

OFFICE OF THE CITY CLERK

AUGUSTA, MAINE

October 11, 2005

Minutes of the regular City Council meeting held Monday, October 3, 2005 at 7:00 p.m., Council Chambers, City Center.

All members of the Council were present except Councilor Gomeau; Mayor Dowling presided.

Public Hearing - Capital Improvement and Equipment Acquisition Bond Issues (Order #145)

Public Hearing - Malt, Spirituous, Vinous Liquor License application for Lisa's Restaurant & Lounge, LLC, 15 Bangor Street (Order #153)

Public Hearing - To amend Augusta's Pine Tree Zone program (Order #160)

Public comments were held on items listed on the agenda

OLD BUSINESS AND TABLED MATTERS

HAS BEEN READ

144 BE IT ORDAINED, By the City Council of Augusta that the Local Business (CB) District located at the junction of the West River Road and the new Route 3 Bridge connector road be dissolved and the land returned to its constituent zoning districts (Rural Residential (RRES), Rural River 2 (RR2), and Low Density Residential (RA)); and furthermore Be It Ordained that the property zoned currently and thereby as Low Density Residential (RA) along the easterly side of West River Road from the Caron property (Lot 37 Tax Map 6) northerly to the Third Bridge connector road, be changed to Rural River 2 (RR2), as unanimously recommended by the Augusta Planning Board.

NO MOTION MADE FOR PASSAGE

HAS BEEN READ AND PASSED, FINAL READING

143 BE IT ORDAINED, By the City Council of the City of Augusta, as follows:

That Chapter 18, Section 38 Schedule of one-way streets, of the Revised Code of Ordinances 1990, as amended be further

OLD BUSINESS AND TABLED MATTERS (Con't)HAS BEEN READ AND PASSED, FINAL READING (Con't)

143 Continued
amended by adding:

Lafayette Street, between Townsend Road and Trueworthy Avenue, north only.

Yeas: 6; Sotir, Foster, Lerman, Davis,
Koski, Lund

Nays: 1; Doore

145 ORDERED, That (1) A sum not to exceed \$500,000 be and hereby is appropriated for the purpose of paying the costs of capital expenditures for the construction and equipment of buildings and other public improvements and the acquisition of equipment of a lasting character to constitute the following:

(A) Public Safety Equipment Acquisition	\$250,000
including but not limited to fire apparatus	
(B) Street Improvements	\$250,000
including but not limited to improvements to Pearl Street and related facilities throughout the City	
<u>Totals</u>	<u>\$500,000</u>

The estimated period of utility of the foregoing improvements and equipment is hereby declared to be in excess of twelve (12) years.

(2) To meet the aforesaid appropriation, the City Manager of the City or his designee, including without limitation the Assistant City Manager for Finance and Administration (any of whom is referred to herein as an Authorized Representative), is hereby authorized and directed under and pursuant to Section 8 of Article VII of the City Charter and other enabling authority to prepare, issue and sell, at one time or from time to time, as one or more separate issues, general obligation bonds of the City in an aggregate principal amount not to exceed \$500,000. The date or dates, denominations, interest rate or rates and all other particulars as to form, issue and sale of each issue of the bonds shall be determined by an Authorized Representative, provided that each of the bonds shall be signed by an Authorized Representative and by the Mayor, whose signature may be by facsimile, shall bear the City

OLD BUSINESS AND TABLED MATTERS (Con't)HAS BEEN READ AND PASSED, FINAL READING (Con't)

145 Continued

seal or an authorized facsimile thereof, and shall mature or be payable in annual installments, the first installment to be payable on or before December 31 of the year after the year in which the bonds are issued, and the last installment to be payable not later than ten (10) years after the date for payment of the first installment. The bond issues authorized hereby may be consolidated for purposes of sale and issuance with any other authorized bonds, provided that the bonds of each component of the consolidated bonds shall mature over a term not longer than the term permitted by the City Charter and other applicable law for such component and by the order authorizing such component. The bonds may be subject to call for redemption with or without premium at the election of the City before the date fixed for final payment of the bonds. An Authorized Representative is authorized to sign such agreements, instruments and certificates as are required in connection with the issuance of the bonds.

