

The Planning Board for the Town of Derry held a public hearing on Wednesday, June 18, 2008 at 7:00 p.m. at the Derry Municipal Center (3<sup>rd</sup> Floor) located at 14 Manning Street in Derry, New Hampshire.

Members present: Virginia Roach, Chair; David Granese, Vice Chair; Jan Choiniere, Secretary; Randy Chase, Administrative Representative; Brian Chirichiello, Council Representative; Ann Evans, Phil Picillo.

Alternates present: John O'Connor, Richard Tripp (7:53 p.m.)

Absent: Gary Stenhouse, Mark Cooper, Maureen Heard

Also present: George Sioras, Director of Community Development; Elizabeth Robidoux, Planning Clerk; Mark L'Heureux, Engineer, Derry Public Works; Robert Mackey, Code Enforcement; Robin Bordonaro, Assistant Animal Control Officer; Jim Lavelle, Lavelle Associates, 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, and noted the location of emergency exits and extra agendas.

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

**Escrow**

**#08-19  
Stark Road Subdivision  
MHB Development  
PID 03130, 3 Stark Road**

The request is to approve and establish cash escrow in the amount of \$33,864.48 for the above noted project.

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

**#08-20  
Tropic Star (future median)  
Tropic Star Development, LLC  
PID 28004, 50 Birch Street**

The request is to approve and establish cash escrow in the amount of \$13,802.40 for the above noted project.

Mr. Granese inquired if the funds were for the area that has not been built yet? Mr. Sioras advised the developer was releasing the letters of credit and establishing cash escrow for the remainder of the project. Mr. L'Heureux advised that the median is proposed in the event that there are problems with traffic making a left out of the Rite Aid onto Rockingham Road. This item was left for a two year period. They are taking the letter of credit and replacing it with cash escrow as the letter of credit comes due next month. The median may not be required; but people were entering the site through the exit lane. Since then, more directional signs have been installed. The future median is proposed in the event the signage does not mitigate the problem. Mr. Granese agreed the entrances/exits were confusing.

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

**#08-21**

**Tropic Star (Rite Aid)  
Tropic Star Development, LLC  
PID 28005, 52 Rockingham Road**

The request is to approve and establish cash escrow in the amount of \$5184.01 for the above noted project.

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

**#08-22**

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

The request is to approve and establish cash escrow in the amount of \$20,347.20 for the above noted project.

Motion by Choiniere, seconded by Granese to approve as presented. The motion passed with Picillo abstained.

**#08-23**

**Rite Aid  
New Land Development Assoc.  
PID 28005, 52 Rockingham Road**

Please approve Release #5 in the amount of \$5184.01 for the above noted project. This is the final release of the Letter of Credit.

Motion by Granese, seconded by Choiniere to approve as presented. The motion passed with Picillo and Chirichiello abstained.

**#08-24**

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

Please approve Release #1 in the amount of \$13,802.40 for the above noted project. This is the final release of the Letter of Credit.

Motion by Granese, seconded by Choiniere to approve as presented. The motion passed in favor with Picillo abstained.

**#08-25**

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

Please approve Release #5 in the amount of \$20,347.20 for the above noted project. This is the final release of the Letter of Credit.

Motion by Choiniere, seconded by Granese to approve as presented. The motion passed with Picillo abstained.

**#08-26**

**River Bank  
River Bank  
PID 36019, 51 Crystal Avenue**

Please approve and establish Letter of Credit # 053008JK for the above noted project in the amount of \$145,009.44.

Motion by Choiniere, seconded by Granese to approve as presented. The motion passed with all in favor.

**Minutes**

Mrs. Roach confirmed the Board should accept the minutes of the site walk with Mr. Sioras.

Motion by Granese, seconded by Choiniere to accept the minutes of the June 4, 2008 meeting and the June 11, 2008 site walk as amended. The motion passed with all in favor.

Changes as noted:

June 4, 2008: Correct spelling of "Zohdi" throughout; correct spelling of "Herbert" on page 3; correct spelling of "raze" on page 9.

June 11, 2008: Add "The location of the aquifer will be shown on the plan" to the last paragraph.

### Other

Mr. Picillo noted that River Bank is the applicant, developer and holder of the Letter of Credit. He is not sure he has seen this before. He is not in favor of spending unnecessary legal funds, but requested Mr. Sioras to inquire of Counsel if there is anything that prohibits the Town from establishing this Letter of Credit for the future.

### **Correspondence**

Mrs. Choiniere acknowledged the following correspondence.

The Town of Windham has sent a notice of public hearing for site plan review for an addition to a wireless antenna, located on Gov. Dinsmore Road. The Town of Londonderry has forwarded a notice of Design Review (revised) for a wireless communication tower to be located on Kelley Road. The Board is also in receipt of the latest edition of *Town and City*. Copies and more information on all of these items are available in the Planning Office.

