INFORMATIONAL MEETING AGENDA
THURSDAY, MARCH 23, 2017
CITY HALL (COUNCIL CHAMBERS)
6:30 P.M.

A. Items for discussion submitted by the City Council and/or the City Manager:
   1. Childhood Hunger Working Group – Councilor Grant
   2. Religious and Associated Activities Land Use Discussion Committee Recommendations – Councilors Alexander and Conti
   3. Continued Blasting Discussion – City Manager
   4. Proposed Setback and Shoreland Zoning Ordinance Revisions – City Manager
   5. Recommended Changes to the Land Use Ordinance to Update Old References to the 1988 Growth Management Plan – City Manager

B. Persons wishing to address the City Council who have submitted a formal request in accordance with Section 2-61 of the Code of Ordinances:
   1. Alex Paganucci – Davenport Street Speed Limit and Parking

C. Open comment period for any persons wishing to address the City Council.
City of Augusta, Maine
DEPARTMENT OF DEVELOPMENT SERVICES

Final Report of the Religious Activities and Associated Uses
City Council Ad Hoc Committee

This Committee was formed by the City Council to review and study how to best address accessory uses that might be conducted within properties used for religious purposes. This report summarizes the Committee’s findings.

Issues Presented to the Committee

Today’s churches are offering a wide and growing array of services to their parishioners and their communities. While these services often address important needs within the City, they may cause impacts on their surrounding neighborhood that were not necessarily foreseen when these districts were zoned to allow churches. There is also a lack of clarity in the existing ordinance regarding whether certain uses, when conducted by a church, should be classified as accessory uses or as part of the church’s regular operations. If, under the existing ordinance, a church wanted to operate a retail shop, café or social service, planning officials would have a difficult task in determining how that use should be classified and whether it is permissible or not. This Committee has considered potential amendments that would (1) adopt performance standards to better address impacts of such uses on residential zones; and (2) provide a clear requirement for conditional use review of such uses.

Religious Land Use and Institutionalized Persons Act

In considering the above issues, the Committee has continually kept in mind the requirements of the Religious Land Use and Institutionalized Persons Act. This federal act, known as RLUIPA, provides as follows:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution:

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. §§ 2000cc et. seq. The law applies where “the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a
government makes, or has in place formal or informal procedures or practices that permit the
government to make, individualized assessments of the proposed uses for the property involved."

Courts have generally interpreted the term “individualized assessment” to apply where
the government may take into account particular details of an applicant’s proposed use of land
when deciding to permit or deny that use. RLUIPA therefore generally applies only to review of
a particular religious institution’s land use request; if the zoning standards as applied cause a
substantial burden on that institution’s practice of religion, they are in violation of RLUIPA. It is
therefore of utmost importance to provide as much clarity as possible in the ordinance so that
planning officials are not left to make case-by-case determinations about which uses are
“religious” uses and which uses are “accessory” uses. It is also important to subject both secular
and religious assembly uses to the same basic requirements.

Findings

Having thoroughly reviewed and discussed these issues, the Committee has made the
following findings:

Accessory Uses

A general weakness in the Ordinance is that it does not have language specifically
prohibiting accessory uses which are not otherwise allowed in the particular zone. The
Committee finds that the Council should consider amending the definition of “Accessory
Structure or Use” as follows:

ACCESSORY STRUCTURE OR USE:

A use or structure which is incidental and subordinate to the principal use or structure.
Accessory uses, when aggregated, shall not subordinate the principal use of the lot.
Accessory uses and structures must comply with all conditions and standards for the
location or use and which have been permitted by the Planning Board for the location or
use. A deck or similar extension of the principal structure, or a garage attached to the
principal structure by a roof or a common wall, is considered part of the principal
structure. Accessory residential structures and uses include, but are not limited to, private
garages with less than four vehicles; swimming pools; greenhouses operated by and for
use by the family living in the residence; and satellite dishes. Accessory structures or
uses also include amateur radio and citizen band radio towers exceeding 35 feet
(excluding antennas) in height above the ground. Such towers less than 35 feet in height
above the ground are permitted by right (no permit required).

