

The Planning Board for the Town of Derry held a public hearing on Wednesday, May 21, 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; Ann Evans, Phil Picillo, Mark Cooper (7:20 p.m.), Members; John O'Connor and Maureen Heard, Alternates.

Absent: Richard Tripp

Also present: George Sioras, Director of Community Development; Elizabeth Robidoux, Planning Clerk; Mark L'Heureux, Engineer, Derry Public Works; Shane Gendron, Edward Hebert & Associates; James Lavelle, Lavelle Associates.

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.

Escrow

#08-13

**Tropic Star (Offsite)
Tropic Star Development, LLC
PID 28004, 50 Birch Street**

The request is to establish approve the final release of the escrow held for the above noted project. The amount to be released is \$16,783.20 plus accumulated interest.

Motion by Choiniere, seconded by Granese to approve as presented. Members voted in favor and the motion passed with Picillo abstained.

#08-14

**Tropic Star (Hess gas station)
Tropic Star Development
PID 28004, 50 Birch Street**

The request is to approve and sign Release #4 in the amount of \$164,650.32 for the above noted project. The amount to be retained is \$20,347.20.

Motion by Choiniere, seconded by Granese to approve as presented. Members voted in favor and the motion passed with Picillo abstained.

#08-15
Rite Aid
New Land Development Assoc., LLC
PID 28005, 52 Rockingham Road

The request is to approve and sign Release #4 in the amount of \$23,522.40 for the above noted project. The amount to be retained is \$5,184.01.

Motion by Choiniere, seconded by Granese to approve as presented. Members voted in favor and the motion passed with Picillo and Chirichiello abstained.

#08-16
Condominium at 38 Maple Street
Pentucket Construction
PID 29117, 38 Maple Street

The request is to establish Letter of Credit #000002 in the amount of \$136,089.72 drawn on Northeast Community Credit Union for the above noted project. The expiration date of the Letter of Credit is May 7, 2009.

Mrs. Roach confirmed this is the project for which the Board approved an extension at the last meeting.

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

#08-17
Windsong Meadows
Covey Run
PID 31021, North High Street

The request is to approve and sign Release #1 in the amount of \$111,054.24 for the above noted project. The amount to be retained is \$248,823.90.

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

Minutes

Motion by Granese, seconded by Choiniere to accept the minutes of the May 7, 2008 meeting as written. The motion passed with all in favor.

Correspondence

Mrs. Choiniere acknowledged the following correspondence.

There are various workshop opportunities available on the topic of Managing Stormwater by utilizing Low Impact Development (LID) in northern New England. Anyone interested should see Mr. Sioras. The Board has received the latest issues of Supply Line with The Source, and *Town and City*.

Other Business

Abutters to the Picirilli project reviewed that plan prior to the public hearing in the 3rd floor training room.

Meeting Schedule

Mr. Sioras discussed the summer meeting schedule. At this time, July 16th and August 20th have been set as public hearing dates. That could change depending upon the need to hold an additional hearing.

Amendments to LDCR

Mr. Sioras advised that he met with Mr. Stenhouse and Ms. Thompson and discussed requiring applicants submit plans digitally, which will also assist with GIS. DPW also has some revisions with regard to the engineering/construction requirements. Mr. Sioras advised the Board will need a motion to schedule a public hearing for June 18th with regard to these amendments. A draft of the changes will be forwarded to the Board prior to the hearing.

Motion by Picillo to schedule a public hearing on June 18, 2008 to discuss amendments to the LDCR to require digital submission of plans as well as revisions to various sections to update engineering requirements. The motion was seconded by Granese.

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

Subcommittees

Mrs. Roach passed the sheet containing the list of Goals and Objectives to the members of the Board so that the members could indicate which subcommittees they might be interested in serving on.

Public Hearing

**Mark Young/Mark & Janice Greenfield
Parcel ID 04038-005 and 04026-001
113 Gulf Road and 144 Goodhue Road
Acceptance/Review, Lot Line Adjustment**

Mr. Sioras provided the following staff report. The purpose of the plan is for a lot line adjustment between the two parcels which are located in the Low Density Residential District. No town department signatures were required, nor were there any state permits required. There are no waiver requests. He would recommend approval of the lot line adjustment.

Mr. O'Connor was seated for Mr. Cooper.

Shane Gendron of Edward Hebert's office presented the Board members with a color version of the plan. He advised he was acting on behalf of Mr. Young and the Greenfields. This is a basic lot line adjustment revision. It is backland that is being transferred and there is no street frontage involved. They will take 1 ½ acres from the Young parcel, leaving 23 ½ acres, which will give the Greenfield's a 4 acre parcel total after the adjustment. Currently their lot is 2.5 acres. The soils on the property were mapped by Gove Environmental. There are no wetlands associated with the land swap. The intent is to create a larger buffer for the Greenfield's and to give them more privacy.

There were no questions from the Board.