(3) An amount sufficient for the payment of the annual installments of principal of and interest on the bonds or notes shall be included in the tax levy for each year during which any of such bonds or notes shall be outstanding until the debt represented by the bonds or notes is extinguished.

(4) An Authorized Representative be and hereby is authorized to borrow at one time or from time to time in anticipation of the bonds to be issued as herein authorized, when and as funds may be required, a sum or sums not exceeding the aggregate principal amount of the bonds as herein authorized, and to prepare, issue and sell at public or private sale, the temporary note or notes of the City therefor and to renew the same as deemed advisable, provided that any such temporary note or renewal note shall be paid within the maximum term permitted by law therefor. An Authorized Representative is hereby authorized and directed, subject to the provisions of this Order and applicable provisions of law, to sign and determine the date or dates of the note or notes (including renewal notes), the interest rate or rates they shall bear and all other details of things necessary and proper to effectuate the issue and sale thereof, provided that each note shall be signed by an Authorized Representative and by the Mayor,

OLD BUSINESS AND TABLED MATTERS (Con't)HAS BEEN READ AND PASSED, FINAL READING (Con't)

145 Continued

whose signature may be by facsimile, and shall bear the City seal or an authorized facsimile thereof. An Authorized Representative is authorized to sign such other agreements, instruments or certificates as are required in connection with the issuance of the notes.

(5) For purposes of U.S. Treasury Regulation Sec.1.150-2, the City reasonably expects (1) to incur debt to reimburse expenditures (including expenditures made within the last sixty (60) days) temporarily advanced from funds of the City, such expenditures to be made to pay the cost, or a portion of the cost, of the foregoing improvements and equipment and (2) that the maximum principal amount of debt to be issued by the City for the foregoing improvements and equipment including for reimbursement purposes is \$500,000 and the City Manager is authorized to advance money of the City for payment of such costs.

Yeas: 7; Sotir, Doore, Foster,
Lerman, Davis, Koski, Lund

Nays: 0

HAS BEEN READ AND PASSED, FINAL READING, AS AMENDED

040 BE IT ORDAINED, By the City Council of the City of Augusta, as follows:

That Chapter 18, section 38 Schedule of one-way streets, of the Revised Code of Ordinances 1990, as amended be further amended by adding:

Melville Street, between Green Street and Western Avenue, south only.

That Melville Street shall be made a "dead end" street at the Southern end (near Western Avenue) and an aesthetically landscaped island, which shall obstruct thru traffic, shall be constructed in accordance with the Council approved design as submitted by the City Engineer.

Yeas: 7; Sotir, Doore, Foster,
Lerman, Davis, Koski, Lund

Nays: 0

NEW BUSINESS

HAS BEEN READ AND PASSED, AS AMENDED

157 ORDERED, That the Augusta City Council does hereby adopt the recommendations (see attachment) of the Buker Ad Hoc Reuse Committee and authorizes the City Manager to carry out, implement, and administer the recommendations of the Buker Ad Hoc Reuse Committee.

BE IT FURTHER ORDERED, That the City Manager is authorized to reduce the Augusta Boys and Girls Club rent 50%, from \$42,000.00 to \$21,000.00, for the first year.

Yeas: 7; Sotir, Doore, Foster,
Lerman, Davis, Koski, Lund

Nays: 0

160 ORDERED, That the City Council amend the list of parcels that make up its local Pine Tree Zone District and that is part of the State of Maine's Pine Tree Zone Program.

1. To authorize the Kennebec Valley Council of Governments, 17 Main Street, Fairfield, Maine 04937, a Regional Council organized pursuant to 30-A MRSA c.81 on March 2, 1994 and designated as a Regional Planning and Development District by Executive Order covering Kennebec, Somerset and western Waldo Counties, to apply on behalf of the City of Augusta for designation of certain parcels in the municipality and described below to be included in a Pine Tree Development Zone pursuant to 30-A MRSA c.206, sub-c.3.

