Lease Term, will leave the premises in good repair, “broom clean”, and without damage, reasonable wear and tear excepted.

7. REAL ESTATE AND PERSONAL PROPERTY TAXES; PROPERTY AND CASUALTY INSURANCE, AND BUILDING MAINTENANCE. Tenant shall be liable for, and shall pay, its pro-rata share of real and personal property taxes, Condominium Fees and costs of upkeep and maintenance for all of Unit 91. In calculating its pro-rata share, the City shall calculate the total leasable square footage of Unit 91 against the area detailed in Exhibit A (estimated Tenant %__________). All costs for upkeep, repairs, and maintenance, whether structurally necessary, or whether they are long-term improvements to the Premises, to any part of portion of Unit 91, shall be part of the pro-rata costs described herein and shared by the Tenant. Tenant shall also be responsible for snow plowing and sanding that area necessary to access its leased space, and within and upon its leased premises. Tenant shall, at all times, maintain its own insurance coverage for loss from casualty, fire and other peril. Tenant shall pay its pro-rata share of these costs and charges and fees within 15 days of a written invoice being presented by the Landlord.
The City covenants it will present such costs and invoice every six months. Failure to pay such invoice when due shall constitute a material breach of this lease.

8. UTILITIES, WATER, HEAT. Tenant is responsible for the cost of all water, sewer, telephone, internet, heat and electricity it uses. Tenant shall be responsible for the payment of any deposits or similar charges required to be paid in connection with supply of these services. All such services shall be established in name of Tenant. If Landlord cannot arrange for separate metering of any utility service functioning within or servicing the leased, the Parties will enter into discussion to fairly assess the costs of such utility service, and such agreed costs will be added into costs assessment set forth as part of Section 7 above.

9. PERMITTED USES. Tenant shall use the premises for the particular business purpose stated in Article 1(d). No other trade or occupation shall be conducted in the premises, and Tenant covenants that its use shall be lawful, proper, and in compliance with all state and federal laws, regulations, or any municipal by-laws or ordinances.

10. QUIET ENJOYMENT. Tenant shall during the lease term peacefully and quietly enjoy the leased property for the intended purposes without unreasonable disturbance.

11. MAINTENANCE, REPAIRS, ALTERATIONS, IMPROVEMENTS. Tenant shall keep at its own expense, the leased Premises in a neat, clean and sanitary condition and in as good order and repair as at the commencement of the Lease, reasonable wear and tear expected. Tenant shall make no alterations in, or additions or improvements to the premises.

12. INSURANCE AND INDEMNITY. (a) Tenant agrees to defend, indemnify and hold Landlord harmless from and against all claims, actions, damages, liability suits or judgments (“Claims”) related to or arising in any way from Tenant’s use and occupancy or the premises, and any of Tenants guests, sub-tenants, agents, officers or employees, use and occupancy of the premises. This obligation shall include all Landlord’s reasonable attorney’s fees incurred to defend itself against any such claims.

(b) At all times after the execution of this Lease, Tenant will keep and maintain in force, at its expense, general comprehensive property and liability insurance of which provides a minimum of $1,000,000.00 coverage for claims with respect to property damage, personal injury or death. Said insurance shall provide for coverage of all third parties, who might be harmed or injured, or suffer property damage, as a result of any negligent act of the Tenant, and such policy shall name Landlord as an additional insured. Proof of such coverage shall be required to be produced by Tenant and provided to the Landlord each year, and the failure to have and maintain such coverage at any time shall constitute a material breach of this lease.

(c) Tenant shall be responsible for insuring its own property and contents as against loss by fire, or other peril.

(d) The failure to indemnify and/or to maintain required insurance shall constitute a material breach of this Lease.
13. DAMAGE, DESTRUCTION OR CONDEMNATION. In case the Premises shall be damaged by fire or other casualty or condemned by public authority so as to render the same untenantable in whole or in part for any period, a just abatement of rent shall be made until the same shall be repaired by the Landlord, provided, however, that in case the Premises damaged by fire or any other casualty that the Landlord shall not desire to rebuild, or if the Premises be taken by condemnation, this Lease shall terminate at the Landlord’s option and rent shall be apportioned to the time of such termination. Tenant shall be given prompt notice of any decision not to rebuilt, or of condemnation.

14. ASSIGNMENT AND SUBLETTING. The Tenant not may assign this Lease in whole or part. Notwithstanding the foregoing, Tenant may rent out parking spots set out within the premises to employees/individuals who work at 110 Main Street, Saco but not to other parties who are not working at 110 Main Street, Saco. This covenant is intended to assure that parking can be found and dedicated to parties working at 110 Main Street, Saco, and it is a material condition of this lease.

15. DEFAULT. (a) The following events shall be deemed to be events of default by Tenant under this Lease:

   (i) Tenant shall fail to pay when due any sum of money becoming due to be paid to Landlord hereunder, and such failure shall continue for a period of fifteen (15) days after written notice, with respect to any monthly installment of rent, or the payment of any costs /fees set out in Section 7;

   (ii) Tenant shall fail to comply with any term, provision or covenant of this Lease and shall not cure such failure within fifteen (15) days after written notice specifying the nature of such default; or

   (iii) Tenant shall abandon the Leased Premises or fail to conduct business in the Leased Premises as required by this Lease; or

   (iv) Tenant shall become insolvent, admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy or a petition to take advantage of any insolvency statute, make an assignment to benefit of creditor, make a transfer in fraud of creditors, apply for or consent to the appointment of a receiver of itself or of the whole or any substantial part of its property, or file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws, as now in effect or hereafter amended.

   (b) Landlord shall in no event be in default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform any of its obligations within thirty (30) days after written notice by Tenant to Landlord reasonably specifying wherein Landlord has failed to perform any such obligation.

   (c) In the event of a default, the Landlord may look to the Guarantor for relief, for payment of any fees/rents or charges owed, or for satisfaction of any obligation set forth herein.
provided the Landlord has given the Guarantor Notice of Tenant’s default of not less than 15
days. The failure of Guarantor to remedy any default shall constitute an independent and
material breach of the guaranty executed herein.

16. REMEDIES/ATTORNEYS FEES. (a) Upon the occurrence of a material default (failure to
pay rent after 15 day notice; failure to pay fees/charges under Section 7; failure to defend and
indemnify per Section 12 a or to maintain insurance coverage per Section 12 b, or the failure of
Guarantor to remedy any default) then this Lease shall automatically terminate and the Tenant,
and any subtenants, shall be ejected from the Premises without further cause, notice or legal
action required by Landlord. For all other defaults, the Parties shall, in good faith, engage in at
least one half day of mediation, the mediator to be jointly selected, and jointly paid for. Only if
mediation fails, may one or the other party pursue legal relief in Court. In the event of a breach
of this Lease, Tenant and Guarantor (if Tenant fails) shall be liable for all the Landlord’s costs to
enforce this Lease, including its reasonable attorney’s fees.