Mrs. Roach opened the floor to public comment; there was none.

Mrs. Roach moved the application back to the Board.

Motion by Granese to accept jurisdiction of the plan, seconded by Choiniere. The motion passed with all in favor.

Motion by Granese to approve the lot line adjustment pursuant to RSA 676:4, III, Expedited Review, subject to the following conditions: the address in the title block is corrected; escrow is established to set the bounds, or certification is provided that the bounds have been set; obtain written approval from Doug Rathburn that the GPS disc is received and is operable; the above conditions are met within 6 months. The motion was seconded by Picillo.

Stenhouse, Picillo, Chirichiello, Granese, O'Connor, Chase, Evans, Choiniere, and Roach all voted in favor. The motion passed.

John Picirilli, Jr.
PID 03165, 135 Island Pond Road
Acceptance/Review
Site Plan (Expansion of Auto Salvage Yard)

Mr. Cooper joined the Board and Mr. O'Connor stepped down.

Mr. Sioras provided the following staff report. The parcel is located on Island Pond Road and was also known as Weber's Auto Salvage Yard. The purpose of this plan is to expand a pre-existing, non-conforming use (auto salvage) by constructing 2 new buildings and one above ground scale for trucks. All town departments have reviewed and signed the plan. A variance was granted by the ZBA on July 19, 2007, to allow the expansion. A NH DOT driveway permit has been obtained and is part of the file. At some point, he would recommend approving the plan. This site is unique, and was first built in the 1940's. The new owners are attempting to clean up the site and are working the NH DES on the Green Yard Program. A few abutters have asked the Board to take a site walk. Keach-Nordstrom had comments that should be addressed. He commends the applicant for trying to clean up the site. Jim Lavelle, of Lavelle Associates will present the plan; also present is the applicant's attorney, Brian Germaine.

Mr. Lavelle advised he would not categorize this application as an expansion as mentioned at the ZBA, but for this meeting, he considers this as an improvement of a site. The applicant is attempting to get the operation from an outside junkyard and contain it within the building. The two proposed buildings will handle the dismantling of vehicles, and the crushing. This will move a lot of the operation from the outside to the inside.

Sheet 1 shows a plan view of the proposed plan. Sheet 2 shows existing conditions, such as storage, scrap metal piles, wetland boundaries and the location of the buses. The TRC has seen this application many times. The buses are shells, and do not contain motors or transmissions. They have been used as fences and for storage of parts that do not contain fluids, such as bumpers and doors. Sheet 3 shows the grading near the building is shallow. There will be two, 400 foot long, 5 foot wide treatment swales near the perimeter of the property above the wetland. The swales were designed by Steve Cummings. The intent is to put in treatment swales and a sediment basin. They will need to move the buses to create the swales. They will remove the buses, create the swales, loam, seed, and then put the buses back above the swale on the upland.

Silt fence was installed above the wetland and has been there for about 6 months. Code Enforcement reviewed the professional installation. This is a simple plan. There will be 2 buildings and an above ground scale to weigh the vehicles.

Mr. Chirichiello inquired as to the number of vehicles on the lot? Mr. Lavelle, after confirming with his client, stated about 500. Mr. Chirichiello inquired if there has been any well testing for MTBE contamination on this lot or on the surrounding lots? Mr. Lavelle answered in the affirmative. There are monitoring wells on site and EPA monitors them. Hazardous soil was removed and replaced some years ago, but there is ongoing monitoring. The monitoring wells are noted on the plan.

Robert Mackey, Code Enforcement Officer, stated that DES monitors the site. Mr. Chirichiello inquired when was DES last on site and how frequently to they monitor? Mr. Mackey advised all testing is done through DES. Periodically, he will be copied on the results. There are some monitoring wells on abutting properties, as well as on the junkyard site. There were some issues with regard to MTBE contamination some time ago. The material was removed and the monitoring wells put in place.

Mr. Stenhouse inquired as to the turnaround time on the vehicles? Do they remain on site? Mr. Lavelle said they used to remain on site; they are trying to eliminate that. The current practice will be to strip the vehicle inside the building, crush it in the building, and then stack it beside the crusher building. Mr. Stenhouse asked if there are plans to reduce the number of vehicles on site? Mr. Lavelle stated that is his understanding.

Mr. Picillo inquired if this is not an expansion, what is it? Mr. Lavelle stated he categorizes this as an improvement. Mr. Picillo asked if the intent is to increase the number of vehicles that will be serviced on site? No there is not. Mr. Picillo asked is there any sense in terms of noise impact? Mr. Lavelle explained the current crusher is in the open. The proposal is that the rear of the crusher building will be open to allow the vehicles to be placed in the building and removed once crushed. The new crusher building will be placed to the rear of the property, away from Island Pond Road. The purpose of the swale is to catch runoff on the site. It will collect the runoff and treat it before the runoff reaches the wetland.