2. To add the following parcels to the City's designated Pine Tree Zone:

<u>Name</u>	<u>Map & Lot Number</u>	<u>Acres</u>
Churchill Development LLC	Map 7-Lot 6	3.66
Churchill Development LLC	Map 7-Lot 5	.28
Johnson, Charles and Ruth	Map 7-Lot 7	4.75
Churchill Development LLC	Map 7-Lot 3B	2.60
East Side Development LLC	Map 7-Lot 3	16.24
<u>Jolicoeur</u>	<u>Map 1-Lot209A</u>	<u>1.93</u>
	Total	29.46 acres

3. To delete the following parcel in the City's designated Pine Tree Zone:

<u>Name</u>	<u>Map & Lot Number</u>	<u>Acres</u>
Quimby	Map5-Lot 125	30.00

NEW BUSINESS (Con't)HAS BEEN READ AND PASSED, AS AMENDED (Con't)

160 Continued

Upon the establishment of the City of Augusta's Pine Tree Zone District, the City had 406.81 acres in the program. This amendment will leave the City with 406.27 acres in the program.

4. To affirm that the use of the property in the Pine Tree Zone is regulated by a zoning or other land use regulation ordinance or is determined otherwise by the municipality to be suitable for the use and development for one or more of the qualified business activities specified in the Pine Tree Development Zone statute, 30-A MRSA c.206, sub-c. 3 and further to ratify and confirm the Council's order of December 3, 2003 creating such zone and now October 3, 2005 amending such zone and to apply the terms and conditions of said order to these additional parcels.

Yeas: 7; Sotir, Doore, Foster,
Lerman, Davis, Koski, Lund

Nays: 0

HAS BEEN READ AND NOT PASSED, TWO READINGS WAIVED

164 BE IT ORDAINED, By the City Council of Augusta that the Local Business (CB) District located at the junction of the West River Road and the new Route 3 Bridge connector road be dissolved and the land returned to its constituent zoning districts of Rural Residential (RRES), Rural River 2 (RR2), and Low Density Residential (RA), as unanimously recommended by the Augusta Planning Board.

Yeas: 3; Lerman, Davis, Koski
Nays: 4; Sotir, Doore, Foster, Lund

HAS BEEN READ AND PASSED, TWO READINGS WAIVED

163 BE IT ORDAINED, By the City Council of Augusta that the property zoned currently and thereby as Low Density Residential (RA) along the easterly side of West River Road from the southern boundary of the Caron property (Lot 37 Tax Map 6) northerly to the Third Bridge connector road, be changed to Rural River 2 (RR2), as unanimously recommended by the Augusta Planning Board.

Yeas: 7; Sotir, Doore, Foster,
Lerman, Davis, Koski, Lund

Nays: 0

NEW BUSINESS (Con't)HAS BEEN READ, FIRST READING

165 BE IT ORDAINED, By the City Council of the City of Augusta, as follows:

That Chapter 18, section 18-98 Schedule of towing, storage, publication fees, of the Revised Code of Ordinances 1990, as amended be further amended by deleting the current language and replacing the language as follows:

The schedule of charges for service calls, towing or removing vehicles and notices of such action as required by this division shall not exceed the schedule of charges which shall be set from time to time and a schedule of charges shall include service calls day or night, tow fee day or night, motor vehicle accident tow day or night, use of winch and mileage from accident scene to vehicle destination.

Tow operators accepting city referrals under this ordinance shall agree to charge reasonable fees that will not exceed the following per vehicle:

a) Service calls: A service call would be described as providing gas, jump start, vehicle lockout, etc.

\$50.00 - 8:00 a.m. to 8:00 p.m.

\$60.00 - 8:00 p.m. to 8:00 a.m.

b) Tow: Described as anytime a vehicle needs to be towed which has become disabled, parked in violation of city ordinance or a police action has required the vehicle to be towed.

\$65.00 - 8:00 a.m. to 8:00 p.m.

