

The Planning Board for the Town of Derry held a public hearing on Wednesday, April 16, 2008 at 7:00 p.m. at the Derry Municipal Center (3rd Floor) located at 14 Manning Street in Derry, New Hampshire.

Members present: Virginia Roach, Chairman; David Granese, Vice Chairman; Jan Choiniere, Secretary; Randy Chase, Administrative Representative; Gary Stenhouse, Town Administrator; Brian Chirichiello, Council Representative; Phil Picillo, Ann Evans (7:02 p.m.), Mark Cooper (7:13 p.m.), and

Alternates present: John O'Connor, Maureen Heard, Richard Tripp

Also present: George Sioras, Director of Community Development; Elizabeth Robidoux, Planning Clerk; Mark L'Heureux, Engineer, Derry Public Works; Wes Aspinwall, Edward Hebert & Associates, Chris Spanos, MHB Development, and various members of the public.

Chairman Roach called the meeting to order at 7:00 p.m. The meeting began with a salute to the flag. Mrs. Roach introduced the staff and Board members present. It was noted Ms. Evans was present.

The Board immediately recessed (7:03) to take advice of Counsel. Mr. Cooper arrived during this time frame and joined the other Board members. The Board reconvened at 7:31 p.m.

Escrow

**#08-10
Derry Retirement Residence
Harvest Development
PID 25014-002, Kendall Pond Road**

The request is to approve and sign Release #1 in the amount of \$372,545.57 for the above noted project. The amount to be retained is \$377,526.55.

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| Motion by Granese, seconded by Picillo to approve as presented. All voted in favor and the motion passed. |
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**#08-11
McDonald's
McDonald's Corporation
PID 36020-001, 45 Crystal Avenue**

The request is to establish cash escrow in the amount of \$155,597.76 for the above noted project.

Motion by Choiniere, seconded by Granese to approve as presented. All voted in favor and the motion passed.

Minutes

Motion by Stenhouse, seconded by Granese to accept the minutes of the April 2, 2008 meeting as written. The motion passed in favor with Chirichiello abstained.

Correspondence

Mrs. Choiniere acknowledged the following correspondence.

Each member has been given a new Board member list, effective April 16, 2008, which defines the terms of each member. The Board is also in receipt of a new edition of *Town and City*, which is on file in the Planning Office.

Other Business

Request for Clarification

Ronald Mead, 230 Rockingham Road, PID 03035-011, Commercial Parking Lot

Mr. Sioras advised that the members have a copy of the written request for clarification from Mr. Mead. There is also additional correspondence from Mike Fowler. Mark L'Heureux of Derry Public Works is here to speak to Mr. Fowler's memo. A copy of the packet of information was retained for the record, and Mr. Mead was provided with a copy.

Mr. Sioras read Mr. Mead's letter into the record. The request was for clarification of his site plan approval. Mr. Sioras identified the lot for the newer members of the Board and explained the approved proposal. Mr. Mead is asking if he can escrow only the part of the project he plans to construct at this time, he would like to not submit proctor and sieve tests, and is requesting the Planning Board give permission to Code Enforcement to issue the dealer license. Mr. Fowler advises in his memo that Mr. Mead has been advised by Public Works that the Planning Board is the proper avenue to discuss phasing and amendments to the site plan. The plan was not approved by the Planning Board with phasing. Public Works is consistent in requesting escrow for every project with a sizeable improvement. The Board members also had in their packet the escrow worksheet, which totaled \$24,131.00 for the entire project.

Mrs. Roach advised that the Planning Board does not have jurisdiction over the Code Enforcement Office issuing permits.

Mark L'Heureux of Public Works reviewed his memo to Mr. Fowler. As he read in the minutes, this plan was approved as a complete package with a future gravel area to the left with a fence around it. There were no conditions regarding phasing of the project. When a plan is approved as one project; without phasing, the project is escrowed as a whole. The escrow amount included site restoration, erosion control, landscaping and the fencing around the future phase section. The LDCR specifies a state gravel designation. On all projects, Public Works enforces that the gravels meet State requirements. The current cost per test is \$85.00, which is not a hardship. They request staking so that they can know the depth of the gravel. Escrow is used to ensure compliance with the approved plan. They don't endeavor to pull escrow and it is not done lightly. The performance guarantee is meant to reduce the town's liability. This particular applicant has not proven a good risk as he has been delinquent in payments to the town to such an extent that the Town had to contact the bank holding the letter of credit in order to receive payment. He brings this up because he wants to ensure the best protection for the town in these economic times, and does not want the town to assume any additional risk.