Mr. Picillo inquired why are the buses being used as storage areas as opposed to using a building? Mr. Lavelle stated that initially, the buses were used as a fence to keep people out of the site. That is not as much of an issue as it used to be. Mr. Picillo inquired what is the new area noted on Sheet 1? Mr. Lavelle explained there had been a lot line adjustment at one time and that is what is noted on the sheet.

Mrs. Choiniere asked if the intent is to clean up the entire property or will it be used as a crushing operation where they remove the crushed vehicles and bring in more? Mr. Lavelle indicated the site will remain as a salvage yard. More cars will be brought in; that is their business. Mrs. Roach understood this to mean

that the existing number of vehicles on site will not be increased. Mr. Lavelle said the intent is to decrease the existing number of vehicles on site, by crushing and disposing of them. New vehicles brought in will be crushed in the building.

Mr. Mackey advised the state has a Green Yard program, the intent of which is to bring all junkyards into compliance with regard to Best Management Practices (BMPs). Operations are encouraged to be brought under cover, or performed on concrete surfaces while vehicles are being dismantled. The intent is to bring the yards into closer compliance with the Green Yard program to dismantle cars under cover so there is no leaking of fluid into the ground.

Mr. Sioras noted a variance had been granted to enclose the facility. Is the rear of the crushing building intended to be open? Mr. Lavelle said the crusher is inside the building but while they are operating, the rear will be open to the air to put the cars in and take them out again.

Mr. Granese said the cars are brought in, taken apart, crushed and then taken out again. How do the buildings beautify the area? It appears the applicant wants to increase the operation and create more traffic. He would need more explanation as to why the buildings need to be constructed.

Mr. Lavelle said the applicant is trying to comply with the Green Yard program. For a number of years, vehicles have been dismantled on the ground. He would need to bring the operation under a roof onto a concrete surface to contain and clean any spills. He wants to bring the operation inside a building. He spoke with Mr. Picirilli prior to the meeting and he is taking in less vehicles than in the past; this is a result of the current economy. This is not an intended expansion.

Mr. Granese inquired if an Alteration of Terrain permit application had been submitted? Mr. Lavelle indicated one was not required as they are under 100,000 square feet.

Ms. Evans stated this is a business with residential neighbors. She has not seen a site plan so barren of vegetative buffers for the neighbors. This has been an unsightly business for decades. Where is the effort to make things more slightly for the neighbors? Mr. Lavelle stated they are not changing the look of the front. It may be considered. Currently there is a fence with parking to the building. Within the yard they would not consider landscaping. They are putting two buildings into the junkyard. Ms. Evans inquired if they are looking for a 'pass' on the landscaping? Mr. Lavelle said they can discuss it with the Picirilli's, but he did not propose to do any work to the front.

Mr. O'Connor inquired if any trees would be removed to create the swales? Mr. Lavelle stated they will not; they will construct the swales where the buses are currently located. Mr. O'Connor confirmed there is an existing buffer. Mr. Lavelle advised there are no trees within the yard area. There are alder trees

and bushes along the wetland. Across the street, the Picirilli's have removed trees on a lot, but that is with the intent of building a home. There is no proposal to remove trees on this site.

Mr. Chirichiello inquired as to the fence on the abutting side: how old is it, what is it made of and how tall is it? Mr. Lavelle replied it is an 8 foot stockade fence. Mr. Picirilli advised the fence is about four to five years old, is in good condition and secures the property. Mr. Chirichiello asked if the fence surrounds the entire property? It does not. The buses fence the rear.

Mr. Cooper felt the proposal was an improvement from an environmental standpoint, but he agreed with Ms. Evans with regard to the site details. There is no driveway, parking, or landscaping. He would like to see something more to protect the wetland from the junkyard than buses. This plan could use more improvement. He does like the theory of protecting the wetland from the junkyard.

Mrs. Roach opened the floor to the public.

Linda Kneeland, 131 Island Pond Road, had a comment with regard to the fencing. The current fence only goes a certain length on her side of the property. She would like the applicant to extend the fence so that she does not see the buses/box cars. It is great that the site will be cleaned up, but what is the time line for that?

Attorney Germaine advised he represents the Picirilli's. The site plan went to the ZBA and is just two buildings that are an improvement. The terms 'junkyard' and 'auto salvage' have been used to describe the site, but it is more of a recycling facility. This is a necessary evil. Old cars need to be taken somewhere. The applicants are voluntarily involved in the Green Yard program. They are making an effort to clean up the property and contaminants. This is a good thing. It can only help the abutters and the community. To put in a vegetative buffer would be hard because of the heavy traffic, such as the machinery and material stacking. There is a fence to the north. This was put in place at the request of the town. The applicants went through the DES training, as did the Town's Code Enforcement Officer. There are monitoring wells on site. This is a pre-existing condition. The Picirilli's have made an attempt to purchase abutting property. His position is that they are attempting to enhance the neighborhood and the property. The berms were constructed in an attempt to contain the property. This is a good plan. Requiring buffers would be hard to accomplish, and there is not much public outcry from the neighbors to establish that given the conditions.