17. ACCESS. The Landlord and its personal representatives, officers, agents or employees, may
enter the Leased Premises at any reasonable time for the purpose of inspecting the property,
performing any work which the Landlord elects to undertake, or such other purposes as Landlord
elects to undertake provided that Landlord provides Tenant with 72-hour advance written notice,
except for emergencies. Each year Tenant shall certify to Landlord that any parking spaces
rented are rented to employees or other persons working only at 110 Main Street, Saco.

18. NOTICES. Any notice or communication relating to this Lease shall be deemed duly given
if in writing and either hand delivered or sent by certified mail, postage addressed to the party for
whom it is intended at such place have been designated by such party in this Lease above in
Section 1 (a & b).

19. SELF-HELP/ACCEPTANCE OF FUNDS IN DISPUTE. The acceptance of a check by
Landlord for a lesser amount with or without an endorsement or statement thereon, or upon any
letter accompanying such check, to the effect that such lesser amount constitutes payment in full
shall be given no effect and Landlord may accept such check without prejudice to any other
rights or remedies which Landlord may have against Tenant. In the event of a material default,
the Parties have agreed in advance the Landlord may employ Self Help to forcibly eject the
Tenant and any subtenants without need or cause for further legal action.

20. RECORDING. Landlord and Tenant agree that this Lease, or an acceptable memorandum
thereof, may be recorded at the Landlord’s discretion and cost.

21. SURRENDER. The Tenant shall, at the termination of this Lease, remove all of the
Tenant’s goods, effects and parking subtenants from the demised premises within five (5) days.
The Tenant shall deliver to the Landlord any and all keys, locks thereto; and other fixtures which
Landlord does not request Tenant to remove, in the same condition as they were at the
commencement of the term, or as they were put in during the term hereof, reasonable wear and
tear and damage by fire or other casualty excepted.
22. ENVIRONMENTAL LIABILITY. The Landlord shall remain fully responsible for any and all liability associated with environmental exposures, claims, permits, damages or causes of action related to or arising at the Premises, whether asserted by a third party or a government agency, whenever and wherever asserted, provided such claims relate to or arise from its use, ownership and occupancy of the Premises prior to the commencement of Tenant’s leasehold. The foregoing covenant shall not apply to those exposures, claims, permits, damages or causes of action of an environmental nature to the extent such claims are caused by or associated with Tenant and or Tenant’s operations, and/or its use and occupancy of the Premises, all of which Tenant agrees to defend, indemnify and hold Landlord harmless from.

23. GOVERNING LAW. This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of Maine.

24. PERSONAL GUARANTEE. The Guarantee of Meredith Richardson is a necessary and important inducement for the City to enter into a lease for this duration with a corporate entity. Therefore, the obligations of Tenant herein are personally assumed and guaranteed by Meredith Richardson. The Guarantor intentionally and knowingly guarantees the performance of Tenant herein, including specifically the obligation to pay rent, fees, costs and charges, and he evidences that intention by the execution below. The parties agree no guarantee will be called upon by Landlord until Tenant is in default, but upon such default Guarantor unconditionally warrants and promises to fulfill Tenant’s obligations, including payment of any and all rent, fees, costs and charges. Guarantor will remedy any default within 15 days of written notice and demand.

IN WITNESS WHEREOF, the parties hereto have set their hand and seals on and as of the date first set forth above.

CITY OF SACO, MAINE:

______________________________
Kevin L. Sutherland
City Administrator

RIVER GATE, LLC:

______________________________
Print Name/Title

GUARANTOR:

______________________________
Meredith Richardson
WORKSHOP ITEM COMMENTARY

AGENDA ITEM: Contract Zone – Cutts Avenue, LLC

STAFF RESOURCE: Bob Hamblen, City Planner

COUNCIL RESOURCE: Councilor Nathan Johnston

BACKGROUND: Applicant Cutts Avenue, LLC proposes to redevelop the Notre Dame Church property, which would include rehabilitation and conversion of the church building, removal of the rectory, and construction of new apartment buildings to each side of the church. A total of up to 80 residential units are proposed, each 7-800 s.f. in area with one-bedroom. While the existing B-3 zone allows multi-family dwellings, the applicant seeks a contract zone that would allow greater density than is currently allowed; reduce the side and rear setbacks from 10 feet to 5 feet; and reduce the number of required parking spaces from 47 to 33, though the parking reduction is now subject to amendment.

This item was reviewed by the Planning Board at its October 4, 2016 meeting. The Board arrived at a positive finding on each of the four standards found in Section 1403-6, and voted to forward a positive recommendation to the Saco City Council.

EXHIBITS:

Exhibit Item Previously Provided on 10/17/16
1. Letter of October 13, 2016 from Applicant

Exhibit Items Previously Provided on 10/11/16
2. Contract Zone and Application Materials
3. Additional Application Materials

RECOMMENDATION: Staff views this proposal as a rare opportunity to remake a community landmark into a 21st century landmark. Downtowns that close down after 5:00 p.m. are not a sign of a vibrant community. Cities must encourage greater residential density in their downtowns – where people live and congregate. Services will spring up to meet the demand. Staff fully supports the Planning Board recommendation that would allow this project to move forward.

SUGGESTED MOTION: “...move to approve the Second and Final Reading and adopt the findings in the contract zone document entitled “Contract Zone Agreement by and Between Cutts Avenue, LLC and the City of Saco,” dated October 4, 2016; for the property identified as Tax Map 38, Lots 105, 105-1 and 106 as authorized by Section 1403 of the Zoning Ordinance, pursuant to 30A M.R.S.A. Section 4352(8).”

DRAFT MOTION TO AMEND THE MOTION: “...move to amend the motion in order to amend the draft contract zone agreement by deleting Section II.c, as the Applicant has determined there is no need to seek relief from parking requirements.”
November 3, 2016

Kevin Sutherland  
City Administrator  
300 Main Street  
Saco, Maine 04072  

Re: Contract Zone Application Cutts Ave, LLC  

Dear Mr. Sutherland:  

Hardypond Development Company on behalf of Cutts Avenue, LLC is pleased to announce that our design team has now determined that our current design meets current zoning. As such, we will be providing an amended contract zone document tomorrow to be included in Councilors’ packets for November 14th 2nd Workshop. This amended document will not include a request for parking relief in our contract zone application.  

Sincerely,  

Frank Carr, Development Manager  
Hardypond Development Company, LLC
Spencer, it is customary that if amendments to a proposed contract zone are identified during the Council’s review, for those amendments to be identified and acted on at the 2nd and Final Reading, currently scheduled for the Nov. 21 meeting (correct, Emily?).

So rather than delete verbiage that was included in the original CZ draft and move it along the process, the original draft will continue to move along, and the Council will act upon the amendment that removes the reference to parking as part of its actions at 2nd and Final Reading. I believe Kevin Sutherland referenced this approach to the amendments during the Nov. 7 meeting.

Hopefully that’s clear, let me know if any questions, thanks.