\$75.00 - 8:00 p.m. to 8:00 a.m.

c) Motor vehicle accident: Described as anytime a vehicle is towed from the scene of an accident involving a vehicle. Tow service required to remove all debris and fluids within reason.

\$90.00 - 8:00 a.m. to 8:00 p.m.

\$100.00 - 8:00 p.m. to 8:00 a.m.

d) Use of winch: Described as having to winch a vehicle out of a ditch and back onto the roadway or other location, or turning over an overturned vehicle. Use of winch is not to be charged when a vehicle is winched onto the flatbed of a tow truck.

\$75.00 per hour to be computed in one-half hour increments beyond the first hour, with the full first hour charge due for any portion thereof.

e) Mileage from accident scene: Described as traveling the distance from the scene of an accident to the location where the vehicle will be off loaded from the tow truck.

NEW BUSINESS (Con't)

HAS BEEN READ, FIRST READING (Con't)

165 Continued

\$3.00 per mile from the accident scene to the offload destination. Minimum charge of \$3.00 if less than a mile.

f) Storage: Location of where towed vehicle was brought awaiting retrieval by owner or other responsible party.

\$25.00 per day, or any portion thereof after the first twenty-four hours of vehicle being towed to storage lot.

(FIRST READING, NO VOTE REQUIRED)

166 BE IT ORDAINED, By the City Council of the City of Augusta, as follows:

That Chapter 18, section 18-100 Responsibility of party towing, storing, of the Revised Code of Ordinances 1990, as amended be further amended by adding the following: and fluids (after the word debris, in the second sentence of paragraph one, and before the word within).

(FIRST READING, NO VOTE REQUIRED)

HAS BEEN READ AND PASSED

148 ORDERED, That minutes of the City Council meetings held September 6, 2005 and September 15, 2005 submitted by the City Clerk be approved.

Yeas: 7; Sotir, Doore, Foster,
Lerman, Davis, Koski, Lund

Nays: 0

149 ORDERED, That the following be appointed to various city committees:

<u>Name</u>	<u>Committee</u>	<u>Term Expires</u>
Steve Dumont	Planning Board	October 3, 2008
David Cheever	Cable Television Committee	October 3, 2008
Max S. Cohen	Cable Television Committee	October 3, 2006
Patrick E. Paradis	Cable Television Committee	October 3, 2007

Yeas: 7; Sotir, Doore, Foster,
Lerman, Davis, Koski, Lund

Nays: 0

NEW BUSINESS (Con't)HAS BEEN READ AND PASSED (Con't)

150 ORDERED, That the the attached list of Election Officials be appointed in accordance with the City of Augusta Charter, Article V, Section 2; said appointees "shall hold their offices for one (1) year, or until others have been chosen and qualified in their stead."

Yeas: 7; Sotir, Doore, Foster,
Lerman, Davis, Koski, Lund

Nays: 0

151 ORDERED, That the Voter Registration hourly schedule for open session for the November 8, 2005 State Referendum and Municipal Election be as follows:

Thursday, November 3, 2005 from 1:00 p.m. to 6:00 p.m.

The intent of this order is to change the evening session time in accordance with M.R.S.A., Title 21-A, Section 122(8), as amended.

Yeas: 7; Sotir, Doore, Foster,
Lerman, Davis, Koski, Lund

Nays: 0

152 ORDERED, That the City provide plowing and sanding for all private roads which meet the following conditions:

1. A public easement to the City is signed by all property owners that own any fee interest on that road,
2. The road has at least three (3) year-round residences located on at least three (3) separate parcels,
3. A Road Association is formed for each road, and
4. The Road meets minimum standards established by the City Council.

Furthermore, that the Road Association provide a contact person to the City.

The City reserves the right to establish a per mile cost for plowing and sanding and reimburse that amount to the Road Association in lieu of providing services directly.

NEW BUSINESS (Con't)HAS BEEN READ AND PASSED (Con't)

Yeas: 7; Sotir, Doore, Foster,
Lerman, Davis, Koski, Lund

Nays: 0

- 153 ORDERED, That the following application for a Malt, Spirituous, Vinous Liquor License be approved:

Lisa's Restaurant & Lounge, LLC, 15 Bangor Street.