There was no other public comment and the plan came back to the Board.

Mrs. Choiniere confirmed the cars go into the building to be processed and that they will not be processed in the open. What happens to the land when the number of cars decreases? Mr. Lavelle stated the land would be used for storage of parts.

Mr. Granese asked if the motor is taken out of the vehicle, drained of fluids, and then put outside? Mr. Lavelle stated the doors and fenders are taken off. "Parts" are parts without fluids that are stored on site in the buses. Mr. Granese asked what happens to the motors, etc.? Mr. Lavelle stated they are kept in the building to sell. The fluids are drained, contained and then trucked away by a licensed company. Mr. Granese asked where is the storage tank? Mr. Picirilli advised the cars come in to the building, the fluids are drained, and then the cars go out, without fluids, into the yard. The fluids are placed in double lined, EPA approved, tanks, which are located above ground. The tanks are checked daily and were replaced three years ago. They meet all the EPA requirements. Mr. Granese inquired if there is any other holding tank near the building? Mr. Picirilli stated they will be inside the building.

Ms. Evans inquired why are there no letters from DES recommending this [plan], or saying this complies with their program? Mr. Lavelle advised the Green Yard program is a voluntary program at this point, so no permitting is necessary.

Mr. Sioras asked Mr. Mackey if he receives anything when DES visits the site? Mr. Mackey stated with regard to compliance, as part of the licensing process for an auto salvage yard, they need to certify they are coming into compliance with the Green Yard program. Cheryl McGary goes through the two junkyards in Derry once a year and inspects them for the state.

Mrs. Roach inquired if the existing block building will remain? It will. What is the smelt furnace? Mr. Lavelle advised it is used to melt aluminum, and is in its own building.

Ms. Evans felt this application merited a site walk. Mrs. Roach inquired if the application should be accepted by the Board? Mr. Sioras felt that given the amount of KNA comments, the application was not complete.

Motion by Evans to hold a site walk on Wednesday, June 11, 2008 at 6:00 p.m.; seconded by Granese. Discussion followed.

Mr. Stenhouse asked how does this business work? He is not familiar with the operations of an auto salvage yard.

Mr. Picirilli explained they intend to build the new building. Vehicles will come into the site, be placed in the building, the fluids will be drained, and then they will determine what to save. Parts that should be saved will be removed from the vehicle. They store the hulk in the yard. They crush cars, recycle the aluminum,

and resell used parts. Mr. Stenhouse asked how often is a crushed vehicle turned over? Mr. Picirilli stated they turn vehicles over daily; they are always coming and going. Mr. Stenhouse then asked if that is the case, why are there 500 vehicles on site? Mr. Picirilli stated part of their business is to sell used parts. Not all parts are removed from the vehicle. The vehicle that is drained of fluids is called a 'hulk'. The hulk may sit for a month on site and be available for people to come in and pick off it. They pick off items such as a alternator, tire or rim. Once the hulk has been picked over, it is crushed.

Mr. Stenhouse noted people object to the hulk storage, but it is a necessary business. It is the storage of car bodies that concerns people. He wonders how they can lessen the pile. Mr. Picirilli said they are trying to eliminate the pile. They don't stack them anymore. Mr. Stenhouse indicated he would want to know what can be done to lessen the impact.

Ms. Evans inquired if abutters would be allowed to attend the site walk? Mr. Picirilli stated they would.

The motion passed in the affirmative to hold the site walk on June 11th.

Motion by Choiniere to continue this public hearing to June 18, 2008, seconded by Granese.

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

Mrs. Roach advised there will be no additional notification of the continuation.

Mr. Lavelle advised he needed a copy of the KNA report. When did it come out? He was advised it was sent at 2:00. Mr. Sioras provided Mr. Lavelle with a copy. Mrs. Roach asked Mr. Mackey to send information with regard to the Green Yard program to the Board members.

The public hearings ended at 7:55 p.m. The Board took a short recess prior to the beginning of the scheduled workshops.

Workshop

The workshops were not televised.

Animal Ordinance

Robert Mackey, Code Enforcement Officer and Robin Bordonaro, Assistant Animal Control Officer were in attendance.

Mr. Mackey brought the Board up to speed on the draft of the Agricultural Livestock Ordinance, also known as the Animal Ordinance. A few months ago, Town Council had a concern with regard to animals in town that were housed on smaller lots. This was brought to Mr. Mackey as most of the surrounding towns enact regulations with regard to the keeping of animals, minimum lot sizes and types of housing through the Zoning Ordinance. About 20 years ago, an Ordinance was drafted, went to Town Council, and was turned down. Mr. Mackey advised he recently did research and the common thread in the surrounding towns is the lot size for larger animals is two acres. Larger animals would be considered cows and horses. It was explained to the Council, regulations could be put in place either as a Town Ordinance or through the Zoning Board. The Town Council preferred this be enacted through the Zoning Ordinance, although there was mixed reaction. The Planning Board held a workshop (November 19, 2007) on a draft of the original ordinance that had some updating and tinkering. The sentiment at the Planning Board level was mixed. So it went back and he and Mrs. Roach reworked the ordinance into the version that is before the Board this evening.