Bob Hamblen
City Planner
City of Saco
300 Main St.
Saco ME 04072
207-282-3487
bhamblen@sacomaine.org
MEMORANDUM

TO: Mayor Michaud and City Council
FROM: Kevin L. Sutherland, City Administrator
DATE: November 9, 2016
RE: Route 112 Bypass Concept

At the October 11th Council workshop, I presented on the need to update the Comprehensive Plan and in that presentation, I included an image of a sketch plan idea (slide 35) to build a 195 spur to the west of 95. Many of the ideas that justify the need for this consideration are outlined in the attached letter. At this point, we’re ready to send to the Maine Turnpike Authority; I just wanted Council input/feedback before I hit send. This is very early on in process, years before it would come to fruition, so there will be ample time for greater community input.
November 15, 2016

Ms. Sara D. Zografos, Transportation Planner  
Maine Turnpike Authority  
2360 Congress Street  
Portland, ME 04102

Subject: City of Saco Request for Consideration  
Route 112 Bypass to Maine Turnpike Exit 36  
Long-Range Planning Objective

Dear Sara:

The City of Saco, in conjunction with Maine Turnpike Authority, MaineDOT, and PACTS, have been working collaboratively for many years to address the traffic issues associated with Exit 36 of the Maine Turnpike that impacts Industrial Park Road and the Route 112 corridor.

As you may know, numerous traffic studies have been performed over the years for the Route 112 corridor to evaluate alternatives for improving the traffic conditions. The latest of these is the Final Route 112 Corridor Update Study prepared by Gorrill-Palmer in May 2015. While a number of recommendations are outlined in this study, it is the City's belief that none of these alternatives will provide a long-term (50-year) solution to mitigate the traffic congestion approaching the turnpike access. What the City believes will provide the best long-term solution is to construct a Route 112 Bypass Road (controlled access) from the westerly side of the turnpike that will provide direct access to the Exit 36 interchange. A conceptual plan for this bypass road is appended to this letter for your review and consideration. It should be noted that this conceptual plan has not been benefitted by any formal route studies; however, we have walked the potential bypass corridor and we believe there is tremendous merit to this proposal.

In summary, the City believes that the Route 112 Bypass Road will provide the following benefits:

From MTA Perspective:

1. Improved Safety
   a. Current traffic congestion associated with the Exit 36 and I-195 Spur interchange with the signalized intersection at Industrial Park Road results in queued traffic backing up through the toll plaza and at times extending back to the main line of the turnpike.
   b. One of the design goals for the new Route 112 Bypass Road will be to provide a direct route for traffic heading westerly onto Route 112 and eliminate the queuing traffic caused by the existing Industrial Park Road intersection.
2. Improved Turnpike Access
   a. Direct Turnpike Access for inbound traffic west of the Turnpike.
   b. Reduced commuter delays and capacity issues. Over 22,000 vehicles per day utilize the existing Route 112/Industrial Park intersection.

From a Regional and Local Perspective:

1. Improved Safety
   a. Route 112 intersections at Garfield Street and Industrial Park Road are high crash locations.
   b. Route 112 intersections at Spring Street, Franklin Street, Tasker Street, Industrial Park Road, Garfield Street, Lund Road, and Jenkins Road are all level of service “E” or “F” currently.
   c. Regional traffic traveling east on Route 5 utilize a number of neighborhood side streets to access the turnpike, especially during the peak hours. A new Route 112 Bypass Road with greater use of Louden Road will help to alleviate much of the cut-through traffic in the residential neighborhoods.

2. Improved Long-term Planning. If the Route 112 Bypass Road was viewed as the long term permanent solution, than implementing dozens of costly short-term measures may be avoided.
   a. Left turn lanes, and associated ROW acquisition and construction costs, along much of Route 112 could be avoided with this project.
   b. Signalization at two or more intersections could be avoided.
   c. Transforming neighborhoods along Route 112 into alternating one-way roads could be avoided with this project.
   d. Some of the most beneficial short term solutions would require major work at the I-195 ramps to have any benefit to Route 112.

We are requesting the opportunity to further discuss the conceptual plan for a Route 112 Bypass Road and perhaps begin the process for creating a three party agreement with MTA and MaineDOT to begin the process for further studies and evaluation. While we understand this to be a long-range plan, we are hopeful that commencing this effort now may enable real long-term improvements to be in place within the next ten years prior to further growth of residential housing in this corridor.

We greatly appreciate your consideration of our request and we would be very happy to meet and discuss in greater detail.

Sincerely,

Kevin L. Sutherland
City Administrator

Enclosure

Cc: Bruce A. Van Note – Maine Turnpike Authority
MEMORANDUM

TO: Mayor Michaud and City Councilors
FROM: Patrick Fox, Public Works Director
DATE: November 9, 2016
RE: Capital Planning Process and Goals

Background
City staff submits a 5-year capital improvement plan to the Council each year during the budget process. This capital plan is the result of many years of asset management process improvements. Each year, we try to improve our asset assessment and planning efforts, and this year’s focus has been to provide you a sustainable funding goal for our annual capital plan. By collectively agreeing on a long term funding goal, staff can better plan the capital projects that land before you in the capital plan request.

What are our assets worth?
The City’s capital planning committee is finalizing our Total Assets Value calculations. This total value is broken up by asset category (Facility, Utility, Municipal Grounds, and Right-of-way Infrastructure). These four broad categories have had estimated values assigned in the past, but have now been broken down into 40 sub-categories and given real replacement costs in today’s dollars. This key component allows us to more accurately forecast and present the real costs much further into the future than we’ve done in the past.

How long will our assets last?
Given the variety of assets the City owns and maintains, arriving at one constant life-span for each asset isn’t perfect, but for long range planning purposes, agreeing on one asset life cycle goal is a great way to assess our current vs. sustainable funding levels for the capital plan. We are working on providing data for a 50-years and 100-year life cycle costs for our assets. While 100 years may be longer than we can expect assets to last, the 50-year funding level may not be attainable in the short-term, so we need to set the ultimate plan goal, and arrive at how long we’d like to take getting there.

How will we pay for managing and replacing what we have?
Currently, we focus our capital fund discussions on what will come out of the general fund each year and go towards specific capital projects. This is really only one piece of the puzzle. As we look at what the sustainable funding levels are for our assets, we also need to recognize that annual allocations from the general funds cannot meet our infrastructure needs. The following funding categories will now be integrated into the planning process:

- Matching funds (State, Federal, and Private Grants)
- Bonds
- Fees (User/ Impact)

Setting guidelines and goals for the levels of each funding stream as part of our capital plan will lessen the burden on the general fund over time.

What are our next steps?
Once there is agreement on the high level approach to this asset management process, staff can then finalize the long term funding costs, and subsequently the 5-year capital project plan to bring back to council.
MEMORANDUM

TO: Mayor Michaud and City Councilors
FROM: Bob Hamblen, City Planner; Timothy Murphy, City Attorney
DATE: November 14, 2016
RE: Berry Road

This is an effort to answer and clarify the questions raised over the course of the Council review of the Berry Road issue.

**Staff Recommendation:**

City staff sees no reason for the City to expend resources on completing the westerly most 1,250+/- feet of the former Berry Road right of way. Developers in Saco are generally welcome to extend City streets and utilities after review and approval by City staff and the Planning Board. Any party interested in extending and improving the unaccepted portion of Berry Road to City street standards is welcome to do so after the usual review and approval process.