The Committee finds that both “civic, social and fraternal associations” and “religious activities”
are uses which might be expanded in such a way that leads to questions regarding what is part of
their mission, and what is an accessory use. At present, certain of these uses are not permitted in
zones where religious and civic activities are permitted, which places planning officials in the
difficult situation of determining whether the use is part of the religious or civic activities, and
therefore allowed, or separate from the religious or civic activities, and therefore not allowed. In
order to provide clarity to planning officials, the Committee suggests consideration of the following amendment in order to provide clarity regarding certain uses that are already conducted, and are likely to be conducted in the future, by religious and civic organizations:

The following uses accessory to permitted assembly uses shall be subject to conditional use approval unless expressly listed as a permitted use in the Table of Land Uses: Conference center, convention facility, social services, educational services, day care centers, group homes, medical clinic, meal center and food pantry, retail, recreational areas and facilities. Shelter shall also be a conditional use and shall not be with 1,000 feet of another shelter.

This amendment would allow both religious and secular assembly uses to conduct the listed uses within their existing facilities, as long as the Planning Board determines that they meet the performance and conditional use standards within the Ordinance. The Committee recognizes that these uses have the potential to cause burdens on their communities, but feels that the conditional use process will allow the Planning Board to review and address those burdens. It will also give neighbors a voice in the planning and approval of such uses. The Committee notes that many of the listed uses are subject to state or local licensure already, and so does not feel it will be a significant burden to require these entities to obtain conditional use approval as well.

**Definition of Religious Activities and Associated Uses**

The Committee finds that inclusion of the phrase “associated uses” in the term and definition for “Religious Activities” is confusing, in that the Code has no definition for “associated uses” and the concept is quite vague. As such, the Committee recommends that all uses of “associated uses” be deleted from the Land Use Ordinance as related to “religious activities.”

**RELIGIOUS ACTIVITIES AND ASSOCIATED USES**

A structure or place where persons regularly assemble for worship, ceremonies, rituals, education, and related social events pertaining to a particular system of beliefs, and which structure or place, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain religious ceremonies and purposes. “Religious activities and associated uses” includes but is not limited to churches, religious temples, convents, monasteries, parsonages, rectories, religious camps and retreat sites.

**Location of Religious Uses**

The Committee examined the current location of churches by zone. It noted that Penney Memorial Church and the Christian Science Church are located in the KBD2 zone, in which churches are not currently permitted. The Committee sees no clear planning reason why KBD2 should not allow churches, and so would recommend that the Planning Board consider adding both religious activities and civic, social and fraternal associations as permitted uses in that district.
**Performance Standards**

The Committee identified pedestrian and traffic circulation as potential sources of concern for residential neighborhoods in which churches are operating accessory uses. While there are existing standards in the Land Use Ordinance for driveway and access standards and parking, there is nothing addressing pedestrian circulation and loitering. Implementing a standard such as the following to the list of conditional use criteria will give the Planning Board the opportunity to evaluate and place conditions to prevent loitering and idling vehicles:

Section 300-603(E)(e) is added as follows:

Will the proposal cause exterior queuing of vehicles or loitering of pedestrians which would have a negative impact on the surrounding neighborhood?

**Conclusion**

The Committee is thankful for the opportunity to have presented the above feedback to the Council and welcomes any additional questions the Council or Planning Board may have regarding the above recommendations.