This version sets minimum lot size criteria, talks about hooved animals, the requirements for town approval, manure storage and enclosures. The Animal Control Officer deals with the bulk of the complaints, and Code Enforcement gets some with regard to health hazards and nuisances. The Animal Control Officer deals with loose animals, noise complaints, and chickens that roam. Tonight, they are looking for direction from the Board on where to go with the Ordinance.

Mrs. Roach stated the floor was open for discussion.

Mr. Stenhouse noted his office gets a few complaints a year with regard to large animals; for example, horses on ½ acre lots. The complaints involve how the animal is perceived to be kept. His office gets some complaints with regard to chickens and other fowl defecating in pools and flying into other yards. These are clearly things that could be seen as offensive.

Ms. Bordonaro stated that during the summer months, the complaints increase and they get at least 2 complaints a week, about 50 a summer. The worst complaints are about poultry eating gardens, and defecating. Some complaints

have been about horses getting loose and walking on newly paved driveways. That is a complaint they can do something about because there are laws about trespassing livestock.

Mr. Mackey noted this draft ordinance is fairly involved. They wanted more clout to make sure animals are properly fenced and housed, and that there were adequate manure storage practices. The town may have reached the time where it needs something to give the Animal Control and Code Offices some teeth to deal with the complaints. This ordinance is fairly restrictive; the animals are only allowed in certain zones. In other towns, if the animal is to be housed on less than 2 acres, the applicant has to go to the ZBA for approval.

Mr. Picillo said he appreciated the effort to create the ordinance. But, the more ways there are to box people in, it becomes more challenging to enforce. There needs to be a balance between this and an overly broad ordinance. If the town is now receiving 50 complaints a summer, will this new ordinance create 100? Mr. Mackey said it could very well do that if abutters call. But, it will help when people call because there will be something to enforce. Mr. Picillo inquired why is there a section specific to roosters and peacocks requiring larger acreage? Ms. Bordonaro explained it is because they make a lot of noise. Roosters are not required for hens to lay eggs, and a lot of land is required to keep roosters. Mr. Picillo noted this regulation calls for a detailed diagram for structures. How does that address pre-builts? Mr. Mackey stated most of the corrals and barns are stick built on site. Anyone using a pre-fab would be able to provide specifications.

Mrs. Roach reported she has received 4 emails from 1 Councilor who has received complaints about makeshift chicken coops. They were forwarded to her as the Planning Board had been designated as the place to deal with this ordinance. Originally, this was proposed as a Town Ordinance and it gave the Animal Control Officer more leeway for response to complaints.

There was discussion with regard to proposed Section 165-162, which notes fines for non-compliance. It was noted this cannot be changed because it is based on the Zoning Ordinance which requires fines for non-compliance. A Town Ordinance could, for example, impose a fine of \$25.00 per occurrence.

Mr. Chase saw the need for a large hoofed animal ordinance. No one wants pigs next door or in a tight area, and roosters are noisy. He does have an issue with someone who has a few yard hens for eggs, or raises rabbits for meat, being subjected to this ordinance. Two acres is too restrictive for that type of use. Mr. Mackey said that a few years back, someone in the downtown raised rabbits for meat and the droppings created quite a problem. Mr. Chase agreed there is a need for fencing and things of that nature, but still felt that a two acre zone for yard hens is restrictive. The biggest nuisance in town is dogs. It all comes down

to responsible owners. Animals need to be kept under control, but there needs to be a method that can be enforced.

Mrs. Roach thought if people were raising rabbits for food, that could be added to the pig section of the ordinance. Mr. Chase agreed there is not enough land in town for a commercial piggery; but the acreage required for a few fowl is stiff. Mr. Mackey said they could keep this ordinance in the Zoning Ordinance, or draft it as a stand alone.

Mr. Chirichiello stated the Town Council made it clear they wanted this in the Zoning Ordinance. Mr. Stenhouse added the Council feels this is a land use regulation matter.

Mr. Chirichiello inquired if there are horses on the smaller lots? Mr. Mackey said a few, but the complaints that are received on those are extreme. For example, a Shetland housed under a home, or one downtown lot that housed multiple horses, sheep, and dogs. People with smaller pieces of property do maintain them well. The ones they hear about are the extreme cases.