**Status of Berry Road as to Abandonment:**

Tim Murphy, City Attorney: “It is my opinion that the furthest out portion of Berry Road (from end of pavement heading westerly) was abandoned by non maintenance well into the late 1880’s. This opinion was written down and forwarded to Saco in 2003 and subsequently in 2005. I’ve not changed my view on Berry Road in this regard.

Moreover, the City Council formally voted in 2005 finding that the road had been abandoned back more than 30 years ago pursuant to authority under Maine statute. That vote has never been challenged. The Council action (though consistent with my legal views) is itself, and alone, binding and controlling. So, as of 2005, the City has voted to find the far portion of Berry abandoned by non-maintenance.”

**Status of Memorandum of Understanding:**

Tim Murphy, City Attorney: “Although it would appear we have authority, there is one critical concern. The 2005 road construction agreement was never recorded in the York County Registry of Deeds, and so it’s not clear future successors are bound to it. In other words, any party that bought from one of the signing parties might not have been aware of the 2005 agreement. This makes enforcement by the City a bit more difficult.”
**What is the City Attorney's Opinion of Current Status of the “Road?”**

Tim Murphy provided the following responses in a Nov. 1 e-mail:

Let me address your questions in an order that hopefully clarifies the matter.

First, I've attached to this email a scan of a drawing showing the latter end of Berry Road. That document is a good starting point. On it, you will see a reference to a spot/location called “point of City acceptance.” This point coincides with prior comments I’ve made about the history of Berry Road which I’ll briefly repeat here. Those points are as follows:

1. Berry Road was “accepted” by the City from Boom Road to its proposed terminus out at Foss Road back in the 1820 or 1830’s as I recall. However, not all of the Berry Road was actually built. It was built out only to the point shown on the attached document to the area show as “point of acceptance.”

2. Not only was the Road built out as noted, but in the mid to late 1870’s or 1880’s, the City Council voted to widen/improve Berry Road from Boom Road to the final point of pavement. It did not vote to build out or widen any portion westerly of the “point of City acceptance.” That portion remained unimproved.

3. Sometime in the mid to late 1980’s the Planning Board approved Bentley Drive as a subdivision.

4. One City Councilor indicated that Saco, on one occasion, invested some funds in the un-built portion of Berry Road. However, Henry Townshend a 40 year plus employee, and former foreman at DPW, who also happened to live on Berry Road, stated he never recalled the City ever taking any acts to improve the un-built portion of Berry Road. IF the city had done so, Henry as a key DPW employee would have been aware of it.

5. The City Council in 2005 voted that the un-built portion of Berry Road had been abandoned.

6. No one out on Berry Road to my memory, except for Jean Hall, has ever pushed Saco for help out there, except for the occasional home builder that wanted a permit. None of the long term residents pushed the City to develop anything, and you see that reflected in the 2005 Agreement which put it on the owners to cede rights and pay the costs to build out/install a road.

These facts lead to a couple of legal conclusions. First, the far end of Berry Road (that portion westerly of “point of City acceptance”) was abandoned by the City well back into the 1800’s by virtue of never having built out anything past the current point of pavement terminus. Thus, the westerly end of Berry from that point out to the Foss Road paper street although accepted by vote was lost by non-action, or what is understood as common law abandonment. Second, the same portion was deemed abandoned as of 2005 by the City Council vote, a vote that was never challenged or appealed.
For these reasons, it is my opinion that the road bed westerly of the “point of city acceptance” is not a public road, not a city road.

Now, having said that, the status and condition of that un-built portion also deserves comment. The un-built portion breaks down into two portions, the partially built portion (the Picard stretch) and the unimproved final portion (the Hall portion). Let me explain the two and why they get so named.

Back in 2005, it appeared that enough folks out on Berry were willing to cede some interests to Saco such to allow the build out of an extension of Berry. It is the area shown in red highlighting on the scan doc. Eric Picard took charge of getting the parties to sign the 2005 Agreement with the City, and he took the lead in building out a city standard road. He installed gravel and ultimately put down base coat pavement. However, none of the homeowners ever granted sufficient rights in land, or seemed willing to pay/reimburse Eric Picard and so his efforts stalled.

This “Picard Portion” has been improved to base coat level but the ROW is not wide enough for City acceptance and critical drainage needs/rights were never secured from Mr. Belanger. Thus, DPW has never had any desire to accept this portion. It cannot be accepted at the present time because it is not of sufficient width. Citizens out there would need to cede ROW width and additional easements for drainage. Also, there is the issue of cost to bring pavement up to full coat./final coat standard.

The final stretch of Berry is completely unimproved. I call it the “Hall Portion” based on Jean Hall, a gentleman out there who did secure adequate ROW width from several abutters so the City could one day possibly accept this portion of Berry. The copies of easements you sent all relate just to this last stretch of the original Berry Road corridor, and they are shown in yellow on the attached scanned document I sent over. So, in this section the City has sufficient legal rights to build out a city standard way, a situation quite different from the Picard Portion.

As for maintenance, there is no agreement out there governing who pays for what part of the unaccepted stretch westerly of the City’s point of acceptance. Basically, they all have an interest in it. Presumptively, they have worked something out regarding snow plowing so I presume they are able to work cooperatively and cost share.

The City cannot, at this time, build out Berry Road as it lacks a full 50 foot wide ROW to build a compliant road through the Picard portion. It has adequate ROW width/interests for the Hall stretch.

I trust this addresses your inquiry, but let me know if I can be of any further help.

Tim Murphy
Why Wasn't the 2005 MOU Followed Through On?
As Tim mentions above, a local contractor got involved in improving a piece of the unaccepted portion, and solicited easements from several abutters – all the property owners who signed onto the MOU. When financial contributions from those who would benefit from the improvements failed to materialize, the contractor ceased work. At that point he had widened the roadway to 20 feet for a distance of 880 feet, installed a gravel base to City specs, and laid down a base coat of pavement, hence the fairly reasonable condition that section of the road is in today.

Existing Homes on Unaccepted Portion:
See attached table, “Berry Road Properties, Unaccepted Portion.” There are seven residences on the unaccepted portion, three of which were built after Oct. 5, 2001, when the current private road standards were adopted by the Council. Two private roads were approved beyond the 880 foot point: about a 350 foot extension from the point for applicant Hall in 2009, then another 250 feet beyond that in 2012 for Gleason (now owned by Crider).

Where Neighbors Stand on Possible Improvements:
The June 2016 workshop session on Berry Road was attended by a handful of neighbors, most of whom were fairly vocal in stating their lack of interest in seeing any changes to the unaccepted portion. Staff has sent out a letter to the seven homeowners (attached) posing some of the questions raised to date. We are hopeful of getting some responses, and/or seeing neighbors at the workshop.

Drainage of Unaccepted Portion:
A longstanding issue, one of the landowners most able to help with solving the drainage issue if it were to be routed to the north has refused to provide a drainage easement. The City Engineer is of the opinion that, if any party chooses to improve the road, drainage can be directed to the south instead, possibly to the Precourt or the Saco Terrace, Inc., parcels. A drainage easement would be needed from any party willing to help solve the drainage issue.

