

Minutes, Planning Board  
August 2, 2016

Members Present: Neil Schuster, Chairperson; Rene Ittenbach, Peter Scontras, Michael O'Toole, Marty Devlin, Bob Hamblen, City Planner, Bill Mann, Economic Development Director, Kevin Sutherland, City Administrator. Absent: Don Girouard, Vangel Cotsis.

Workshop 5:00 p.m.

- Sketch plan review of a proposed 11-lot residential subdivision off Grant Road. Applicant is Mezoian Development. Tax Map 124, Lot 6. Zoned C-1.

Regular Meeting 5:30 p.m.

**1. Minutes of July 19, 2016**

**No minutes were submitted.**

**2. Public Hearing: Review of a Plan for the Disposition of City-owned Real Estate known as Unit 91, Island Terrace condominium. Tax Map 37, Lot 1-1-91. Item was tabled at the July 19 meeting.**

Hamblen: This item was tabled at the Board's July 19 meeting due to concerns about the lack of notification of abutters. In fact, the public hearing had been properly noticed in the Journal Tribune. Evidently abutters were not notified due to a misunderstanding. So, the Board was right to table. All required notices have taken place in a timely manner prior to this meeting.

As outlined in Chapter 81 of City Code, consideration of the sale of City-owned property is referred to the Planning Board "...for evaluation and a report to the City Council." The property in this case is a portion of Building 1 on Saco Island, known more specifically as Unit 91. It is roughly a 30,000 s.f. space, all commercial, and consists of 6-7 individual spaces, including the farmer's market, a martial arts studio, a photography studio, and a Department of Labor office.

The City has come into ownership due to a lien maturing on Jan. 11, 2016, because of the non-payment of property taxes from fiscal year 2014. The City now seeks to divest itself of the property, and a Planning Board recommendation is requested. Also attached, the letter that Sam Zaitlin, Director of Development for Saco Island West LLC, that was submitted at the 7/19 meeting.

**Bill Mann, Economic Development Director:** The City of Saco is exploring the potential sale of real estate property owned by the City of Saco, known as Unit 91, in the Island Terrace Condominium Assoc. 110 Main Street. The building is a two-level condominium unit with an underground parking garage. The upper level consists of 30,000+/- sq.ft. of space that is subdivided into several rental units, that are occupied by several commercial tenants. This building is located in the center of the Saco-Biddeford Mill District which is presently undergoing a

significant development/redevelopment with new residential and commercial development presently underway in Saco Mill No. 4, just north of this property. The east is Mill Building #2, which was recently acquired by a new and experienced developer who is working to maximize the development opportunity related to this project. To the south there are several active development projects currently underway. Currently the Property is home to a Karate Academy, a farmers and artisans market, a photography studio, a marketing firm, and the Department of Labor.

What the City is proposing, is making a Request For Qualified Proposal (RFQP), for the sale and Development/Redevelopment of said property located at 110 Main St on Saco Island aka as Unit 91 in the Island Terrace Condominium Assoc. The City is seeking proposals of viable prospects who have the ability to maximize the long-term economic development viability and potential of the property; the ability to complement/enhance the other development that has occurred within ITCA, on Saco Island, within the greater mill district and general vibrancy in the downtown neighborhood; the RFQP will require documentable go forward financial capacity to complete both a purchase and any proposed development or change of use of the real estate; responders to the RFQP shall have a documented financial history free of tax liens/foreclosures in the State of Maine for the last five years; responders to the RFQP shall have a documentable track record of financial capacity and technical capability to complete whatever the the responder to the RFQP is proposing.

**Peter:** The City is responsible for stopping the deterioration, so they have been putting money into it, but now we are bleeding money into it. We have to stop it and get rid of it. **Bill:** We aren't bleeding it. We had to put some money into it. This building was not given to the City. Taxes were not paid, so the City acquired it. We expect to fully get all the money back in the sale of it.

**Kevin Sutherland:** It will be sold as one part or it will be split up. **Bill:** There has already been interest in this property.

**Mike O:** I move to open the public hearing, seconded by Marty. Motion passes 5-0.

**Don Horton, Unit 139, ITOA:** He is okay with allowing any use, or to subdivide. It doesn't affect other owners. 90 owners were bled of hundreds of thousands of dollars, because the previous owner did not pay the taxes. If we end up with the same owner, this condominium will collapse. He encourages the sale of it. **Bill, Unit 126, ITOA:** He purchased his condo on the cheap, and fortunately it has maintained its value. ITOA is teetering on the edge of disaster. We need to fight to keep its value. There is a resurgence of these old mill buildings. Look what is going on in Biddeford. **Larry Lopes, Unit 336 ITCA:** We have struggled with the 25% payment because of costs to fix gutters and downspouts that the previous owner was supposed to do. We are the ones who put in the new drains. It's got to be sold to the right buyer. It's a gem of a property. Nobody wants to see dozens in foreclosure all at one time. It needs to be done right.