Ms. Evans inquired if humane laws were enforced? Ms. Bordonaro stated the only requirements at the state level are fresh water, fresh feed, and shelter. The state does not deal with the size of the yard or the type of feed. Ms. Evans stated that years ago, people had more animals but they were kept better. There are more laws now and less animals. This ordinance is heavy handed and draconian. It restricts land use because of the requirement for distances of fences to lot lines. She felt Section 165-158 was the only part of the ordinance that was reasonable. She does not agree there should be an approval committee. Based on the description, that committee would at this time be made up of Mr. Mackey, Mr. Sioras, Mrs. Roach and Ms. Bishop. That committee can then decide if someone can have an animal or not. Mr. Mackey stated the intent of the committee was to ensure the lot meets the requirements. Ms. Evans wanted to know why single strand electrical fencing was not allowed? It can contain horses. Mr. Mackey explained that gets back to the Animal Control issues. Ms. Bordonaro said they have had issues with horses in the South Range School area breaking through that type of fencing and getting into the school yard. Ms. Evans also did not agree with the fine. Mr. Mackey said the fine is part of the Zoning Ordinance. Ms. Evans felt it was hurtful. Mr. Mackey said he assumed it would be handled as any other Zoning violation. The fine would only be imposed if the person was taken to court. Ms. Evans felt the people who would be hurt would be the people who have animals who get new neighbors who do not like the animals. The only thing she supports in this ordinance is the handling of waste manure.

Mr. Stenhouse said in a perfect world, this ordinance would not need to be here. The fact is that they are getting 50 to 100 complaints a year. Derry is no longer agrarian. The Animal Control Officer and Code Enforcement need regulations. It

is our job to tinker with the wording and put something together at the request of the Town Council. This is the Planning Board's chance to react to the draft; he feels the Board is reasonable enough to make something that will help with the humane treatment of animals and assist the neighbors. The Board needs to do something that will protect the rights of all 35,000 residents in town, not just those with animals. He agrees the two acre minimum requirement is draconian, but he has seen chicken coops made out of sticks and tarps.

Mr. Chirichiello inquired if Derry is the only town without an ordinance of this type? Mr. Mackey thought Chester also did not have one. Most towns have something in their Zoning Ordinance. They looked at the other ordinances to see what was the most common. Most had a two acre minimum. Most did not go into the detail of this ordinance.

Mr. Chirichiello inquired what would happen to the existing animals? Mr. Mackey explained they would be grandfathered until that animal expires. Mr. Chirichiello asked how would the town keep track? Mr. Mackey noted that was a good question. Ms. Bordonaro indicated they would like to know who has livestock so they know where to take the animals when they get loose, especially if the animal is large enough it won't fit in the van or can't be temporarily housed at the pound. In the cases of loose horses or bulls, they try to find a farm nearby to temporarily house the animal until the owner can be located.

Mr. Granese agreed the ordinance is heavy handed. It has good points, but ties people's hands. This is a live free or die state and we are telling people with this ordinance what to do on their property. Are there no licenses for horses? Ms. Bordonaro said there are not. Horses are considered pedestrians rather than vehicles. Mr. Mackey said he can take a look at the minimum lot sizing for fowls and large animals. He can also put something together for proper housing and fencing of animals.

Mr. Granese inquired what town ordinances were looked at? Mr. Mackey stated they based this version of the ordinance on the one from 20 years ago, and added common themes. Originally, this ordinance had a 2 acre minimum; anything under two acres would need to be approved by Code. Mr. Granese asked if they looked at other town's Zoning Ordinances? He feels the ordinance needs some recommendations. Mr. Chase agreed there should be a minimum lot size for larger animals, but did not feel smaller animals such as ducks, geese and rabbits should apply. Do they need a minimum lot size so long as there is a fence and structure?

Ms. Bordonaro felt there needed to be regulations so that the owners contain the animals. It is not the size of the lot, other than with respect to roosters and peacocks which need a larger area. Mr. Chase said he could see that some people would not like to hear roosters first thing in the morning. But he would like to see the small fowl minimum lot size dropped. He does agree with a minimum

lot size for larger animals. Mr. Stenhouse did not want to review the ordinances from all the towns; he would like to see a consensus on this one. The biggest issue seemed to be lot size. He thought the Board would probably not adopt something this evening.

Mrs. Roach said they could do a bare bones ordinance that requires minimum lot sizing for larger animals. Mr. Granese agreed that would be beneficial, along with fencing. Fowl would need to be kept on the owner's property. Mr. Mackey felt there would not be commercial animal use and that the large animals could be kept on one acre. Mr. Stenhouse said it all comes down to how the animals are treated. Mr. Mackey said there could be smaller lots in regard to where it is located. The state has BMPs that it recommends. Mrs. Roach noted it is sad that it has come down to this when 95% of the people house and care for their animals properly. Mr. Chirichiello noted the largest complaints seem to be against poultry. He agreed the ordinance could be revised down to bare bones and then could be brought back to the Board.