Other Private Roads in Similar Situation?
None that staff is aware of. There are dozens of private roads throughout the City, both pre-2001 and post. The most similar situation to Berry Road is, as most are aware, Fenderson Road, which was a substandard private road dating back decades, if not into the 19th century. The several landowners on Fenderson banded together in 2005 to ask the City to improve and accept the road as a City street. An agreement with landowners resulted in a $5,000 contribution from each owner on the road, which helped defray the costs of widening and paving the road. In staff’s opinion, those who own property on post-2001 private roads know exactly what their situation is: they built or bought property on a private road, maintain it per their road maintenance agreement, and are satisfied with their situation.
MEMORANDUM

TO: Patrick Fox – Director
FROM: Joseph A. Laverriere, P.E. – City Engineer
DATE: July 27, 2016
RE: Berry Road Extension
Summary of Remedial Work in accordance with Previous MOU for Street Acceptance

On July 21, 2016, I visited the Berry Road site to review the conditions of the existing road in comparison to the Memorandum of Understanding (MOU) between the City of Saco and the residents along the unaccepted portion of Berry Road (approximately 1,250’ in length). The MOU was developed by the City and executed in 2005. A copy of the executed agreement is appended to this memo.

In general, the MOU required the existing unaccepted portion of Berry Road be constructed in accordance with the City’s standards for secondary roads with the exception that the overall paved width would be reduced to 20’, with 2’ gravel shoulders along each side of the roadway. In addition, a turn-around acceptable to the City would be constructed and contained within the final right-of-way to be conveyed as part of the final street acceptance.

The agreement required the documentation of the existing gravel materials. As part of the construction activity performed in 2005, representatives from Saco DPW and the design engineer of record (Thomas Milligan, P.E.) performed inspections to document that the gravel sections (quantity and quality) were provided and installed for the full length (1,250’) of the roadway in accordance with the City standards and the MOU. Subsequently, binder pavement was placed from Crystal Lane to Bentley Drive (approximately 1,050’).

During our recent site inspections, the paved portion of the roadway was determined to have a width ranging from 19’-8” to 21’; therefore, it generally complies with the 20’ pavement width stipulated in the MOU. The condition of the pavement is fair with many areas experiencing fatigue cracking, which is indicative of the poor surface drainage patterns along the roadway. It is recommended that a shim course of pavement be applied over the full length of the roadway prior to placement of final surface course. The shim course will correct any cross section grading issues and provide a minimal level of increased pavement strength.

The shoulders along the existing paved portion of roadway are minimal (1’ to 2’ +/-) and overgrown with vegetation. The extent of gravel shoulders needs to be verified; however, for the purposes of this estimate, it has been assumed the shoulders are acceptable and that minimal remedial work is required. It should also be noted that the ditching along either side of the road for approximately 700 linear feet are not adequate and will need to be regraded.
The remaining 200’ portion of the road is gravel. The gravel appears to meet subbase gravel material; therefore, for the purposes of this estimate, it recommended that the existing gravel material be graded and an additional 3” of base gravel material be placed prior to paving. The location of the existing turn-around is approximately 150’ from the terminus end of the road. A second turn-around area has somewhat been constructed at the existing terminus end; however, additional work is need to meet the needs of the City. For the purposes of this estimate, the scope of work includes full depth construction of a turn-around area within 80’ of the terminus of the roadway. This will likely require additional right-of-way to be conveyed to the City.

Based upon this general scope of work, an estimate of quantities and opinion of cost associated with the remedial work has been prepared. A detailed breakdown of the cost is appended to this memo. The total opinion of construction cost associated with the remedial roadway work described above is $110,985, which includes a 10% contingency.
Engineer's Opinion of Probable Site Construction Costs
BERRY ROAD EXTENSION
REMEDIAl ROAD WORK REQUIRED PRIOR TO CITY ACCEPTANCE
IN ACCORDANCE WITH THE STIPULATIONS OF THE MOU

Date Issued: July 21, 2016
Updated: July 27, 2016

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| SUBTOTAL EXCLUDING GENERAL CONDITIONS   | $95,020.00 |

| CONTINGENCY (10%)                       | $9,502.00  |

| TOTAL OPINION OF REMEDIAl ROAD IMPROVEMENT COST | $110,585.00 |

References:
1. Memorandum of Understanding (circa 2005) between the City of Saco and Property Owners along the unaccepted portion of Berry Road.
2. Unit Prices for this Engineer's Opinion of Cost are based on other similar projects and historic experience.

Notes:
The Engineer's Opinion of Probable Construction Costs is based upon Engineer's professional judgement and experience. Engineer has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing. Engineer makes no warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from the Engineer's Opinion of Probable Construction Costs.

1. On July 21, 2016, Saco DPW performed a site visit to review the conditions of the existing road and determine remedial work necessary to satisfy the stipulated requirements prior to City Acceptance as outlined in the MOU (circa 2005). The scope of work is generally described in a memo from the City Engineer dated July 27, 2016.
2. The pavement quantities are based on the following pavement section buildup and areas:

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- Bituminous Surface Pavement MDOT 9.5mm Superpave
- Bituminous Binder Pavement MDOT 12.5mm Superpave
- Base Gravel MDOT Type "A"
- Subbase Gravel MDOT Type "D"

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<th>Area (sf)</th>
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3. Approximate length of ditching work (linear feet) =

4. Standard Loam and Seed buildup based upon 4 inches.
5. Quantities and work are subject to variations and changes required by final Memorandum of Understanding.
AGENDA ITEM: Repair and Maintenance of Berry Road

STAFF RESOURCE: Bob Hamblen, City Planner

COUNCIL RESOURCE: Councilor David Tripp

BACKGROUND: A number of homeowners on the Berry Road have expressed interest in clarifying the status of the unaccepted portion of Berry Road. This has been an ongoing discussion involving residents, City staff, and attorneys for several years, with no resolution to date.

The City Attorney has offered the opinion that the unimproved portion of Berry Road has not been maintained for 150 years, and has therefore effectively been abandoned by the City with no public easement. If this is also the Council’s conclusion, then the Council may be asked by neighbors to clarify whether their efforts toward determining ownership of a “Berry Road Extension” right of way, then construction of a street for eventual acceptance by the City, would have the Council’s support. The Council discussed this item at Council Workshop on August 22, 2005 and again on September 26, 2005. This item was discussed at the Council Meeting on October 3, 2005.

EXHIBITS: Memorandum of Understanding Concerning Berry Road from City Attorney (tab 2, previously provided)
Memos from City Attorney, June 16, 2005 and Jan. 8, 2003
Letter from David Ordway, attorney, June 2, 2005
Memo from City Planner
‘Widening of Berry Road’ document, Sept. 6, 1869
Affidavit, R.L. Cassette, April 22, 2005
‘Public Ways,’ document authored by Jim Katsiaficas, attorney, MMA

RECOMMENDATION: It is the recommendation of staff that the Council accept the opinion of the City Attorney, thereby finding that the unaccepted portion of Berry Road was abandoned prior to Sept. 3, 1965, and therefore no public easement exists; and that if abutters to the unaccepted portion of Berry Road pursue construction of an extension to Berry Road, then clear title to a 50 foot wide right of way shall be established, and it shall be constructed to City street standards.