**Paul Culloton, Unit 129, ITOA:** There have been thousands of dollars that have been lost, because of the previous owner. **Donna Heinstein, Unit 119, ITOA:** Just as everyone has mentioned, we have been bled dry. If it happens again, she will lose everything, then where would

**Paul Culloton, Unit 129, ITOA:** There have been thousands of dollars that have been lost, because of the previous owner. **Donna Heinstein, Unit 119, ITOA:** Just as everyone has mentioned, we have been bled dry. If it happens again, she will lose everything, then where would

she be. It should be sold, but it must be the right owner. **Mr. Campbell, Unit 127, ITOA:** She is encouraged by the new RFQP. She agrees with the City in how they are approaching this sale.

**Mike O: I move to close the public hearing, seconded by Peter. Motion passes, 5-0.**

Marty suggested the planning board members have a site walk of Unit 91. Rene asked the owners of Island Terrace what they would prefer; Commercial or Residential? All were in agreement that it did not matter, as long as who ever bought the building was financially responsible. It also didn't matter if the building was divided up. The Farmers Market is poorly attended and is mostly crafts.

**Peter: I move that the Board recommend to the City Council that the property known as Unit 91, identified as Tax Map 37, Lot 1-1-91 be offered for sale through a Request for Qualified Proposals process, with details to be worked out by the City Administrator, Economic Development Director, and City Attorney, seconded by Marty. Motion passes 5-0.**

### **3. Public Hearing: proposed amendments to Articles 3, 4 and 7 of the Zoning Ordinance related to medical marijuana caregivers.**

**Hamblen:** Following up on the July 19 workshop, this evening's public hearing is held with the goal, in addition to receiving public comment, of arriving at a recommendation for the City Council regarding amendments to certain sections of Articles 3, 4 and 7, with the goal of establishing a level of regulation for medical marijuana caregivers. Board members may be aware that medical marijuana has been allowed in Maine since 2013. The City responded at the time by defining three different types of dispensaries and determining where said uses would be allowed. Only eight dispensaries were allowed to operate in the state, and in this area, one is established in Biddeford.

Another use was also defined by statute: Primary Caregiver, "...a person who is designated by a qualifying patient to assist the qualifying patient with the medical use of marijuana in accordance with these rules." Legal advice at the time was that "...municipalities may only regulate dispensaries and not caregivers..." Staff and the Council proceeded on that basis. Several, if not many, communities in Maine now host "caregivers." In Saco that has meant buildings occupied, or interest shown in occupying, within the industrial park and off Lund Road. There is concern that these uses are occupying buildings that could be devoted to more beneficial uses, and employing a greater number of workers. Also, that the high energy use demanded by the grow operations is taxing CMP's distribution system in the City's industrial area.

Concern about the situation led to City staff asking that the Council consider a six month moratorium on new permits for medical marijuana caregiver facilities. The Council approved the moratorium on June 6. Staff believes that defining the use(s), determining where the use(s) should be allowed, and adding a performance standard that will provide specific requirements for two new proposed uses – "Caregivers, Growing" and "Caregivers, Growing Facility" -- will address the situation to the extent necessary. The City Administrator, the PD, Code Office, Planning and a

summer intern, Amanda Methot, a 3rd year law student have worked together to draft the language below, which is presented as draft amendments to the Zoning Ordinance:

- Article 3. Definitions

**Medical Marijuana Care givers, growing:** Individual or business that has registered with the state pursuant to 22 M.R.S. §2422(8-A) as a caregiver. The individual or business has established patients and is engaged in growing medical marijuana outside of the caregiver's primary residence (see growing facility) pursuant to 22 M.R.S. §2423-A (2)(B).

**Medical Marijuana Caregivers, Growing facility:** Growing facility is a building where plants are stored and cultivated, and may have patient rooms on site separate from plant cultivation and processing. The facility must be locked and secured. The facility cannot contain more than 3 separate licensees. The facility is located separately from the caregiver's primary residence.