Regarding construction requirements, the Department does not hold a pre-construction meeting until all of the conditions of the plan are met; including the establishment of escrow. They have had off-line discussions with the applicant regarding expectations of the Department of Public Works on this project.

DPW believes there are two options for the applicant; he can provide escrow for the entire project, or he can remove the future phase portion by amending his plan, and reduce the escrow accordingly.

Mrs. Roach confirmed that if the plan was amended to exclude the future phase, the large gravel area to the left would be removed, and the applicant would have to come before the Board with a new plan.

Mr. Stenhouse inquired if the opinion of the Board was that this plan had been approved as one plan without phasing? Mrs. Roach said yes. Mr. Granese concurred.

Mr. Cooper inquired if the developer does not comply and the town takes the money from the bonds, what happens? Mr. L'Heureux stated the town has never had to do that on a site plan; but it has happened on subdivisions. He can't answer that question as there is no precedent. At this point, they would encourage completion of the plan and compliance. They work with Code with regard to permitting. He can't say what the town would do to pursue those areas. Mr. Cooper said what happens if the bond is pulled? The town can't go on the owner's land to complete the job. Mr. L'Heureux stated there are many variables. The escrow typically goes with the property, not the owner. It may be at that point, the owner will have changed.

Ms. Evans noted that erosion control had been a primary concern of the Board. She questioned the amount for site restoration. Mr. L'Heureux explained the difference between the unit price and the actual price. Was the chain link fence a Board requirement? Mr. Picillo stated it was on the plan. The developer wanted to protect his trailers. Mr. Sioras noted the approved plan shows a proposed 6 foot fence. Mr. Picillo asked if the 'almost \$30,000' referred to in Mr. Mead's letter equated to the \$24,000? It does. He felt that the applicant could put up the full escrow, or amend the plan by removing the left side and then escrow the rest to develop the right hand side of the plan. Mr. L'Heureux said the amount would be about half.

Mr. Chirichiello questioned the amount held for landscaping. What is the \$2250.00? The extended price is \$4600.00. Mr. L'Heureux stated that \$2250.00 is a misprint. This is a lump sum item. Typically they ask for a quote from the developer because the prices can vary. This amount was received from Mr. Mead's engineer.

Mrs. Roach stated her understanding was that if Mr. Mead did not want to pay the full escrow, he could come back to the Board with a revised plan that shows the right side only. That would be up to Mr. Mead. Mr. Sioras agreed. Mr. Mead had asked for clarification. If the Board feels the plan was approved as one plan, he would need to come back with a reduced plan. Mrs. Roach assumed that clarified the issue as the Board approved the plan as one plan, not a phased plan. This is the escrow amount that needs to be established [\$24,131.52]. Mr. Sioras reported that he has discussed this with Mr. Mead who is aware that a revised plan submission is an option.

Public Hearing

MHB Development

Parcel ID 03130, 3 Stark Road

Acceptance/Review, 5 Lot Subdivision Plan

Mr. Sioras presented the following staff report. The applicant is Mountain Home Builders. The proposal is for a five lot subdivision on Stark Road, which is one of two scenic roads left in Derry. This lot is in the Low-Medium Density Residential District. All town departments have reviewed and signed the plan. One waiver request was received this evening and the Chair has a copy of the request. Staff supports the waiver request. NHDES subdivision approval has been obtained and a copy of that approval is in the file. Mr. Sioras stated he would recommend approval of both the subdivision application and the roadside improvements on Stark Road. The Scenic Road improvements will require a separate vote by the Planning Board. He explained that any time there is any work performed on a scenic road, it requires a separate vote of the Planning Board.

Wes Aspinwall of Edward Hebert Associates presented for the applicant. He advised the owner, Chris Spanos, was present.