SUGGESTED MOTION: "Be it Ordered that the City Council find that the unimproved portion of Berry Road has not been kept passable for the use of motor vehicles at the expense of the City for a period of 30 or more consecutive years, and has therefore been discontinued by abandonment as outlined in Title 23 M.R.S.A. §3028, and that the City Council hereby authorizes the City Administrator to enter into and sign the agreement titled "Memorandum of Understanding Concerning Berry Road."

"I move to approve the Order".
MEMORANDUM OF UNDERSTANDING

Now comes the CITY OF SACO, a municipal corporation, 300 Main Street, Saco, Maine ("CITY") and the OWNERS, those individuals set forth on Tab 1 attached hereto, all of whom own property presently along and adjacent to an unimproved and unaccepted portion of Berry Road, who state and agree as follows:

1. The CITY, by and through its City Council, has expressed a willingness to accept all of Berry Road as a municipal street provided certain conditions are met. The parties intend herein to set forth those conditions.

2. The OWNERS agree to cooperate in the construction of improvements to Berry Road, as further set forth below, from its current terminus (as shown on Tab 2, City GIS/Map, also known as "ML. SID") from the end of the pavement to the end of the original proposed paper street where it intersected with Foss Road, and what is land now or formerly of Precourt (see Tax Map 95, Lot 3), a linear distance of 1221 feet, more or less, as shown on Tab 2.

3. Upon completion of the construction of Berry Road as set forth above, OWNERS shall dedicate the way to the CITY, and shall simultaneously deliver to the CITY executed Quitclaim Deeds to all portions of said improved right of way. Provided the road has been constructed as required herein, and said construction is certified by Public Works, and provided a dedication has been made and all Quitclaim Deeds are delivered, the CITY shall not unreasonably withhold or condition the acceptance of Berry Road, but shall thereupon poll its Council for vote.

4. All costs of construction shall be borne by OWNERS in such proportions as they, among themselves, shall agree in writing. CITY may, at its sole option, provide assistance including engineering and construction review and analysis, survey or other data swapping, etc.

5. CITY may refuse to accept any portion of right of way for Berry Road where any required Quitclaim Deed has not been executed or delivered.

6. The following construction standards shall be met by OWNERS:

   A. Right of way shall be 3 rods wide (40.5 feet) as originally set forth by the original developer.

   B. Pavement shall be no less than 20 feet in width, and shall at point of beginning of unimproved Berry Road match and connect to the existing pavement of the improved portion of Berry Road.

   C. With the exception for a variance of 20 foot pavement widths, all cross sections shall otherwise be in conformance with CITY road specifications for construction including base materials, thickness, etc.
If test pits indicate substandard materials, those portions shall be excavated and rebuilt as the Department of Public Works deems necessary.

E. From the existing end of pavement to Bentley Circle, the road shall be box cut, and appropriate, conforming base and sub-base materials shall be installed.

F. Gravel shoulders of not less than 2 feet in width shall be installed on both sections of Berry Road to be improved hereunder. Owners are not required to undertake any work on any portion of the current paved, improved and accepted portion of Berry Road.

G. A hammerhead turn, approved in design by CITY, shall be installed at the terminus of Berry Road, all within the proposed right of way.

H. Monuments shall be installed periodically to document the right of way, all as determined between Department of Public Works in conjunction and discussion with Tom Milligan. A final as built plan showing said right of way, construction, any improvements, drainage, monuments and track of pavement shall be provided to CITY.

I. Adequate drainage including drainage easements and underdrain as required, shall be fixed and constructed.

6. OWNERS and Milligan shall cooperate with CITY and Deluca-Hoffman during construction, and thereafter.

7. Base coat paving must be finished and in place before November 15, 2005. Final coat paving shall occur in the spring, provided a sufficient security is provided.

WITNESS:

[Signatures]

Print Name

CITY OF Saco:

[Signatures]

Print Name
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<tr>
<th></th>
<th>Owner Attores</th>
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<td>2</td>
<td>Paul and Irene Precourt</td>
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<td>3</td>
<td>Jean Paul and Carol Hall</td>
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<td>Pauline Hall</td>
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<td>5</td>
<td>Robert and Rose Gagne</td>
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<td>6</td>
<td>James and Michelle Blow</td>
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<td>8</td>
<td>Lionel and Anita Belanger</td>
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<td>11</td>
<td>Norman and Claudette Spaulding</td>
<td>116 Berry Road</td>
<td>(Map __, Lot __)</td>
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MEMORANDUM OF UNDERSTANDING CONCERNING BERRY ROAD

Now comes the CITY OF SACO, a municipal corporation, 300 Main Street, Saco, Maine ("CITY") and the OWNERS, those individuals set forth on Tab 1 attached hereto, all of whom own property presently along and adjacent to an unimproved and unaccepted portion of Berry Road, who state and agree as follows:

1. The CITY, by and through its City Council, has expressed a willingness to accept all of Berry Road as a municipal street provided certain conditions are met. The parties intend herein to set forth those conditions.

2. The OWNERS agree to cooperate in the construction and improvement of Berry Road, as further set forth below, from its current terminus (as shown on Tab 2, City GIS/Map) from the end of the existing pavement through to the end of the original proposed paper street where said paper street intersected with the proposed Foss Road, and what is land now or formerly of Precourt (see Tax Map 95, Lot 3), a linear distance of 1221 feet, more or less, as shown on Tab 2.

3. Upon completion of the construction of Berry Road as set forth above, OWNERS shall dedicate the way to the CITY, and shall simultaneously deliver to the CITY executed Quitclaim Deeds to all portions of said improved right of way. Provided the road has been constructed as required herein, and said construction is certified by Public Works, and provided a dedication has been made and all required Quitclaim Deeds are delivered, the CITY shall not unreasonably withhold or condition the acceptance of Berry Road, but shall in good faith and recognition of all parties efforts, thereupon poll its Council for vote.

4. All costs of design construction testing and inspection shall be borne by OWNERS in such proportions as they among themselves, shall agree in writing. CITY may, at its sole option, provide assistance including engineering and construction review and analysis, survey or other data sharing, etc.

5. The following construction standards shall be met by OWNERS:

A. Right of way shall be 49.5 feet (3 rods) wide.

B. Pavement shall be no less than 20 feet in width, and shall at point of beginning of unimproved Berry Road match and connect to the existing pavement of the improved portion of Berry Road.

C. With the exception for a variance of 20 foot pavement widths, all cross sections shall otherwise be in conformance with CITY road specifications for construction including base materials, thickness, etc.

D. Gravel base installed to date lying between Bentley Circle to the end, as shown on Tab 2, will be accepted provided limited test pit borings are acceptable. If test pits indicate substandard materials, those portions shall be excavated and rebuilt as the Department of Public Works deems necessary.
E. From the existing end of pavement to Bentley Circle, the road shall be box cut, and appropriate, conforming base and sub-base materials shall be installed.