- Article 4. District Regulations

**410-12. I-2 INDUSTRIAL BUSINESS DISTRICT** (ed. note: includes I-2b district at former Maine Turnpike Exit 5) (Amended 8/1/88, 9/19/88, 3/2/92, 3/16/92, 4/1/91, 6/4/91, 7/6/93, 7/6/93, 2/28/94, 2/19/02, 5/21/12)

#### PERMITTED USES

25. Medical Marijuana Caregivers, growing

26. Medical Marijuana Caregivers, growing facility

- Article 7. Standards of Performance

### Section 711. Home Occupations

#### 711-2. PROHIBITED HOME OCCUPATIONS

A home occupation shall not be interpreted to include the following:

- 1) Facility for the repair of motor vehicles
- 2) The retailing of any item not produced on the premises (Amended 8/1/88)
- 3) Medical Marijuana Caregivers, growing

*Planner's Note: at the recommendation of the City Attorney, items f-i have been added to the draft Sec. 734, below. These are the only changes to the draft from the version viewed at the 7/19 workshop.*

## **Section 734. Medical Marijuana**

Where permitted by this Ordinance, uses engaged in the provision of Medical Marijuana including Caregiver (Growing) and Growing Facility, shall comply with the following standards:

- a. Neither of the referenced uses shall be permitted to generate offensive or harmful odors perceptible beyond their property lines, either at ground or habitable elevation.
- b. Neither of the referenced uses shall be allowed in a location less than five hundred (500) feet, measured in a straight line, to the nearest point on the boundary of any property which is occupied by a public or private school, Day Care Center, or Day Care Home.
- c. An enclosed outdoor area used for the cultivation of marijuana shall have a privacy fence at least six (6) feet high that obscures the view of the marijuana *in order to discourage theft and unauthorized intrusion.*
- d. There shall be no outside displays, window displays, or interior displays visible from the outside of the building intended to attract attention to or generate interest in either of the referenced uses.
- e. Adequate measures for security of the facility, which may include a security system, security fencing, security cameras and other measures, shall be demonstrated to the satisfaction of the Code Enforcement Office prior to issuance of either a building permit or a certificate of occupancy. The Code Officer shall consult with the Police Department if the adequacy of proposed security measures is in question.
- f. *The owner(s) of a building intended for lease to a Caregiver (Growing) or a Growing Facility shall apply for and receive a business license from the City Clerk's office. Each lessee within said building shall apply for and receive a business license from the City Clerk's office. Failure to secure a City of Saco business license shall disqualify either an owner or a lessee from operating as a Caregiver (Growing) or a Growing Facility in Saco.*
- g. *A Caregiver (Growing) or a Growing Facility shall receive an annual safety inspection by the Fire Department, Code Office, and Electrical Inspector.*
- h. *Both a Caregiver (Growing) and a Growing Facility shall identify all principal officers/ owners by name and address.*
- i. *Evidence of compliance with all applicable state laws shall be submitted to the Planning Office prior to issuance of a Certificate of Occupancy.*

There seems to be some misinformation after an article in the Portland Papers ran an article recently, so I wish to make it clear. This new zoning ordinance amendment does not prohibit existing caregivers from their current status. They are grandfathered. We also are not trying to change state statute. We are just recognizing a new use.

**Rene:** He didn't realize that there would be patient rooms on site. **Amanda Methot:** It is more of a consultation room.

**Rene: I move to open the public hearing, seconded by Mike. Motion passes, 5-0.**

**Joe Cooper, 89 Industrial Park Rd:** Is this final to have it in just this district, or will it be allowed in other districts? **Bob:** Only in the I-2. **Joe Cooper:** It has caused severe financial consequences for him. He would like the planning board to reconsider having it in other districts. He is sitting on an empty building. Why identify just one district? **Darrell Goodreau, Boothbay Harbor:** you should be able to grow at home. Don't restrict to one zone.

**Justin Chamberlain:** He is a caregiver, and has found it beneficial to grow in his home. It is very expensive to grow. This is a farming community. It should be allowed. **Brent Messer:** Working in a facility is better than out of a home. Is it possible to have in residential homes? **Amanda Methot, Intern:** She did a lot of research, starting with State Statutes, lawyers and has met with Caregivers. There were many definitions to choose from.

Neil suspended the public hearing.

**Bob:** City staff kicked the idea of allowing in the C-1 zone around, but the smell would be a problem being in a residential area. And it is a heavy power user. Geographically the I-2 zone made sense. Security was an issue, because operations are largely operating on a cash basis. Also, federal dollars were used to develop the industrial park, and with marijuana still illegal at the federal level, it's been stated that repayment of the federal money could be a consequence of allowing growers in the industrial park. **Amanda:** the moratorium was because Dick was being bombarded with applications.