Respectfully submitted,

The Committee

Marci Alexander, Councilor at Large
Kristin Collins, City Attorney
Linda Conti, Councilor, Ward 1
Erik Karas, Pastor, Prince of Peace Lutheran Church; St. Mark’s Episcopal Church
Matt Nazar, City Planner
Mark O’Brien, Councilor at Large
Rev. Kristin White, Green Street United Methodist Church
<table>
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<tr>
<th>TASKS</th>
<th>DESCRIPTION</th>
<th>Estimated Labor and Expense Costs</th>
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<tr>
<td>1</td>
<td>Attend City Council meeting to discuss SOW issues</td>
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<tr>
<td>2</td>
<td>Review Project Information</td>
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<tr>
<td>a</td>
<td>MD&amp;B presentation 11-10-16 - brief review</td>
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<td>b</td>
<td>Maine DEP quarry blasting regulations</td>
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<td>Blasting data from McGee quarry, summary of neighborhood complaints + develop scale-distance relationships</td>
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<td>d</td>
<td>Blasting data from Quirion Const. quarry, summary of complaints + develop scale-distance relationships</td>
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<td>Quarry blasting regulations for other Maine cities</td>
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<td>Existing Mineral Extraction Standards</td>
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<td>Video testimony from neighbors re: structural damage</td>
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<td>j</td>
<td>pre-blast survey data</td>
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<td>k</td>
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<td>Site Visits (MP+JS) - two quarries, nearby neighborhoods and two homes with structural damage - incl discussions w owners</td>
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<td>Attend (MP only) one in-depth daytime meeting with city staff - incl prep w PP presentation</td>
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<td>Review National Trends re: Acceptable Quarry Blasting Criteria</td>
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<td>5</td>
<td>Correspondence and Summary Report</td>
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<td>6</td>
<td>Attend (MP+JS) one City Council meeting to present report</td>
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<td>Attendance at and preparation for additional staff meetings, additional city council meetings, Planning Board Licensure Meeting + consultations to the Planning Board during license reviews</td>
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<td><strong>ESTIMATE TOTAL - PROPOSED REVISED TASKS 1 - 7</strong></td>
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Memo

To: City Council

From: Matt Nazar, Director of Development Services

Date: February 21, 2017

Re: Setbacks and Shoreland Zoning Ordinance Revisions

Setbacks
Proposed revisions to the Setback section of the Land Use Ordinance are redlined in the attached document. The most recent revisions to this section were in 2003, and since this time, changes to street names and designations have occurred. The proposed revisions better align the setback standards with today’s conditions. Underlined text has been added and strikeout text is removed.

Shoreland Zoning
The Maine Department of Environmental Protection updated Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances on January 26, 2015. The Mandatory Shoreland Zoning Act requires that municipalities adopt shoreland zoning ordinances consistent with, or no less stringent than, those minimum guidelines. The last revisions to these sections, related to Shoreland Zoning, were in 2004 and 2006. Proposed revisions to the Land Use Ordinance are redlined with underlined text added and strikeout text removed.

As part of the revisions to the ordinance, an updated Shoreland Zoning Overlay Map has been created to modernize the 2002 maps currently used. The new map has aerial photography as a backdrop to better orient the user to natural features and site specific areas.
Memo

To: City Council

From: Matt Nazar, Director of Development Services

Date: February 21, 2017

Re: 1988 Growth Management Plan references

The following changes reflect my interpretation of a recommendation by Corporation Counsel, Steve Langsdorf, to remove references to the Comp Plan as a “standard” in the ordinance and to complete a couple of other updates.

Amend Section 300-101 as follows:

This chapter involves the consolidation of the General and Shoreland Zoning Ordinance, the Subdivision Ordinance, the Mobile Home Park Ordinance and the Flood Damage Prevention Ordinance, as well as new land use regulations that reflect the policies of the 1988 Growth Management Plan 2007 Comprehensive Plan. The provisions and requirements listed in this document reflect input from the City Council, Planning Board, City staff, residents, business persons and a group of citizens who reacted to several versions of the draft prior to sending it along to the Planning Board and City Council.

Amend Section 300-103

The purposes of this chapter are broadened to include the policies of the 1988 Growth Management Plan adopted in December of 1988 2007 Comprehensive Plan adopted in January 2008.