F. Gravel shoulders of not less than 2 feet in width shall be installed on both sides of those sections of Berry Road to be improved hereunder. Owners are not required to undertake any work or improvements on any portion of the current paved, improved and accepted portion of Berry Road.

G. A hammerhead turn, approved in design and location by CITY, shall be installed at the terminus of Berry Road, all within the proposed right of way.

H. Monuments shall be installed periodically to document the right of way, all as determined between Department of Public Works in conjunction and discussion with Tom Milligan. A final as built plan showing said right of way, construction, any improvements, drainage, monuments and track of pavement shall be provided to CITY.

I. Adequate drainage including drainage easements and underdrain as required, shall be fixed and constructed.

6. OWNERS and Milligan shall cooperate with CITY and Deluca-Hoffman during construction, and thereafter.

7. Base coat paving must be finished and in place before November 15, 2005. Final coat paving shall occur in the spring, provided a sufficient security is provided.
Print Name
Signature
Irene Precourt

Print Name
Signature
Jean Paul Hall

Print Name
Signature
Carol Hall

Print Name
Signature
Pauline Hall

Print Name
Signature
Robert Gagne

Print Name
Signature
Rose Gagne

Print Name
Signature
James Blow

Print Name
Signature
Michelle Blow
WITNESS:

Signature Curtis McCulloch
Print Name

Signature Maureen McCulloch
Print Name

Signature Lionel Belanger
Print Name

Signature Anita Belanger
Print Name

Signature Ronald Belanger
Print Name

Signature Andre Picard
Print Name

Signature Norman Spaulding
Print Name

Signature Claudette Spaulding
Print Name
To further create the incentive for the commercial sector to recycle, it is being recommended that the recycling carts be distributed to the businesses within the community free of charge and that the collection of the recyclables be done without additional charge to the businesses as well.

Given the fact that in 2004, 5,688 tons of commercial waste was delivered to Maine Energy, this would mean additional revenue to the City of $113,760. However, some of this additional revenue will be needed in order to purchase the carts for the commercial sector and for the increased cost to the City for collection of the commercial recyclable material by BBI. The remaining additional revenue would be minimal.

**MAIN MOTION** Councilor Cote moved, Councilor McDougal, seconded that it be Ordered that the City Council approve the increase of the solid waste commercial tipping fee from $60 to $80 per ton and to distribute recycling carts to those businesses interested free of charge and to begin the collection of their recyclable materials at no additional charge to them. The motion passed with four (4) yeas and three (3) nays. Councilors Tardif, Tripp and McDonough voted in the negative.

**Further move to approve the Order.** The AMENDED motion passed with four (4) yeas and three (3) nays. Councilors Tardif, Tripp and McDonough voted in the negative.

**AMENDMENT** Councilor Michaud moved, Councilor Cote seconded, to amend the main motion with the following language: Said fee implementation of the fee increase will occur only after the change to Chapter 181, Solid Waste has been voted upon and approved by Council. The motion passed with four (4) yeas and three (3) nays. Councillors Tripp, McDonough and Tardif voted in the negative.

Councilor McDonough moved, Councilor Tripp seconded, to table the matter until future implementation of the changes to Chapter 181. The motion failed with three (3) yeas and four (4) nays. Councilors Michaud, Cote, McDougal and Smith voted in the negative.

**E. Repair and Maintenance of Berry Road**

A number of homeowners on the Berry Road have expressed interest in clarifying the status of the unaccepted portion of Berry Road. This has been an ongoing discussion involving residents, City staff, and attorneys for several years, with no resolution to date.

The City Attorney has offered the opinion that the unimproved portion of Berry Road has not been maintained for 150 years, and has therefore effectively been abandoned by the City with no public easement. If this is also the Council’s conclusion, then the Council may be asked by neighbors to clarify whether their efforts toward determining ownership of a “Berry Road Extension” right of way, then construction of a street for eventual acceptance by the City, would have the Council’s support.

Councilor Tripp moved, Councilor McDonough seconded, that it be Ordered that the City Council find that the unimproved portion of Berry Road has not been kept passable for the use of motor vehicles at the expense of the City for a period of 30 or more consecutive years, and has therefore been discontinued by abandonment as outlined in Title 23 M.R.S.A. §3028, and that the City Council hereby authorizes the City Administrator to enter into and sign the agreement titled "Memorandum of Understanding Concerning Berry Road.

**Further move to approve the Order.** The motion passed with seven (7) yeas.
## OWNER ABUTTORS

(Berry Road Extension)

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November 2, 2016

Jean Paul Hall
110 Berry Road
Saco ME 04072

Re: City Consideration of Improving Berry Road

Dear Mr. Hall:

You may have heard that the City has been approached by a property owner with a parcel off the unaccepted portion of Berry Road, and that the City has been asked to complete and accept the road as a full service city street. The issue has been discussed a few times with the City Council, and will return for further review at the November 14 Council workshop.

We are attempting to determine how property owners along that section of the road feel about any proposed changes. Before any decisions are made, we’d like to gather as much information as possible about this roughly 1,200 foot section of road. If you would answer a few questions, and provide any comments or questions you may have, we would provide that information to the Council in an effort to arrive at decisions that are supported by the Berry Road neighborhood.

1. Would you like to see the unaccepted portion of Berry Road improved to city street standards and accepted as a city street?

2. If so, would you be willing to contribute to the estimated $120,000 cost of these improvements? By way of example, about ten years ago residents on Fenderson Road asked the City to participate in improving and accepting their road as a city street. An agreement was reached that had each property owner pay $5,000 as a contribution toward improving the road, which remains in place, with new lots still being required to pay the fee.

3. Do you and your neighbors jointly hire someone to plow the entire unaccepted section of Berry Road, or is snow handled by residents each doing their own portion of the street?

4. Has the status of this section of Berry Road as an unaccepted city street been a problem or concern for financing your home? Has the road’s status been questioned by your bank?

5. It is the City Attorney’s opinion that this section of Berry Road was abandoned years ago. Then in 2009, the City Council voted to formally abandon the unaccepted portion of Berry Road. The abandonment of a road or right of way means that abutters on each side of the road acquire the former roadway to the centerline. If the City were interested in improving the unaccepted portion to a point where it could be accepted as a City street, would you be
willing to convey a 25 foot strip of your land along the road so that the City could create a 50 foot wide right of way for this section of Berry Road?

We appreciate your interest in the matter. Please provide any additional comments you may have, and forward this back to the Planning Office. We’d like to have your input prior to the Nov. 14 Council workshop, which will start at 6:00 p.m. In lieu of responding to this letter, your presence at the meeting would be welcome, thanks.