Mrs. Roach summarized by stating the ordinance would be revised to not have an acreage requirement for fowl; a one acre minimum for large animals; housing and fencing requirements; and the fine would be automatic since it was already in the Zoning Ordinance. Mr. Mackey noted the RSAs already allow for the maximum penalty at \$275.00 per day. He would handle the individual complaints, follow up with a letter and allow a time frame for compliance. The Ordinance could be changed to have the fine occur at the second offence; he will explore those options. Mr. Stenhouse noted that normally the Court imposes the fine. It is difficult to get a Judge to impose a fine when the offender is willing to correct deficiencies. Maybe the wording could be changed to "fine up to...". Ms. Evans thought the fine should be \$25.00 per occurrence. Mr. Mackey noted that as this ordinance will be in the Zoning Ordinance, it will have to come through the Code Department. Mrs. Roach did not agree with the \$275.00 fine. The bulk of the work will be getting this ordinance back to bare bones. Mr. Chirichiello felt that the \$275.00 fine is the teeth to the ordinance. If the fine is minimal, why would someone bother to comply? Mr. Mackey explained an offender is subject to fines as outlined in the Zoning Ordinance; that makes the fine \$275.00.

Mr. Stenhouse felt that of the 5% who do not comply with the regulations, 95% of them do it out of ignorance of the regulations. The \$275.00 fine is a good thing to hold over the heads of that remaining percentage.

Mr. Mackey will take the Board's comments and revise the ordinance.

Open Space Ordinance

Mr. Chirichiello noted that Councilor Benson had suggested holding a joint workshop, but Councilor Coyle thought it would be better to give direction to individual members. There is a concern this ordinance will not pass at the Council level. Mr. O'Connor stated he was disheartened to see that approach to the Open Space Ordinance; one of the Councilors said he would vote against it. His suggestion would be to go to the Town Council and ask what is wrong with the Ordinance. Mrs. Roach noted the draft ordinance is not finished. The Councilors have only seen half of the document. Mr. Chirichiello recalled that two years ago, the committee worked on the ordinance for a year; it went to Town Council and was shot down. He can see the Board has been working hard on this ordinance again and it makes sense to get Council feedback. If the Board wants to take a shot without input that is okay. Mr. Stenhouse stated this is basically a good ordinance. Ms. Evans did not feel the drafts should have gone to Town Council. Mr. Granese noted Councilors could have attended tonight's workshop. Mr. Stenhouse said the intent of sending the drafts is to get a reality check. Mr. Chirichiello felt that Board members would be contacted by individual members of Council and receive comments in that manner.

Section 165-157

Members of the Board had questions with regard to 165-157.2 with regard to the sprinkler requirement. Mr. Sioras advised the Fire Department would like to see more homes with sprinklers. Mr. Chase said cisterns are still on the table, but are not the main choice of the Fire Department. Sprinklers are better from a life safety aspect, code and given the potentially long driveways. It is the best as far as a first line of defense. Mr. O'Connor was of the impression the Fire Chief wanted to eliminate cisterns going forward. Mr. Granese inquired if the NFPA required inspection of residential sprinkler systems? Mr. Chase explained residential sprinklers are only required to be inspected for the CO; commercial properties are inspected once a year. Mr. Sioras stated the current regulation allows for sprinkler systems or cisterns if the cisterns are within 1000 feet. The Fire Department is pushing for sprinklers. Mr. Chirichiello noted if the ordinance passed today, it would be more restrictive. Mrs. Roach suggested amending the Zoning Ordinance so that the changes are corresponding. Mr. Chase reiterated the Fire Department would like to eliminate cisterns.

Mr. Chirichiello inquired why is there a two car garage minimum requirement? Ms. Evans said it speaks to a better home. Mrs. Roach asked if most people would want a two car garage? Mr. Chirichiello said he was thinking of a 55+ open space development; there might only be a one car garage. Mrs. Robidoux suggested changing the wording from "required" to "recommended". Mr. Cooper

stated he does not often build without a two car garage; but this is land control, not housing control. He felt that an open space subdivision in some areas of town would yield a lower end home. He has constructed open space developments in other areas of the state that were high end.

The Board held a discussion regarding the permitting of shared driveways. Mr. Chirichiello envisioned an open space development with houses clustered closer to the road. Mr. Cooper stated sometimes they are set back which allows for better use of the land. Mrs. Roach recalled that Bob Baldwin had suggested clustered homes on shared driveways. Mr. Cooper said that type of development was geared more toward low impact development. No one wants a shared driveway; it creates future problems with regard to the maintenance of it. Ms. Evans said it is not a mandatory requirement; it is just a tool. Mr. Cooper thought that shared driveways would be more appropriate if the development was overseen by an Association. Mr. Chase said the wording now indicates shared driveway are allowed and permitted, but they are not mandatory. The market will determine what is constructed. Mrs. Roach felt many open space developments will have an Association because of the sharing of common land. Maybe common driveways could be a part of that.