Amend Section 300-106(B)(1)(f)[1]

The rezoning shall be consistent with the 1988 Growth Management Plan 2007 Comprehensive Plan, and any plans or policies subsequently adopted by the City;

Amend Section 300-106(B)(2)

Text amendments. Text amendments shall be consistent with the 1988 Growth Management Plan 2007 Comprehensive Plan and any plans or policies subsequently adopted by the City.
The applicable notification requests of Subsection B(1)(a) and (b) of this section shall be followed.

Amend Section 300-202 (38)

COMPACT AREA For purposes of this chapter, the "compact area" of the City of Augusta shall mean that area contained within the "Revised Urban Boundaries" shown on "Map of Compact Area, Augusta, Kennebec County, Maine," prepared by the State of Maine Department of Transportation, Bureau of Planning, in cooperation with the United States Department of Transportation, Federal Highway Commission (1975). Said map is hereby incorporated into this chapter and shall be maintained on file with the Official Zoning Map. For purposes of this chapter, except with respect to the provisions of OBDS, the compact area of the City of Augusta shall also include the Urban Growth Area designated in the 1988 Growth Management Plan 2007 Comprehensive Plan.

Amend Section 300-314(A)

The Urban Growth Area, as defined on the land use map of the 1988 Growth Management Plan 2007 Comprehensive Plan, includes the City's built-up portions. Building trends in this area indicate that it is primarily infilled and that redevelopment is beginning to occur. The Urban Growth Area is the area of the City where Augusta wishes to contain higher density and compact development. Water, sewer and storm drainage utilities are generally available or are planned to serve this area. Special attention is given to the area to protect residential areas from adverse impacts that may result from other land use activities, to retain its visual gateways into the City, to unify the capital complexes on both sides of the river with the downtown and Western Avenue, and to improve the City's image.

Amend Section 300-314.1

Purpose. The RD District encompasses the area on both sides of Mount Vernon Avenue. The area's highly congested mixed-use building pattern, its floodplain and steep slopes, its recreational opportunities and its function as a major gateway make this corridor as environmentally sensitive as it is economically attractive. It connects the Heart of Augusta with the City's growth area. The infrastructure capacity is strained. In recognition of these factors, and based on the policies outlined in the 1988 Growth Management Plan 2007 Comprehensive Plan, the RD District encourages low-intensity mixed-use development supporting residential/recreational activities and the commuting public.

Amend Section 300-315

Delete the entire text in the “Introduction and Commentary” Section.

Amend Section 300-316.1(C)(1)(f)

The following other areas which have been recommended for protection in the 1988 Growth Management Plan:
Amend Section 300-501

Consistent with the purpose of this chapter, the 1988 Growth-Management-Plan 2007 Comprehensive Plan, as amended, and the provisions regarding nonconforming uses and structures, any use legally existing as of the effective date of this chapter which does not meet one or more of the following performance standards shall, upon application for expansion, change of use or other modification, excluding minor modifications, be required to bring into compliance existing nonconforming aspects of the property under the following conditions:

Section 300-506 - Environmental resources.

The following policies, written in italics, are from the 1988 Growth-Management-Plan and are included in this section to guide the Planning Board when reviewing projects. Specific performance standards, when included, are written in the standard type set.

A. General.

1. New development shall be sited and designed in a manner that will maintain the critical functions and interrelationships of ecological systems, including air, water, land, plant and animal resources.

2. Property owners are encouraged to place conservation easements on lands containing natural resources.

B. Plant and animal habitat.

1. Buffers of natural vegetation shall be provided adjacent to all wetlands, deer-winter ranges, streams, brooks, and rivers in rural areas identified as critical habitat by the Maine Department of Fisheries and Wildlife. See criteria for designating Resource Protection Districts in § 300-316.1C. (Applicant shall consult with the MDF&W in determining the buffer width.)

2. The impacts on wildlife of siting new roads, subdivisions, and intensive development shall be given scrutiny in rural areas and such uses discouraged in areas important to wildlife.

