

CITY OF LEWISTON

v.

JEAN M. PARADIS et al.

Submitted on Briefs October 20, 2006

Decided January 16, 2007

Panel: SAUFLEY, C.J., and DANA, ALEXANDER, CALKINS, LEVY, and SILVER, JJ.

#### MEMORANDUM OF DECISION

Jean M. Paradis appeals from a judgment entered in the District Court (Lewiston, *Beaudoin, J.*) in a land use complaint case brought by the City of Lewiston pursuant to M.R. Civ. P. 80K and 30-A M.R.S. § 4452 (2005) in which the court assessed civil penalties in the amount of \$29,000 against Paradis. We find that the issue of the “unlawful intensification of use” was tried by the consent of the parties and, despite Paradis’s contention to the contrary, was therefore properly before the court. *See* M.R. Civ. P. 15(b); *Town of Orrington v. Pease*, 660 A.2d 919, 922 (Me. 1995) (finding, although the town did not charge defendants in either the citation or complaint with a certain violation of a zoning

ordinance, the issue was properly tried by consent because the defendants failed to object to the introduction at trial of evidence relating to the violation). We further find that the court acted within its discretion when it accepted into evidence exhibits submitted by the City after the close of evidence. *See* M.R. Civ. P. 43(j); *Ringuette v. Ringuette*, 594 A.2d 1076, 1078 (Me. 1991). Finally, the court's determination that the violations continued until September 26, 2005, was not clearly erroneous. *See Stickney v. City of Saco*, 2001 ME 69, ¶ 13, 770 A.2d 592, 600.

The entry is:

Judgment affirmed.

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