The parcel has an existing home and is a 16.9 acre piece. This is located on Map 3, Lot 130. They are proposing a five lot subdivision. Lot 03130 will have 2.549 acres and retain the existing home; Lot 1 will have 2 acres, Lot 2, five acres, Lot 3, 2.43 acres and Lot 4 will have 5 acres. He reviewed Sheet 2 with the Board members. There is a large wetland to the east side of the parcel. They have shown the edge of wet. The wetlands were delineated by Gove Environmental. The purpose of the subdivision is to create 4 new lots. Sheet 3 outlines the soil types as determined by HISS mapping. The edge of one of the wet areas comes in toward the existing house and takes up some of the space. He has shown the 75 foot wetland buffer as this wetland is over 1 acre in size. He did submit the soils analysis to staff. All of the lots are in compliance with the regulations with regard to lot sizing. Sheet 4 shows the proposed house locations. The septic systems will be located to the west sides or near Stark Road on the upland. The wells will be located to the rear, closer to the wet areas. Lots 2, 3 and 4 have a good amount of buildable space. Lot 1 is constricted but has plenty of space for the building. The rest of the lot is well drained, viable land. This lot is located in the LMDR zone, which requires a 2 acre lot minimum, 150 feet of frontage, and 35 foot setbacks.

The road profile and driveway information begins on Sheet 6 where they have indicated the driveways and road treatments. Most of the driveways are gentle, with approximately 3% grade. The grade rises closer to the building to keep drainage from the building.

Lot 5 (03130) will have the existing home. That still has a 4-5% grade range for the driveway. The existing condition has a reasonably good driveway. There is good sight distance. The upper right portion of this sheet shows a standard road section with four foot shoulders with a 4:1 slope up or down.

The highway will require cutting of trees back to the new right of way line, increasing the width of the road right of way. They will dedicate 25 feet from the centerline and that will go behind the existing wall. There are many large trees on the existing edge of the right of way. They have agreed to remove trees, grade it back and drainage will go off the road. They won't create a ditch other than a few short pieces on either side of the existing driveway (03130). They will create a shoulder that travels 2% from the edge of pavement and will have gravels that meet DOT specifications.

Stark Road is designated a Scenic Road and that will be part of tonight's hearing. He has photos that show the existing road. [Photos were not retained for the file] The pictures begin at the south end of the subdivision and move to the other side. The engineering report brought to his attention the question of the utility lines. Section 170-31 of the LDCR requires underground utilities. There are

existing lines on the poles that are overhead lines. He advised they would like to request a waiver from Section 170-31.A, Other Utilities, to allow the overhead utilities. He has discussed this with PSNH. Their representative said they would install a pole at the corner between Lots 3 and 4, and run service to the home from there. They would install another pole between Lots 1 and 2 as well. Once the poles are set, the owners may have the option of running underground from the poles, but they would request the ability to run the lines overhead, as the other homes in the area utilize overhead utilities. Keach-Nordstrom has reviewed the plan and he is happy to answer any questions. He would like to bring to the Board's attention for an opinion Note 6 on the KNA report under Planning Design Matters. Their note on the plan states, "All the trees and stone walls must be moved back to the newly established right of way line, stone walls may be rebuilt behind that new line. All stones are to be retained for use on site." The intent is to use the extra stones for retaining walls and landscaping on the lots. The remaining stones can be lined up. They do not want to use 100% of the existing stonewall in the new stone wall.

Mrs. Roach asked if the application was asking to not replace the word "may" with "shall" as recommended by Mr. Keach? Mr. Aspinwall concurred.

Mrs. Roach advised she would take questions from the Board at this time.

Mr. Picillo had a question with regard to the wetland setbacks and the actual location of the wetland. Mr. Aspinwall advised the plan shows the actual edge of wetland line and the 75 foot setback line that is required by the regulations. Mrs. Choiniere confirmed that driveways do not need to conform to the wetland setback.

Mr. Sioras spoke with regard to the waiver request. Traditionally, new development requires underground utilities. There have been a few instances over the last few years where existing poles are in place near proposed frontage lots. Where the poles are in existence and these are frontage lots, not a new road, he would support the waiver request. Mrs. Choiniere inquired if the Board could require that the utilities go underground to the homes from the poles? Mr. Sioras did not feel that was unreasonable.

Mr. Stenhouse inquired who designated this as a scenic road? Mr. Sioras stated that was done at Town Meeting in a prior year. Stark Road and English Range Road are the only scenic roads left. Generally they have stonewalls and overhanging trees. Whenever someone does anything to a scenic road, such as removing a portion of a stone wall, a tree, or an improvement, the Board needs to hold a public hearing and review the plan per the RSA. If Town Council wanted to, they could probably change the designation of the road. Stark Road is not as it was; it used to be dirt. Many years ago, some town people (none of which are employed by the town at this time), went in, paved the road, widened the shoulders, and removed trees. It was more of a road improvement project. It

wiped out most of what that road used to look like when it was dirt and had overhanging trees. English Range Road, near the apple orchards, is similar to what parts of Stark Road used to look like.