3. A woodland buffer shall be maintained and enhanced adjacent to all major arterials in rural areas to minimize air pollution, except in areas where other public objectives conflict. The planting of air-pollution-resistant trees and the retention of pockets of forestland shall be encouraged in urbanized parts of the City. (See Highway Overlay Standards—Reserved.)

C. Soils.

1. See special standards applicable to shoreland areas.

2. On sites with marine clay or presumpset soil formations, developments shall be designed and located to avoid earth slumping.

3. On soils with high erodibility, areas of site disturbance shall be minimized and earthmoving and destabilization shall be conducted using best-management practices. See air and water quality standards.

4. Prime agricultural soil areas of greater than 10 acres shall be conserved, and the removal of topsoil from them is prohibited. Clustered developments shall be required for
subdivisions in these areas so that the prime agricultural soils are retained as open space and conserved through conservation easements. If the site contains entirely prime agricultural soils, actual developable area shall be limited.

(5) Areas with sand and gravel deposits suitable for mining shall be conserved. Clustered development shall be required for subdivisions in these areas so that the sand and gravel deposits are retained as open space. If the site is entirely sand and gravel deposit, actual developable area shall be limited. See mineral exploration—mineral extraction activities standards.

D. Steep slopes:

(1) Commentary: The 1988 Growth Management Plan outlines the following policy: “Development, other than passive recreation, on slopes steeper than 15% is discouraged. Such development shall require Planning Board review.” The plan also includes suggested buffer widths for protecting streams from construction and developmental activities (Table 9). The following discussion is from Preliminary Land Use Constraints Analysis by Southern Kennebec Valley Regional Planning Commission, June 1976:

(a) Slopes are commonly placed into categories indicating potential limitations to land use:

- 0% to 8% flat to gently sloping land; well suited to most kinds of development.
- 8% to 15% gentle to moderate slopes; usually well drained and suited to residential development.
- 15% to 25% moderate to steeply sloping land, presenting limitations to development and susceptibility to erosion.
- 25% and over—very steep slopes, causing difficult construction; erosion problems.

(b) Stable hillsides represent an equilibrium of the geology, slope, soils, vegetation and precipitation in a particular area. When the balance among these factors is disturbed, the result can be increased erosion through loss of slope and soil stability, greater runoff due to alteration of the natural drainage patterns and degradation of an aesthetic resource because of erosion, removal of vegetation and other factors.

(c) Erosion depends to a large extent upon the degree of slope, soil type and condition, and vegetative cover. The greater degree of slope, the more susceptible the hillside is to erosion. The length of slope also affects the rate of erosion although to less an extent that the degree of slope.

(d) Generally, soils with low permeability or with little capability for absorbing or retaining water are more susceptible to erosion. This condition can be exacerbated by loss of vegetative cover. Vegetation aids slope stability through the binding action of root systems as well as by the consumption of water. Disruption and removal of vegetative cover can cause stepped up erosion through the loss of root systems and the saturation of soils by excess water. The increase in water content in the soils, in addition to exaggerating erosion, may contribute to slides or slumps in areas of steep slopes.
(e) The stability of hillsides depends in part upon a stable drainage system. A mature, vegetated hillside has a relatively stable drainage pattern which changes slowly as gradual erosion alters the slope. This is in contrast to disturbed slopes where loss of vegetation and exposed soils results in runoff seeking new channels of flow.

(f) The approach to regulation of steep slopes aims at avoiding the hazards described above by maintaining to the extent possible the equilibrium established on hillsides. Three regulatory methods are possible. The first involves slope density provisions. This method defines what degree of developmental density may occur in areas of various slopes. Generally, the greater the slope, the less the area may be developed. The rationale is that, other factors being equal, as slope increases so does potential degradation of the environment through increased probability of runoff, erosion, sedimentation and slope failure. The effect is to encourage development in areas of gentle slopes through restricting development from areas of steep slopes.

(g) A second regulatory method utilizes performance standards in hillside development.