Mr. Sioras reported SNHPC had a guest speaker, Randall Arendt. He showed options that get back to land flexibility. There is not a lot of good land left in Derry but the Board needs to consider the character of the land which will dictate where the house will go. Mr. Cooper said there are less good pieces left everywhere, but there are good pieces left. Mr. Sioras stated Mr. Arendt's push was toward being creative with the land. Mr. Chirichiello felt that people have issues with covenants and restrictions. Mr. Cooper indicated he has spoken with a few Town Councilors and they feel the ordinance should encourage flexibility and creativity. This part of the ordinance does not allow that. In the state it is in, it is restrictive. DPW should be involved and maybe allow a steeper grade or allow people to go around a curve faster. That would allow more flexibility in the space. He did not feel Stone Fence Drive was a good example of a cluster development. Mr. Sioras agreed that project was not as good as it could have been. Mrs. Roach noted the original proposal would have been beautiful.

Mr. Chirichiello noted the town wants to preserve what space it can. Mr. Cooper felt the Board should be encouraging flexibility in design and not be restrictive. He still feels the Board should wait for direction from Town Council. If the Board is putting in all this time and work on it, it should be approved. Directive from the Council would not hurt; it has been only one day since the Council discussed the workshop suggestion. Mr. Chirichiello said it was recommended there be a joint workshop. The Council should be allowed time to get up to speed on the ordinance. He would hate to see it shot down because someone did not understand it. Mrs. Roach asked if the Board wanted to wait on further revisions to see if Town Council gets in touch with the Board? Mr. Chirichiello did not think so; this is under the Planning Board's direction. He felt it was the right thing to

give the drafts to the Council; they need to be educated and brought up to speed so that it is easier to sell the ordinance. Mr. Cooper said he was not trying to be discouraging, but he would not want the Board to go through this exercise and be denied.

Section 165-158

Ms. Evans felt there needed to be deeds with easements; the common land won't be public land, so some of the sections under this item should be removed. There was some discussion with regard to Homeowner's Association covenants and why people would pay for a lot where they are charged for 3 acres of land and their home is on a 1 ½ acre lot. There was also discussion with regard to the potential for a Homeowner's Association attempting to put the common land into current use and whether that could happen or not.

The Board removed subsections a, b and d from number 1; the first two sentences s from number 2, number 3 in its entirety, and in number 4, removed "the town and" substituting "the owners". Also removed was "sewage disposal, water supply, road, drainage and all other such systems in the open space development as applicable" which was replaced with "all commonly owned facilities."

It was noted that shared wells are not recommended.

Section 165-159

Mr. Cooper felt it would be more appropriate to have a minimum of 25% of the Buildable Area and 50% of the Gross Tract in the Conservation Area. This is more common in this type of development. With the larger percentage, nothing fits or works right. Ms. Evans felt it took away from the land. Mrs. Robidoux disagreed, and felt it allowed for more flexibility to actually create more open space. Mr. Cooper stated that in order to avoid putting all the wetland in the open space, homes will be packed close under these guidelines and that will create cheap, smaller homes, which Town Council wants to avoid. Mr. Chirichiello felt the focus should be on quality. The Board worked for a few minutes with the figures to try and get an idea of what the percentages actually meant. If the buildable area was 10 acres and the gross tract was 20 acres, in a 3 acre zone, 12 acres would go to conservation. Mr. Picillo noted that 15 of the 20 acres would end up as open space. In a one acre zone 5 homes would be allowed on a 20 acre lot. Mr. Cooper advised there is also a consideration for the roads and wetlands. That is why he said this draft of the ordinance is asking a lot of a developer. Ms. Evans advised the wording came from the Town of Londonderry's 55 and older open space ordinance. Mr. Cooper said that for a 55+ condo type of development, it would be fine, but does not necessarily work with single family homes.

The Board held a short discussion with regard to the Land Advisory Criteria.

The Board decided to come back to a discussion on this section at a later date. It was also suggested that the ordinance be modeled at the next workshop, using the revised draft.

Section 165-160

The Board discussed changes to this section. It was noted that developers have an opportunity to tweak Fiscal Impact Analyses and that unless the town hired a consultant to perform the Analysis and have the applicant pay for it, it was probably not a necessary item in this ordinance. The requirement for a Fiscal Impact Analysis was removed.

Section 165-161

Mr. Cooper stated he struggled with this section with regard to landscape buffer requirements. Mr. Picillo felt that with the buffer requirement, it would make it harder to get a number of homes. Mr. Cooper felt the setback should be no more restrictive than normal. Mr. Sioras mentioned the congregate care facility on Kendall Pond Road; if you did not know it was there, it does not stand out and it is a large facility. Mrs. Roach felt most developers would not build along the property line. The Board decided to remove number 1 under this section and will reword number 2 at the next workshop.

Motion was made and seconded to adjourn. The motion passed in the affirmative and the meeting stood adjourned at 9:49 p.m.
--

Minutes prepared by Elizabeth Robidoux, Planning Clerk.