Yeas: 7; Sotir, Doore, Foster,
Lerman, Davis, Koski, Lund

Nays: 0

- 154 ORDERED, That the City Manager is authorized to enter into a purchase and sale agreement with REWCO, LLC, the highest bidder of \$7,009.00 for City owned property located at 117 Northern Avenue. Said agreement to be prepared by Corporation Counsel.

Yeas: 7; Sotir, Doore, Foster,
Lerman, Davis, Koski, Lund

Nays: 0

- 155 ORDERED, That the City Manager is authorized to expend up to \$271,000.00 from the Augusta Civic Center Enterprise Fund for Capital Improvement Projects to include; a floor washer (\$10,000), lighting system upgrade (\$102,000), boiler replacement (\$25,000), elevator replacement (\$42,000), roof repair (\$60,000), ice cream machine (\$17,000), convection oven(s) (\$10,000) and a meatslicer (\$5,000).

Yeas: 7; Sotir, Doore, Foster,
Lerman, Davis, Koski, Lund

Nays: 0

- 156 WHEREAS, the City of Augusta, Maine, in its capacity as a Franchise Authority (hereinafter the "Franchise Authority"), and FrontierVision Operating Partners, L.P. d/b/a Adelpia Communications (hereinafter "Adelpia") are parties to a Cable Television Franchise Agreement (the "Franchise Agreement"); and

WHEREAS, Adelpia has entered into an Asset Purchase Agreement (the "APA") with Time Warner NY Cable, LLC (hereinafter "Time Warner") dated as of April 20, 2005,

NEW BUSINESS (Con't)HAS BEEN READ AND PASSED (Con't)

156 Continued

providing for, among other things, the sale of certain assets of Adelphia to Time Warner, including the cable system serving the Franchise Authority and the transfer of the Franchise Agreement to Time Warner (the "Sale"); and

WHEREAS, Adelphia, as Transferor, and Time Warner, as Transferee, submitted to the Franchise Authority an FCC Form 394 Transfer Request (the "Transfer Request"), dated on or about June 10, 2005, in which it was requested that the Franchise Authority approve the Sale and the transfer of the Franchise Agreement to Time Warner; and

WHEREAS, Time Warner has made representations and assurances to the Franchise Authority that it possesses the managerial, legal and financial and technical qualifications necessary to assume all current obligations and responsibilities under the Franchise Agreement.

NOW THEREFORE, the City Council of the City of Augusta, in its capacity as the Franchise Authority, hereby approves the Sale and the transfer of the Franchise Agreement from Adelphia to Time Warner, subject to the following conditions:

1. Time Warner must accept and comply with all the terms and provisions contained in the Franchise Agreement and in any amendments thereto in effect between Adelphia and the Franchise Authority.

2. The approval by the Franchise Authority of the Sale and the issuance of this Resolution shall not, by itself, cure any pending or past violations of any of the Franchise Agreement or any other agreements between the Franchise Authority and Adelphia, nor shall such approval and issuance constitute a waiver of any rights of the Franchise Authority to enforce the provisions of the Franchise Agreement or any such other agreements.

3. This Resolution is subject to and conditioned upon the timely closing of the Sale. In the event that said closing does not occur on or prior to December 31, 2006, or closes on terms that are substantially different from the terms disclosed to the Franchise Authority in writing, then in either such event the approval granted herein by the Franchise Authority shall be null and void, unless said approval is extended by the Franchise Authority in writing.

NEW BUSINESS (Con't)HAS BEEN READ AND PASSED (Con't)

156 Continued

4. Time Warner must provide the Franchise Authority with a written statement within 10 days of the actual closing of the Sale confirming that the Sale has occurred and that Time Warner has assumed operation and control of the cable system serving the Franchise Authority.

5. Prior to assuming control of the cable system serving the Franchise Authority, Time Warner shall file with the Franchise Authority the following Franchise documents:

- a. A certificate of insurance in the amounts and types as may be required by the Franchise Agreement. Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in the State of Maine.
- b. Proof that Time Warner has in place any performance bond required by the terms of the Franchise Agreement, in the amounts and types required by the Franchise Agreement. A surety licensed to do business in the State of Maine shall issue said performance bond.

6. Time Warner must operate and maintain its cable systems serving the Franchise Authority so as to comply with all requirements of Federal, State, and generally applicable, local law, regulations and ordinances.

7. This Transfer Agreement is expressly conditioned upon the truth and accuracy of the representations made by Adelphia and Time Warner in the foregoing submissions and exhibits submitted therewith at the time such representations were made.

8. Franchise fees assessed pursuant to the Franchise Agreement shall be prorated as of the closing date of the Sale. Time Warner shall pay all franchise fees accruing after the closing date in accordance with the terms of the Franchise Agreement.

9. Time Warner shall maintain business offices, customer service operations and repair facilities that provide customer service and repair and installation services that meet any specific requirements of the Franchise Agreement.

10. Within ninety (90) days of the closing of the sale, Time Warner will meet with the Franchise Authority to discuss its integration and/or service roll out plans for

NEW BUSINESS (Con't)HAS BEEN READ AND PASSED (Con't)

156 Continued
the community.

11. If any provision or condition of this Resolution is, for any reason, declared to be invalid, in whole or in part, by any court, agency, commission, legislative body, or any other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion and such declaration shall not affect the validity of the remaining portions of this Resolution, which other portions shall continue in full force and effect.

12. On the basis of Adelphia's and Time Warner's written representations to the Franchise Authority, and subject to compliance with the conditions contained herein, the Franchise Authority find that the proposed Sale to Time Warner of the cable system serving the Franchise Authority and owned by Adelphia should serve the interests of cable television subscribers in the City of Augusta.

Yeas: 7; Sotir, Doore, Foster,
Lerman, Davis, Koski, Lund
Nays: 0

158 WHEREAS, the Buker Ad Hoc Reuse Committee has recommended the reuse of Buker School complex; and

WHEREAS, recognizing that by adopting the recommendations by the Augusta City Council there is need to invest a sum of money in the Buker building necessary to implement the recommendations; and

WHEREAS, a punch list of items has been identified that need to be remedied in the Buker building; and

WHEREAS, it has been identified the amount of money needed to make necessary improvements to the Buker building is in the amount of approximately One Hundred Thousand Dollars (\$100,000); and

WHEREAS, it is recommended the funds be appropriated from the City's fund balance.

THEREFORE BE IT ORDERED, that the Augusta City Council authorize the City Manager to expend funds not to exceed \$100,000.00 from the City's fund balance to make the

NEW BUSINESS (Con't)

HAS BEEN READ AND PASSED (Con't)

158 Continued
improvements to the Buker School facility.

Yeas: 7; Sotir, Doore, Foster,
Lerman, Davis, Koski, Lund
Nays: 0

159 ORDERED, That the City Council accept the donated parcel of land on Cross Hill Road, as described in the attachment, which will allow the City to straighten out the road at a later date.

Yeas: 7; Sotir, Doore, Foster,
Lerman, Davis, Koski, Lund
Nays: 0

161 ORDERED, That the City Manager enter into a one-year contract extension with the State of Maine for the management of the Augusta Airport.

BE IT FURTHER ORDERED, that the Mayor appoint a committee of up to seven members to advise on the matter of a successor long-term contract for management of the airport. Said advisory committee to report back to the City Council within 90 days of appointment.

Yeas: 7; Sotir, Doore, Foster,
Lerman, Davis, Koski, Lund
Nays: 0

162 BE IT ORDERED, By the City Council of Augusta that the moratorium on commercial development in the CB Zoning district located at Rt. 104 and Rt. 3, enacted on March 7, 2005 and extended to November 2, 2005 by Council action on September 6, 2005, be repealed.

Yeas: 6; Sotir, Doore, Foster,
Davis, Koski, Lund
Nays: 1; Lerman

Respectfully submitted,

Barbara E. Wardwell
City Clerk