Mr. Stenhouse confirmed the purpose of a scenic road is to keep the road rural in character, with stone walls and the trees that are not cut.

Mr. Chirichiello inquired how many trees will be cut and how much of the wall will be moved? He imagines the town wants to keep as much as it can in place. Mr. Aspinwall said that what they have proposed has been supported by Public Works. They plan to remove the entire wall and place it behind the right of way line. They will remove the trees along the right of way. There are many large trees along the existing edge of the right of way. Stark Road is now developed along the other side of the road. They are removing the trees for safety reasons and to improve sight distance from the driveways onto the public roadway. It has been agreed this is the right thing to do. Relative to the scenic road lots, the Planning Board, as part of their consideration, needs to approve the plan relative to the scenic road. Mr. Chirichiello confirmed that a public hearing is required and Mr. Sioras explained that there were two legal notices that were posted separately for the scenic road portion of this hearing. The public is allowed input with regard to the scenic road. Mr. Chirichiello inquired if the Conservation Commission saw this plan? Mr. Aspinwall advised that they did see it and they conducted a site walk this winter. They are reasonably well satisfied with the lots. Mr. Chirichiello asked what did the Conservation Commission say, specifically with regard to the stone walls and trees? Mr. Aspinwall reported not a lot of discussion came up. They are aware this is a scenic road. There was some concern that the stone walls don't end up being sold for a someone's decorative fireplace out west. They do not want to see these stones shipped out of state. They would like the stone walls somewhat reconstructed. In some areas, the existing stone wall is fairly sparse. Reconstruction of a stone wall is fairly expensive but they would foresee utilizing the stones to create a new one and using the remaining stones in lot development and landscaping.

Mr. Chirichiello inquired how many stones would be moved and how much of the wall would be reconstructed? Mrs. Roach stated that is Mr. Keach's note on Page 3 of his report, Item 6. Mr. Chirichiello confirmed the Board will determine what "shall" shall be.

Mr. Aspinwall said the question would be if 60 to 80% of the stones are used to replace the stone walls, could the remainder be used on the lots? Mr. Chirichiello inquired as to the quantity of trees that would be removed. He would think the intent on a scenic road would be to retain as much as possible, and that would enhance the sale of the lots. Will it look like a scenic road when they are done? Mr. Aspinwall said this will look in between. It will not look like a new subdivision road, but the road will not look like it did in the 1970's. There are homes along most of the road. Safety is an issue. There are 3 foot diameter trees at the edge

of existing pavement. Snowplows have issues and the trees are a collision hazard. He agrees with DPW that the trees along the right of way need to be removed to the new line. There is one large tree that is dead that needs to be removed. There is a tree on the northwest corner of Lot 1 that is a huge maple, but it is right next to the pavement and obscures sight. The tree is near the end of its lifespan and is a hazard. The best service to the public interest is to remove it.

Mr. Sioras stated that during the Conservation Commission meeting, Margie Ives indicated that they supported moving the walls back. He has had discussions with Alan Côté and Nathan Montgomery who have been out on the site. The applicant will go out and mark the trees so that everyone knows which ones will be retained. There are dead trees out there. That is a tough stretch of road with regard to hazards and it would be important for safety to remove the trees. Mrs. Choiniere noted that hill is a blind hill.

Mrs. Roach invited public input.

Michael Prieto, 25 Stark Road, stated his concern is water flooding into the yard where his children play. He disagrees with the wetland line as drawn on the plan. The water level is higher than shown and is up to the border of his yard. He owns two parcels of land near this proposal. Mrs. Roach noted he owns one parcel that on the plan looks as though it is landlocked. Mr. Prieto stated if the site walk was performed in the winter, the land would have been dry. Now the water is well past any wetland markers. If there are no issues with flooding in his yard, he is fine with this proposal. Mr. Aspinwall inquired what Mr. Prieto meant by "wetland marker". Did he mean the wetland flags? Mr. Prieto said he spent time on the town website and used the wetland boundaries on that site. The water is above what is shown on the website.

Mr. Aspinwall stated that before the Public Hearing he spoke with the abutters off Lester Lane who have lived there for 5 years. In the rear of their lot (03131), the area is mostly swamp and there is a lot of beaver activity. At the worst time, they have seen the water level one and a half feet higher than present. They are working with the state to try and keep the beaver issue under control. Last winter and fall, he did the survey work and the area was dry at that time. Right now, the area is wet and the water level is up. If there is a wet year, the beavers can make the water level higher. Their subdivision does not have an effect on the level of water. There are no wetland impacts considered as part of this proposal, as all of their work will be performed on the upland.

There was no further public input and the plan came back to the Board.

Mr. Chirichiello inquired if there was a note on the plan with regard to the width of Stark Road? Mr. Aspinwall advised the width is variable. There are places with stone wall on each side of the road. The original road was a 2 rod road (33 feet).

There have been subdivisions along the road since 1974 and the town required dedications to 25 five feet from the centerline. Therefore, there are places where the road is 50 feet wide. They are increasing the right of way up to 8 to 10 feet wider in some places. Mr. Chirichiello inquired if this is because DPW is requesting it because of the safety issue of sight distance? Mr. Aspinwall said they are clearing the trees as requested and agreed upon by DPW. The width of the right of way is always in accordance with the regulations.

Mr. Chirichiello inquired of Mr. L'Heureux if there is a hardship if the road is not widened? Mr. L'Heureux said the pavement width is 20 to 22 feet and that is not affected. The right of way will expand and the ditch and shoulder work will occur. They cannot get the required 200 feet sight distance with the trees in the current locations. With regard to scenic roads, the developer/owner has the right to alter the stonewall, and the municipality does not along a scenic road.

Mr. Picillo suggested a site walk which will help the Board to visualize what is being discussed. Perhaps the trees to be cut could be marked prior to the site walk. Mr. Aspinwall stated they have set boundaries along the front so that it is clear that the trees will be cleared between the boundary and the exiting pavement. There is also the four foot shoulder and grading work that needs to be performed. The existing hump in the road will also be removed. Mr. Picillo inquired what will be in the exposed area? Mr. Aspinwall explained that they will compact the gravel and then loam and seed to meet the natural grade. The trees will be retained at that point. They will rebuild the stonewalls in line with the boundary markers. Mr. Picillo confirmed that no trees are intended to be retained between the existing edge of pavement and the boundary markers.

Motion by Picillo to perform a site walk, seconded by Stenhouse. Motion passed and discussion followed.

Mr. Stenhouse stated he will go during business hours to view the site. Mr. Granese asked that the driveway locations be marked. Mr. Chase stated he was familiar with the area located about 800 feet north of Gervais. There is an improved area in that location. It is a small, low area with a swamp. Is that similar to what will be done here? Mr. Aspinwall could not recollect the area. Mr. Chase said it might be helpful to look at that area as well during the site walk to get a visual as to what the proposed work will look like once it is complete for comparison purposes. Mr. Aspinwall said he is sure they will retain what they can in front of the lots, but do need to remove trees for safety and maintenance purposes.

The site walk was set for Wednesday, April 23, 2008 at 6:00 p.m.

Motion by Granese to accept jurisdiction of the plan, seconded by Chase. The motion passed in the affirmative.

Motion by Picillo to continue the public hearing to May 7, 2008, seconded by Choiniere.

Stenhouse, Chirichiello, Picillo, Granese, Cooper, Chase, Evans, Choiniere, and Roach all voted in favor.

Mrs. Roach confirmed with Mr. Spanos that abutters would be allowed to attend the site walk.

Mrs. Roach advised there would be no further notice of the continuation.

Motion by Picillo, seconded by Granese to adjourn to the workshop. The motion passed and the public hearing adjourned at 8:47 p.m.

WORKSHOP

The workshop was not televised.

Goals and Objectives

Mr. Sioras advised that he would like to perform an update to the Master Plan this year. The last time the Master Plan was updated was in 2001; the RSAs recommend it be updated every five to ten years. He has put funding into the budget, which will need to be approved, to work with SNHPC who will work with the Board, himself and Mrs. Robidoux on the update. This will allow for recommendations for goals and objectives for the Board for items such as an Impact Fee Ordinance, economic development, downtown redevelopment, and rezoning. He hopes if the funds are approved, to begin work in July. This is an important piece of work.

Mrs. Roach did not recall agendaizing goals and objectives for a workshop; Mr. Sioras advised that it had been mentioned that the Board would review goals and objectives once the new members were all seated on the Board.

Items the Board has indicated it would like to work on this year are the Impact Fee Ordinance and the Growth Management Ordinance. Zoning could be worked on by Mr. Stenhouse, Mrs. Roach, Beth Thompson and the DDC. The Zoning Subcommittee will need to be resurrected since all of the past members of the Subcommittee are no longer on the Board.

Mrs. Roach said she would also like to see work on the Telecommunication Ordinance, wind turbines, and the billboard issue. Ms. Evans agreed the sign section of the Zoning Ordinance needs to be reviewed. Mr. Sioras noted that no one is sure how the billboards were erected along Route 28. Mr. Cooper stated his family has a long term lease on one of the properties and the billboards were there when they acquired the lease. Mr. Sioras noted they have checked the files and there is no record of a sign permit. Mr. Picillo noted the state may have its own approval for that type of sign; this is a state road.

Mrs. Roach said she would like to look at the 55 and older Ordinance again to make sure it is where it should be. Mr. Sioras suggested creating a list of topics and passing it around to the Board members so they can sign up for the ones they would like to work on.

Open Space Ordinance

Mrs. Roach stated she had marked up copies of the draft for anyone who wanted to see the changes. The Board has a clean copy with the changes incorporated into the document.

Mr. Chirichiello stated he appreciated the hard work that has gone into this. Is there a timeframe as to when Town Council will potentially be included in the conversations? Mrs. Roach said that after tonight, the plan was to send the draft to Legal for review, then take it to Public Hearing for a vote. At that point, it would go to Town Council. Mr. Chirichiello inquired if there had been any thought to have the Council look at it ahead of time and have them look at the drafts? There is a lot of information to digest. Mr. Cooper agreed that would be a good idea. Mrs. Roach said she would see that it happened; Mrs. Robidoux will forward a copy of the changes incorporated into the document this evening, to the Town Council.

Mr. Cooper stated he had a few things to discuss with regard to the draft. He took a close look at it over the last few weeks. The purpose states the intent is to encourage "greater flexibility" but there are items in the Ordinance that are more restrictive than flexible.

Under Section 165-155, *Applicability*, it is unclear if a parcel is over 15 acres must it be subdivided using this regulation? He thought it was exclusionary. Maybe a 14 acre parcel could use this. He also did not like the wording with regard to the negative tax impact. It sounded like snob zoning or exclusionary zoning. Mrs. Robidoux commented she was not certain from the last workshop if that paragraph was to stay in or be removed, so she left it. Ms. Evans felt the paragraph should remain and be reviewed by the attorney.

Mr. Cooper said that since it was up to the sole discretion of the Planning Board to deny, a developer could present a proposal with low income housing for cluster, have it denied by the Planning Board and come back in with a conventional grid subdivision. This seems like a loophole. Anyone looking at this would not want to do it; it is restrictive.

Mr. Chirichiello inquired if a developer would have the option to go cluster, or is it mandated? Mr. Cooper felt the wording indicated it was mandated for any parcel 15 acres or greater. He felt allowing a choice is more appropriate. Mr. Sioras noted the wording "shall" makes it mandatory; "may" gives the option.

Ms. Evans stated the recommendation from SNHPC and Randall Arendt was to make it mandatory. What follows this wording is the exceptions. She would like to review this further. Mr. Tripp stated regarding the negative tax impact, how is that defined or characterized? Mr. Chirichiello noted that could change on a yearly basis as the taxes change yearly. Mr. Cooper agreed the ordinance

needed legal review. He did not feel the Board could say someone cannot build a home affordable to first time homebuyers. It is important to include all buyers into the market.

Ms. Evans pointed out Section 165-160, on page 5 which spoke to the Fiscal Impact Analysis and Yield Plan. That relates to the negative tax impact. That would be one thing that gives an idea if the development would be good or bad for the community. The Board should add the wording, "by a Fiscal Impact Analysis" to the second paragraph of Section 165-155.1, after the wording "...shown or proven". Mr. Stenhouse stated his opinion was that you could not build a residential subdivision that does not have a negative tax impact unless you ban children or streets from them. He agrees there should be a fiscal impact analysis. Ms. Evans stated that was put in there because the Town Council felt if open space land is not taxable the town could lose taxes. At that last meeting, they discussed that all the land owned by the homeowner would be taxed, even if that meant they had a $\frac{3}{4}$ of an acre lot with the remainder of the three acres in open space. The Yield Plan will be great because you can see how many homes you can get conventionally versus in open space. The Board will then be able to see if the proposal is in line with what is being built. Mr. Cooper said a yield plan is a typical requirement. The Board decided to remove the first sentence in the second paragraph of Section 165-155.1.

Mr. Picillo thought the original intent was to give an option for open space if the parcel was over 15 acres in size. Ms. Evans said it would be better for Derry if it is mandated with exceptions, but she will go with that the Board wants. Mr. Chirichiello asked if a density bonus could be added to entice developers to utilize an open space design? For example, an additional two homes and not mandate it? Ms. Evans said they will not do that in Derry.

Mr. Sioras recalled Randall Arendt stating the ordinances should be flexible. You give a density bonus or reduce the road width, but don't make it mandatory. Some people do not want an open space lot. Mr. Tripp said open space/cluster development won't have the same amount of road as a traditional development so it is of benefit to the developer. Mrs. Roach noted that shared driveways are allowed. Mr. Cooper felt a higher clientele would be drawn to this type of development. Natural resources are important and that is why you do this type of development. There was discussion about changing the wording in the first paragraph from "shall" to "may". Mr. Chirichiello thought there were only 36 parcels left available. Mr. Cooper said he has looked at the maps and some of parcels that have existing homes on them could be further subdivided; not all of them are on this map. Ms. Evans noted some of the parcels have conservation easements on them.

Mrs. Roach asked that the open space map be updated to include the available acreage and also note conserved land with a hatch mark. If the wording is changed to "may" the exemptions could be removed.

Mr. Cooper noted some towns, for example Sandown, have open space regulations that make open space mandatory, but they continually grant waivers so that the land is not developed that way.

Mr. Chase felt if the word "shall" was removed there may not be enough percs to entice someone to go with open space development. The Board can grant exceptions if the developer has a good case as to why the land needs to be developed conventionally.

Mr. Sioras recalled the Stone Fence Drive development proposed by Mr. Baldwin. Mr. Baldwin had suggested if the town had an open space ordinance it would give greater flexibility so that there would not need to be a lot of waivers granted. Mrs. Roach noted if the Board does not include exceptions, then applicants would need to go to the ZBA. Mr. Cooper felt the Board needed to be able to grant its own options. Ms. Evans said the special use permit exemptions gives those options to develop as a conventional subdivision. Mr. Chirichiello stated but that was subject to it being at the Planning Board's discretion. Sometimes the market dictates the product and the Board can entice with options in open space.

Mr. Cooper felt that landowner rights were being taken away, specifically under Section 165-155.1.a.1. What if someone had a parcel and they had eight children. If the landowner wanted to divide off a parcel for each of the children, they could not do it. Mrs. Choiniere noted that if there is an ordinance and it is waived all the time, what is the purpose of the ordinance? Mrs. Roach said if a developer chose to use the open space ordinance, they would follow the provisions under 1.d of this section.

Mr. Chirichiello thought this might be a perfect time for this draft to go to Town Council for input, so that it does not get shot down. They should be in the loop in a general sense. He does not want the Town Council to get hung up over "may" versus "shall" in the first section. The Planning Board has worked very hard on this and he wants to avoid that. Mr. Cooper felt if the ordinance is well written, it would have their support. Mr. Chirichiello inquired if a brief meeting with the Town Council would help? The committee has worked very hard on this. Ms. Evans felt the Board should take its best shot and then send the ordinance to the Town Council.

Mr. Stenhouse said the Board has spent a lot of time on this and the main issue seems to be the words 'shall' versus 'may'. Does the town want to make everyone submit an open space plan and then carve out exceptions? That is the biggest issue.

Mrs. Roach called for a poll of the members. Cooper wanted the wording "may"; Chirichiello was undecided and abstained. Chase, Evans, Choiniere, Stenhouse,

Picillo, Granese and Roach felt more comfortable with the “shall” and the exceptions.

Mr. Cooper felt Section 165-155, 1.a.i, was restrictive. If someone wanted to leave 2, twenty acre lots to their kids, they would be required to make them into 10 acre lots. There was discussion with regard to the intent of that section. Mrs. Robidoux said she interpreted it to read that if someone had a 30 acre parcel and wanted to divide it into 3, ten acre lots and deed the remainder as conservation that would be allowable. If someone wanted a two acre lot and block subdivision, that was not open space, they would have to utilize Section b under special use permits. She noted that subsection iii under this section conflicts with Section 1. This says if the parent parcel is 9 acres it can be conventional. The ordinance states there is a 15 acre minimum. The Board opted to remove this sentence. They also opted to add the following wording to the end of paragraph 1, under Section 165-155, “A parcel less than 15 acres in size may apply for consideration under the Open Space Ordinance.”

In reviewing page 3 of the draft, Mr. Cooper felt the wording with regard to “non-buildable area” under Section 5 conflicted with the definition of open space. The Board will leave this for Legal Counsel to review and ensure the language is clear. The Board is aware the language needs to be consistent throughout the ordinance, but wants make sure those conservation/open space areas are non buildable.

Mr. Cooper stated he had difficulty with the Density section of the ordinance. The regulations grant a giant density bonus under the 55 and older ordinance. He felt if the subdivision was generating residences for 55 and older, a 20-30% bonus would be appropriate. He also did not see a density bonus for areas that would add water and sewer. If the developer is putting in that type of infrastructure, there should be a bonus available. That is a benefit to Derry. In other ordinances, if people go with age restricted housing, they get a 20-50% bonus. He feels a 50% density bonus is too high. Mrs. Roach felt that was available under the 55 and older ordinance, not here. Mr. Sioras recalled the Board did grant density bonuses for 55+, but the density bonus was changed; it is not as great as it once was. There is a bonus under 55+ for water and sewer. Mr. Stenhouse said the question is, should we do that for open space? Mr. Chase noted the downtown zone is $\frac{1}{4}$ of an acre; you can't get much there. You won't see a lot of 15 acre downtown lots. Ms. Evans said SNHPC is not recommending 55+ development; and that type of development has not been a good thing for Derry. Mr. Chirichiello noted the entire real estate market is affected at this time, not just the 55+ market. Timing is an issue for any type of development.

Mr. Sioras said there is only so much capacity the infrastructure can handle, so the water and sewer can only go out so far based on the Water and Sewer Master Plan. 95% of the one acre zone is serviced by water and sewer currently.

There are only a few parcels left that fall in this zoning; the Fraser parcel is a good one to consider. Mr. Cooper said the point is if a developer runs 800 feet more of water and sewer, that is 800 feet more than was there previously and the town did not have to install it.

Mr. Tripp noted the town used to allow common septic areas. Mr. Sioras said there are some areas where that was allowed in the past and it has shown itself to be a problem. The septic systems are failing and there is no replacement area. The town and area is losing the ability to take solid waste disposal. Based on tougher DES standards, the regulations may want to be single systems only, which requires good soil types.

Mr. Cooper had a comment with the requirement in the draft to require replacement areas be shown on the site plan. DES allows replacement in kind. The new technology utilizes smaller septic systems. He felt the town should shadow DES regulations to allow for greater design flexibility. The old stone and pipe systems are the ones that can't be replaced in kind. Mr. Chase thought it was a DES requirement that the replacement areas be shown on the plan, if it could not be replaced in kind. Mr. Sioras advised the town regulations require that the replacement areas be shown on the plan. Mr. Cooper is advising that the technology is changing so that smaller systems can be built. Mr. Sioras' concern is that the marginal land that is left to be developed may not have replacement areas available. Mr. Cooper stated showing the 4K area once on the plan would be more applicable. Mr. Granese noted it is hard to get a home, a well and 2 septic systems on a $\frac{3}{4}$ of an acre parcel.

Mr. Stenhouse suggested that due to the hour of the evening, the Board hold off on further discussion of the ordinance until the next meeting. The Board will begin on page 3, at Section 165-157, Dimensional Requirements.

Mr. Chirichiello suggested Mr. Cooper email his other concerns to the Board members so they can review them prior to the next workshop.

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| A motion was made and seconded to adjourn. The motion passed and the meeting stood adjourned at 9:54 p.m. |
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Minutes prepared by Elizabeth Robidoux, Planning Clerk.