**Mike:** do individuals need anything other than a license from the state to become a caregiver? No. **Don:** the zone may be too small, patients can be easily identified, and there will be a flood of caregiver applications at the end of the moratorium. Personal services is not the right definition. Light manufacturing is closer to correct.

**Rene:** I move to close the public hearing, seconded by Marty, and so voted, 5-0. Peter: this is setting that area up for a lot of electricity use. Is that a concern given the lack of capacity? Has CMP said it will meet the demand? **Rene:** natural gas may help. The I-2 zone is near the fire station, and there are several public destinations in the I-2 zone, so I'm not concerned.

**Rene: I move that the Board forward a positive recommendation to the City Council for the proposed amendments to Articles 3, 4 and 7 of the Zoning Ordinance, with the goal of regulating medical marijuana caregivers growing in a non-residential situation in the City of Saco, seconded by Michael, and so voted, 5-0.**

#### 4. Public Hearing: proposed amendments to Articles 5 and 7.1 of the Zoning Ordinance related to shoreland zoning.

Hamblen: The Board is asked for its review and a recommendation to the City Council on proposed amendments to Articles 5 and 7.1, the City's "Shoreland Zoning Ordinance."

The last round of SZ amendments was in 2009, a significant one with several policy-oriented changes. The latest round of revisions put forth by the DEP, found in the attached, amended copies of Articles 7-1 and 5, are largely housekeeping in nature. The "bigger issues" that are proposed for amendment are as follows:

- Nonconforming structures
- Timber harvesting
- Revegetation
- Nonvegetated surfaces
- Disability variances
- Definitions
- Shoreline stabilization
- Structures and uses extending over, or located below, the shoreline

A few of these items in a bit more detail:

- Nonconforming Structures -- The proposed amendments limit the expansions of nonconforming structures based on *footprint* (by square footage or percentage, whichever allows more expansion) and *height*, instead of floor area and volume.
- Timber Harvesting -- Any ordinance that is not consistent with the 2015 Guidelines is not considered consistent with the Statewide Standards for Timber Harvesting and Related Activities in Shoreland Areas (SWS). Compliant SWS are needed for a municipality to receive assistance from the Maine Forestry Service (MFS) for the regulation of forestry activities. Municipalities that have not amended their ordinances to comply with SWS or have a state-imposed ordinance are responsible for enforcing these non-compliant ordinances without MFS assistance.

As Mr. Morse from the DEP suggests, "Make your (and Dick's) life easier and repeal timber harvesting in the slz! MFS can handle it just fine." The draft proposes to do just that – language is suggested for deletion.

- Revegetation -- There are many changes related to clearing or removing vegetation. Among the most significant includes the 2006 shift from the 25' by 25' plot system to a 25' by 50' revegetation plot system. The old system required landowners to maintain vegetation points in *any* plot; while onerous on the landowner, it makes investigating violations easier on CEOs. With the new 25' by 50' system, the landowner must lay out plots in the area to be

thinned adjacent to one another without overlap. Fewer plots are needed making it easier for the landowner, but when investigating violations this is more onerous on CEOs, who now have to match the plots that were laid out by the landowner. Regardless of which system is used locally, the provisions must preserve a certain number of saplings per plot. In addition to the plot system changes in the 2015 Guidelines require amended ordinances to include specific standards for the removal of hazardous, dead, and storm-damaged trees, including revegetation requirements. The exemptions provisions in the 2015 Guidelines have also been substantially modified.

We've forwarded the draft changes to Mike Morse, the southern Maine Shoreland Zoning coordinator for the DEP, and await his comments. The amendments have been provided to the Code Enforcement Office for review. We seek questions or comments from the Board.

Mike: I move to open the public hearing. Seconded by Rene. No comments. Peter: I move to close the public hearing, seconded by Rene, and so voted, 5-0.

**Mike: I move that the Board forward a positive recommendation to the City Council for the proposed amendments to Articles 5 and 7.1 of the Zoning Ordinance, as related to Shoreland Zoning, as amended based on suggestions found in Don Girouard's e-mail of Aug. 1, seconded by Marty, and so voted, 5-0.**

The meeting adjourned at approx. 8:40 p.m.

Submitted by,

Maggie Edwards, Recording Secretary  
Bob Hamblen, City Planner