By phone: 282-3487

Fax: 282-8202

E-mail: bhamblen@sacomaine.org

Mail: Planning Department, Saco City Hall, 300 Main St., Saco ME 04072

Sincerely,

Bob Hamblen
City Planner
Unaccepted portion of Berry Road
1250 Feet

Berry Road
4481 Feet

Legend
- Private Roads
- 2016 Parcels
- Parcels with Structures on Private Roads

1 inch = 300 feet
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Private Rd Standards Approved Oct. 5, 2001
AGENDA ITEM:  (First Reading) Addition of Chapter 171 – Single-Use Carryout Bags to Saco Municipal Code of Ordinances

STAFF RESOURCE:  Bob Hamblen, City Planner

COUNCIL RESOURCE:  Councilor Eric Cote

BACKGROUND:  Single-use carry-out bags are a pervasive part of our society, whether a small paper bag in which a store clerk places a single greeting card or the multiple plastic bags in which we carry home our groceries. However, these single-use bags negatively impact the environment, particularly plastic bags that proliferate near roadsides and can harm wildlife and marine life. More than a dozen states have introduced legislation seeking to ban the use of plastic bags. Currently in Maine: York, Portland, Falmouth, Freeport, and South Portland have passed legislation encouraging the use of reusable bags, and imposing a fee on single-use bags.

The current proposal is to add “Chapter 171 – Single-Use Carryout Bags” to the City of Saco’s general code, which would impose a fee on single-use bags in stores in Saco. The City’s goal is to discourage single-use bags and to encourage the use of reusable bags. We recommend the implementation of a monetary fine system for violations of Chapter 171, should the proposal be approved and go into effect.


RECOMMENDATION:  Staff recommends consideration of the proposed changes.

FUNDING:  None needed.

SUGGESTED MOTION:  “Be it Ordered that the City Council does hereby ordain and approve the First Reading for the addition to the Saco Code of Chapter 171- Single-Use Carryout Bags, and further moves to set the Public Hearing for December 5th, 2016

“I move to approve the order”.

WORKSHOP ITEM COMMENTARY
Chapter 171. Single-Use Carryout Bags.

Sec. 171-101. Purpose.

It is in the best interest of the citizens of Saco to protect the environment and natural resources of Maine by discouraging the distribution and use of disposable, single-use, carryout paper shopping bags, and by the restriction of single-use, carry out plastic bags. This ordinance also intends to encourage the use of reusable shopping bags in Stores, as defined below.

Sec. 171-102. Findings.

Single-use carryout bags have an adverse effect on the environment and wildlife; and

It is important to keep the City of Saco as litter-free as possible to enhance the quality of life for Saco’s residents and visitors; and

Saco is a coastal community with a vested interest in protecting the ocean environment from plastic debris; and

The City finds that re-usable bags are the best alternative to single use carryout bags reusable bags for shopping, which is accomplished through prohibiting the free distribution of single-use carryout bags by Stores, as defined in this Section; and

Sec. 171-103. Authority.

This proposed Ordinance to be adopted pursuant to the City’s home rule authority pursuant to 30-A MRS Section 3001, et seq. as amended from time to time.

Sec. 171-104. Definitions.

Single-Use Carryout Bag. Single-Use Carryout Bag means a bag other than a Reusable Bag, as defined below, provided at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. The term Single-Use Carryout Bag includes compostable and biodegradable bags, including paper bags, but does not include Reusable Bags, Produce Bags, Product Bags or bags provided by pharmacists to contain prescription drugs.

Produce Bag or Product Bag. The terms Produce Bag or Product mean any bag without handles used exclusively to carry produce, meats, other food items or merchandise within the store to the point of sale inside such store or to prevent such items from coming into direct contact with other purchased items.

Reusable Bag means a bag that meets all of the following criteria:

(a) Designed and manufactured to withstand repeated uses over a period of time;

(b) Is machine washable or, made from a material that can be cleaned and disinfected regularly;
(c) Has a minimum lifetime of 75 uses; and

(d) Has the capability of carrying a minimum of 18 pounds.

*Store.* The term *Store* means any of the following retail establishments located within the City of Saco engaged in the sale of perishable or non-perishable foods to the ultimate consumer for direct use or consumption and not for resale:

(a) a full-line, self service market located in a permanent building, operating year-round, and which sells at retail a line of staple foodstuffs, meats, produce, household supplies, dairy products or other perishable items.

(b) a drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda and snack foods.

“*Store*” does not mean:

1) Restaurants; or

2) Businesses at which food sales are an incidental part of the business. Food sales will be considered to be “incidental” if such sales comprise no more than 2 percent of the business’s gross sales in the City of Saco as measured by the dollar value of food sales as a percentage of the dollar value of total sales at any single location.

Sec. 171-105. Single-Use Carryout Bag.

(a) No Store, as defined above, shall provide a Single Use Carryout Bag made of plastic that does not meet all the criteria as a Reusable Bag, as defined above, to a customer at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment.

(b) A Store may make available for sale to a customer a Single-Use PAPER Carryout Bag for a mandatory, uniform charge of five cents ($0.05) per bag.

(c) All monies collected by a Store for Single-Use Carryout Bags under this Section may be used by the Store for any lawful purpose.

(d) All Stores must post signage clearly indicating the per bag charge for Single-Use Carryout PAPER Bags.

(e) Notwithstanding this Section, no Store may make available for sale a Single-Use Carryout PAPER Bag unless the amount of the sale of the Single-Use Carryout is separately itemized on the sale receipt.
(f) No Store shall rebate or otherwise reimburse a customer any portion of the minimum charge required in Subsection (b).

(g) Nothing in this Section shall be construed to prohibit customers from using bags of any type that the customer brings to the Store for their own use or from carrying away from the Store goods that are not placed in a bag provided by the Store.

(h) Carry-out bags for Take-Out meals from a restaurant or food ready to eat carried out from a business that prepares meals on-site for sale to the public are exempt from the definitions of a single use bag.

Sec. 171-106. Exemptions.

A Store shall be exempt from the provisions of the Ordinance, in a situation deemed by the City Administrator to be an emergency for the immediate preservation of the public health or safety.

Sec. 171-107. Record Keeping and Inspection.

Every Store shall keep complete and accurate records or documents of the purchase and sale of any Single-Use Carryout PAPER Bag, for a minimum period of three (3) years from the date of purchase and sale, which record shall be available for inspection at no cost to the City during regular business hours by any City employee authorized to enforce this Ordinance. Unless an alternative location or method of review is mutually agreed upon, the records of documents shall be available at the Store’s address. The provision of false information including incomplete records or documents to the City shall be a violation of this Ordinance.

Sec. 171-108. Violations and Enforcement.

The City Administrator, or his/her designee(s), shall have the primary responsibility for enforcement of this Ordinance. If the City Administrator or his/her designee(s) determines that a violation of this Ordinance has occurred, he or she shall issue a written warning to the Store that a violation was found. Subsequent violations of the Ordinance shall be subject to the penalties set forth below.

Violations of this Ordinance shall be punishable by fines as follows:

A fine not exceeding $250 for the first violation in a one-year period;
A fine not exceeding $500 for the second and each subsequent violation in a one-year period. Each day that a violation occurs will be considered a subsequent violation.

Sec. 171-109. Effective Date.

The provision of this ordinance shall become effective 30 days after its enactment.

Sec. 171-110. Severability.

If any part or provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of the Ordinance, including the application of such part or provision
to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable.