

MEMO

Date: October 21, 2009
To: Gardiner Planning Board and Gardiner Board of Appeals
From: Anne Davis, Interim City Manager
Re.: Upcoming Planning Board meeting

Dear board members,

Let me first begin by thanking you for your dedication to our community. The time you spend on our boards is extraordinarily helpful to the City of Gardiner.

In the upcoming week, you may be contacted individually about an application for a crematorium that is currently in front of our Planning Board. Please remember that these decisions are board decisions and individuals have taken an oath to uphold them. You should refrain from speaking about any pending issues with individual residents either formally or informally.

The Gardiner City Council will be holding an emergency meeting on 10/27 at 4PM just prior to the Planning Board meeting. Though these meetings are public, I respectfully ask that no member from the Planning Board or the Board of Appeals attend this meeting.

We are expected to offer a fair and unbiased process to all our citizens and I know that all our board members take this very seriously. Thank you so much for remaining as professional as possible so that we can render a fair decision to all involved.

Sincerely,



Anne Davis
Interim City Manager

FEDERLE | MAHONEY
LAW & GOVERNMENT AFFAIRS

October 23, 2009

Pat Hart
Planning Board Chair
City of Gardiner
34 High Holborn Street
Gardiner, ME 04345

Dear Pat:

In advance of the scheduled 6:00 p.m. Gardiner Planning Board meeting of October 27, 2009, I have reviewed the proposed moratorium on crematoria, portions of the City's Charter, portions of the City's Land Use Ordinance and the recent amendments that the City adopted relating to crematoria. I have also reviewed the proposed agenda for the City Council meeting at 4:00 p.m. on October 27th which includes action by the Council on the proposed moratorium.

In light of the scheduled meeting of the City Council, and because of the uncertainty of the outcome relating to the imposition of a moratorium, I advise that the Planning Board meet as scheduled at 6:00 p.m. on October 27th and immediately move to table any further action relating to the proposed crematoria at Oak Grove Cemetery. The final outcome of the City Council's actions will dictate the appropriate time at which the Planning Board can schedule the timing for its next actions relating to the crematoria application.

For the benefit of the Planning Board, I would like to offer two observations regarding the proposed moratorium. The first relates to a specific delegation of duties. In the second to last whereas clause, the Council directs the Planning Board "to study the land use implication of crematoria and consider locations that might be appropriate for such facilities." This duty is incompatible with the Planning Board's continuing adjudicatory role in the pending application of Oak Grove Cemetery. The imposition of a moratorium would not nullify the pending application; it would simply put the matter in abeyance until the moratorium is lifted. At some point, as a matter of law, the moratorium will be lifted. At that time, unless the application has been withdrawn, the Planning Board will need to continue its review and ultimately make findings of fact and conclusions of law relating to the application. If, in the interim, the Planning Board has engaged in its own study of the closely related question of appropriate locations for crematoria, the sanctity of the adjudicatory process will have been compromised.

It is not unusual for a Planning Board to function as an adjudicatory body on some matters and a quasi-legislative body on other matters. It is inappropriate, however, for the Planning Board to act in both capacities in the same matter.

As such, I recommend that the Planning Board not perform the duty assigned to it in the proposed moratorium. If the City Council does adopt a moratorium, it would be wise for it to amend the second to last and last whereas clauses and to form a separate committee, not comprised of Planning Board members, to perform that duty.

Secondly, a moratorium affecting a municipal ordinance is itself, as a matter of law, a municipal ordinance, albeit a temporary one. As such, it needs to be adopted in the same manner as any other municipal ordinance. Pursuant to Gardiner's City Charter this means that the moratorium needs to be read on two separate days and that it must receive at least five (5) affirmative votes. As a result, I believe that the October 27th City Council meeting will constitute the first reading of the moratorium and that the matter will not be ready for a vote of the Council that same day. Although this means, in my opinion, that the moratorium will not be effective as of 6:00 p.m. on October 27th, I nevertheless believe that the Planning Board should take no action on the 27th other than to table the pending application. The actions of the City Council have raised sufficient doubt regarding the Planning Board process in this matter that the Planning Board should postpone further action until the Council's actions have resolved themselves.

I would be happy to discuss this further with you or answer any questions you might have.

Regards,



THOMAS B. FEDERLE

TBF/kcm

cc: Mayor Andy MacLean
Anne Davis, Interim City Manager
Jason Simcock, Planning Development Director



CITY OF GARDINER

HISTORIC PRESERVATION COMMISSION

www.gardinermaine.com

MEMORANDUM

To: Pat Hart, Chair, Gardiner Planning Board
From: Clarence McKay, Chair, Gardiner Historic Preservation Commission
Date: October 23, 2009 *C.F.M.*
Subject: Oak Grove Cemetery

At its regular monthly meeting on Tuesday, October 20, 2009, the members of the Gardiner Historic Preservation Commission present requested that I contact you on the matter of Oak Grove Cemetery. As you know, **Section 9.B.2.A.** of the Land Use Ordinance authorizes the Commission to “Act in an advisory role to other officials and departments of local government regarding the protection of local cultural preservation.”

Oak Grove Cemetery was chartered at a time (1844) when the “rural cemetery” movement was beginning to dramatically reshape the design and purpose of municipal cemeteries in America and Maine. As described in *Designing the Maine Landscape* (Mattor and Teegarden, 2009) rural cemeteries were developed as “romantic pastoral landscapes of the picturesque type. Planned as serene and spacious grounds where the combination of nature and monuments would be spiritually uplifting, they came to be looked on as public parks, places of respite and recreation acclaimed for their beauty and usefulness to society.” (p.120).

The original grid-like form of Oak Grove Cemetery as depicted on the 1879 *Kennebec County Atlas* and the apparent lack of ornamental landscape features makes it difficult to ascertain whether the original design intent embodied aspects of a rural cemetery. However, it appears that by the late 19th century the use and perception of the cemetery had assumed some if not all of these qualities. For example, an article in the July 16, 1890 edition of the *Gardiner Home Journal* described the construction of an ornamental pond at the cemetery in the depression in front of the tombs with pipes for a fountain. A rustic bridge was contemplated in the plans to be built later. The

article concluded with the statement that the pond “will add greatly to the beauty of the cemetery, and the policy of the directors is to beautify the place as fast as the income of the Association will permit.” Three photographs of Oak Grove Cemetery were published in *Picturesque Gardiner* (1896), including one of the pond and its rustic bridge; a second that shows the front of the receiving tomb that had been erected in 1891 from designs by the prolific Gardiner architect E. E. Lewis (Lewis also designed the office built in 1891); and a third showing one of the tree lined avenues that are flanked by a variety of funerary monuments.

Oak Grove Cemetery is not presently listed in the Gardiner Historic Register (**Section 9.E.**), and such properties are ordinarily not eligible unless it is “A cemetery that derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events.” Having considered the history of Oak Grove Cemetery, including the type and integrity of its existing character defining features (and recognizing that the pond and bridge are gone), the Commission believes that this property merits designation as an historic district. Consequently, we believe that any activity that has the potential to adversely impact these features – including alterations to its picturesque, park-like character; modifying or repairing the historic buildings in a manner that is not in conformance with the U.S. Department of the Interior’s Standards for the Treatment of Historic Properties (ordinance **Section 9.H.**); and introducing uses that change the serene, contemplative nature of the cemetery – should be avoided.

If you have any questions regarding this matter, or if the Commission may be of further assistance to the Planning Board as it considers applications pertaining to the cemetery that come before it, please do not hesitate to contact me.

cc: Mayor
City Council

HISTORIC AND ARCHAEOLOGICAL RESOURCES

SECTION 18

SUMMARY

This section will cover the City's historic and archaeological resources such as; historic buildings and structures, historic districts, historic preservation ordinance, new historic districts, educational programs and archaeological resources.

GOALS

1. Preserve the City's historic and archaeological resources.
2. Promote and protect the distinct character of Gardiner's downtown, residential neighborhoods and rural Areas.
3. Promote a diverse economic climate while preserving its historical and natural resources.

DATA

See the following Data sections: Historic Properties; Historic Survey; and Scenic Survey.

ANALYSIS AND ISSUES

The data collection for the Historic and Archaeological Comprehensive Plan Section contains the following:

- Information on the downtown historic district.
- A list of individual properties on the National Register of Historic Places.
- A proposal for a Common historic district boundary.
- Historical Reconnaissance Survey of the City.

The City does not contain any known archaeological sites however potential sites could exist along the Kennebec River and Cobbossee Stream. Existing and past development along the river and stream has reduced the chance of discovering any archaeological sites.

Current and future development along the river and stream will be very limited due to State and Federal Regulations regarding water setbacks and other environmental issues. The City should develop a policy to monitor any type of shorefront development, so that any archaeological information will not be disturbed without first assessing the site.

The City should include within the Zoning Ordinance a review process to ensure that any new construction or development in a sensitive archaeological area is first evaluated by the Maine Historic Commission.

The City Historic Commission was established in 1989 as a result of a recommendation in the City's 1988 Comprehensive Plan. The 1988 plan recommended that the City develop a commission to establish a Downtown Historic District and a Historic District to encompass the Common area. The plan further high-lighted citizen's interest in the City's historic heritage including its architecture and significant persons and places.

The Historic Commission developed a local preservation ordinance which uses the Secretary of Interior Standards as the prime review criteria. The downtown area already listed on the National Register of Historic Places became the City's first local district. Since the establishment of the Historic Preservation Ordinance, the Commission has reviewed for compliance all exterior renovations and alterations within the downtown area.

The Common area as per the 1988 plan recommendations have not yet been introduced as a local historic district. The Commission has been working towards the creation of a Common Historic District and has taken the following steps:

- Collected all historic research completed within this area.
- Developed a district boundary.
- Obtained approval of the district boundary from the Maine Historic Commission.
- Developed a map and property listing for the proposed district.
- Created a plan/process to pursue inclusion of the area as a historic district.

The Commission and/or process to create the Common Historic District includes the following strategy:

1. Develop an on-going public awareness and education program which creates an interest in historic preservation and educate the public about historic issues .
2. Pursue a listing for the proposed Common District on the National Register of Historic Places.
3. Develop a timetable to create a local district based upon the public's support and interest in the areas inclusion on the National Register of Historic Places.
4. Develop public interest and support for the Common Historic District in an

The Commission has undertaken for the Comprehensive Plan a Historic Reconnaissance Survey which is the first comprehensive historic survey of the entire City. The complete survey is contained in the Historic Data Section. The survey found a number of significant individual historic properties and some district areas. The Significant district areas are Riverview Drive, Highland Avenue, High Holborn Street and South Gardiner Village.

Current Historical Issues and Concerns

1. Foster cooperation between the Historic Preservation Commission and other City committees and civic groups.
2. Develop common goals between historic preservation and the City's economic development plan.
3. Provide adequate funding to support educational planning and other historic preservation efforts.
4. Increase local awareness of the positive benefits of historic preservation upon economic development, healthy residential neighborhoods, quality of life and the City's image.
5. Develop public support and interest for the creation of the new historic districts.
6. Increase the number of educational outreach programs in the community.

POLICIES

1. The efforts of individual property owners to protect architecturally and historically significant properties shall be encouraged.
2. The Historic Commission shall actively pursue the identification of potential archaeological and historic sites throughout the City. An educational program should be developed to inform all property owners of historically significant buildings.
3. The City's historic residential neighborhoods, downtown and individual buildings are an integral part of Gardiner's character and sense of place. The quantity and quality of historic buildings throughout the City contribute to the quality of life, economic utility and identity of the City.
4. The preservation and enhancement of the City's architectural heritage is a critical part of the City's future health and growth. The efforts of the Historic Commission

IMPLEMENTATION STRATEGY

1. The Historic Commission shall submit an application for Certified Local Government status to the Maine Historic Commission by January 1996.
2. The Historic Commission shall with cooperation of the City Manager and the Economic Development Director pursue State and Federal grants for historic surveys, planning and education programs.
3. The Historic Commission shall expand its existing education efforts in order to solicit additional interest and support for historic preservation.
4. The Historic Commission shall complete all the property and district research by December 1996 for the proposed Common Historic District and shall submit to the City Council an application to nominate this area to the National Register of Historic Places.
5. The Historic Commission shall evaluate the results of the Historic Reconnaissance Survey and perform additional study and/or research as required in order to identify new historic buildings or districts. The Commission shall develop a plan by January 1996.

PLAN INTEGRATION

The preservation of archaeological and historical sites, buildings and places within the City is an important way to preserve the original character and identity of the City for both present and future residents. The attraction of historic buildings or older residential neighborhoods is an incentive that could help the City with economic development and residential neighborhood improvement. At times the goals of preservation seem to conflict with the efforts of individuals or groups within the City involved in business or other commercial activities, however, this does not necessarily have to be the case. These two groups can work to each others mutual benefit and in doing so achieve their own individual goals. The first step is increased communication between all parties and the identification of shared concerns and objectives.

the maximum extent possible. Storage and service areas must be screened or landscaped to minimize their visual impact.

18. Capacity of the Applicant

The applicant must demonstrate that he/she has the financial and technical capacity to carry out the project in accordance with this ordinance and the approved plan.

19. Solid Waste Management

The proposed development must provide for adequate disposal of solid wastes. All solid waste must be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.

✓ **20. Historic and Archaeological Resources**

If any portion of the site has been identified as containing historic or archaeological resources, the development must include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation. The Cobbossee Corridor District includes a range of historic resources that should be incorporated into projects or preserved when deemed appropriate by the Planning Board.

21. Floodplain Management

If any portion of the site is located within a special flood hazard area as identified by the Federal Emergency Management Agency, all use and development of that portion of the site must be consistent with the City's Floodplain management provisions.

R. Post Approval Activities

1. Incorporation of Approved Plan

One copy of the approved site plan must be included with the application for the building permit for the project and all construction activities must conform to the approved plan, including any conditions of approval and minor changes approved by the Code Enforcement Officer to address field conditions.

2. Improvement Guarantees

SECTION 5 SITE PLAN REVIEW

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