(2) In areas of steep slopes (as defined), the following standards shall apply:

(a) Any application to construct a principal structure on slopes greater than 15% shall be accompanied by an engineered site plan, building plan and a landscape plan developed by a qualified licensed professional, such as, but not limited to, an engineer, architect, or landscape architect. Along with requirements for a site plan outlined in Part 6 of this chapter, the application shall include information on soil type and existing vegetative cover. Such building permit shall not be issued without Planning Board approval.

(b) All development on slopes covered by these standards shall comply with the applicable standards outlined in § 300-514B, Water quality.

(c) See the overlay standards in § 300-529, Capitol View District.

(d) See the special shoredland standards outlined in § 300-528J(3) and O(2)(f) for additional requirements applicable in shoredland overlay districts.

(e) Guiding principles (modified from the Lake County, Illinois ordinance):

1. Fifteen to less than 20% slope. At least 60% of such areas shall remain as open space. No more than 40% of such areas shall be developed and/or regraded or stripped of vegetation.

2. Twenty to 30% slope. At least 70% of such areas shall remain as permanent open space. No more than 30% of such areas shall be developed and/or regraded or stripped of vegetation.

3. More than 30% slope. At least 85% of such areas shall remain as permanent open space. No more than 15% of such areas shall be developed and/or regraded or stripped of vegetation.

Amend Section 300-512(B)(5)

Maine DEP and MDIF&W wetlands (as outlined on the Resource Protection Map, 1988 Growth-Management-Plan); wetlands over two acres in size as shown on the City of Augusta 200 scale topographic maps.
Amend Section 300-514(B)(2)(d)

Delete “Commentary” text.

Amend Section 300-514(B)(3)

Delete “Commentary” text.

Amend Section 300-524(A)

The 1988 Growth Management Plan contains a policy that new residential subdivisions offering affordable housing to low- or moderate-income homeowners or renters, in areas where public water and sewer are available or planned, shall be eligible for density bonuses and relaxed frontage and setback requirements, providing they are clustered so as to retain open space and that there are no adverse impacts on traffic, visual character, the environment and adjacent property.

Amend Section 300-603(E)(2)(a)

Is the proposal in accordance with the adopted elements of the 1988 Growth Management Plan? Reserved.
Hi Loretta and Bill,

The Traffic Calming Committee met today and reviewed Mr. Paganucci’s concern about the speed limit on Davenport Street and speeding on that street. Speed limits are set by the Maine Department of Transportation and speed limits in residential areas are typically set at 25 mph. We do not believe the MDOT would approve a lower speed limit for this street and do not support the speed limit being lowered as this is a typical residential street and we need to be consistent. There was a speed study done in November of 2016 which is attached and it does not indicate there is a speeding problem on Davenport St. Additionally, there are speed bumps on this street that were installed several years ago in response to neighborhood concerns that traffic was cutting through Davenport Street to avoid the traffic signal at Eastern and Stone Street.

At this point we would recommend that the Police Department patrol the area when they have the resources available to monitor speeds and do enforcement as needed.

Thanks.

Lesley Jones on behalf of the Traffic Calming Committee

Here is the speed data from last November.

Mr. Paganucci, a resident of Davenport Street, called today to speak with the Mayor. He wanted to know what the next step is to get the speed limit changed on his street where he says there is an ongoing speeding problem.

He has brought this problem to Councilor Grant, met with Bill and I think this went to the TCC as it sounds like a speed study may have been done. He asked what else he could do and wanted to speak at the next Council meeting.
He asked to be included on the next informational agenda under and I have done that. This is what will appear on the agenda under Part B per his request:

Alex Paganucci – Davenport Street Speed and Parking.

He said he would still contact the Mayor prior to the meeting.

Thanks,

Loretta Lathe
Executive Assistant
Office of the City Manager
City of Augusta
16 Cony Street
Augusta ME 04330
Phone: 207-626-2300
Fax: 207-620-8174
www.augustamaine.gov