### **Other Business**

Mr. Sioras noted Mr. Stenhouse was unable to attend the meeting this evening as he is at the NHMA conference.

With regard to the summer schedule, the meetings are scheduled for July 16<sup>th</sup> and August 20<sup>th</sup>. He will keep the Board updated in the event that schedule needs to be changed to add a meeting.

**Public Hearing****John Picirilli, Jr.****Parcel ID 03165, 135 Island Pond Road****Site Plan Review (Expansion Auto Salvage Yard)****Continued from May 21, 2008**

Mr. Sioras advised the Board is in receipt of a letter from Mr. Lavelle requesting this hearing be continued to the July meeting.

Motion by Chirichiello to continue the public hearing for the Site Plan for John Picirilli, parcel 03165 to July 16<sup>th</sup>.

Mr. Granese inquired if that would give Mr. Lavelle enough time to complete the plan? Mr. Lavelle said it would and it allows the applicant an opportunity to go before the Conservation Commission. They are on the schedule for next Monday evening (June 23<sup>rd</sup>). Mr. Granese thought this plan had already been before Conservation. Mr. Lavelle explained the Chair signed off on the plan, but they have not met with the full board.

Motion was seconded by O'Connor. Chirichiello, Picillo, O'Connor, Granese, Chase, Choiniere, Evans and Roach all voted in favor.

**Proposed Amendments to the Land Development Control Regulations**

(A copy of the proposed amendments is attached to this record.)

Mr. Sioras provided an overview of the changes proposed by his department. He advised the first set of amendments have to do with the requirement to file plans electronically. Once the plan has been finalized, we will now have the ability to view it electronically, via email or on line. Paper copies will still be required. This was something that he had discussed with Mr. Stenhouse and Ms. Thompson and it was thought to be a good idea. With regard to the change for Fire Protection, this is a housekeeping item. He read the letter submitted by Michael Scott in Fire Prevention aloud for the record.

"Upon reviewing the fire protection section 170-30 in the LDCR book, I noticed in Section 170-30, part B, #3 references NFPA 1231 for fire cisterns. In 1999 NFPA 1231 was renumbered to NFPA 1142. This needs to be changed so people can reference the correct book."

Mrs. Roach noted that electronic filing is established in other communities and gives a more accurate view of the plan.

Mr. Sioras advised the recording fee change is to cover the new fees imposed by the state, effective July 1. The state passed a surcharge of \$25.00 that will be imposed on the recording of each plan, deed or mortgage to fund the LCHIP (land conservation and historic preservation) program. An article explaining the new fee is attached to the Board members' packets.

The Board decided to take up each Section separately.

#### Section 170-24.C

Mr. Picillo inquired if applicants would provide an email with an attachment to submit the plan? Mr. Sioras stated they will pdf the file and send it as an attachment. The town wants the ability to see what the plan looks like in the field and we will be able to view it through the GIS. Mr. O'Connor suggested, as an administrative adjustment, that the definition of Community Development Director be added to the definition section of the regulations. Mr. Sioras said that could be done. The Board was reminded that amendments would also have to be approved for Sections 170-61.C and 170-72. The wording is the same as for Sections 170-24.C and 170-37, but are in the Site Plan regulations.

The floor was opened for public comment, there being none, the discussion came back to the Board.

Motion by Picillo, seconded by Granese to approve the proposed amendments as written to Sections 170-17, 170-24.C, 170-61.C, 170-37, 170-72, 170-30, and 170-56 of the Land Development Control Regulations.

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

Mark L'Heureux, Engineering Coordinator presented the proposed amendments with regard to engineering and construction requirements.

#### Section 170-26, Streets.

With regard to driveways, the last sentence of the current regulations states, "All proposed driveway aprons shall be constructed to a point 40 feet inward from the edge of pavement on all streets at the time of street construction." The developers have been adhering to the last sentence in the current regulations. The proposed amendment adds space criteria, the wording for which has been pulled from the driveway permit process. It addresses slope increases or decreases, depth, and gravel requirements. A new subdivision requires a strip of pavement from the edge of pavement for about 13 feet. They have been doing this consistently through the permit process, but this puts it in black and white for the developers. Mrs. Roach thought that was a good thing to do.

Section 170-29, Storm Drains

The proposed changes are minor changes related to detention ponds. It requires that specialized grates won't corrode over time. Much of the change is related to items the DPW department sees over time and they wanted to shore up the regulations. He also wanted to add a disclaimer that there should not be underground detention systems in subdivisions. The normal means of stormwater control is swales and detention ponds.

Mr. Picillo asked in reference to driveway aprons, should reference be made to that part of the regulation (driveway permits) in the event they change? Mr. L'Heureux stated this change is more comprehensive because it ties in with the subdivision regulations. It is important to have it because it gives the developer the information up front. Mr. Picillo inquired how does the underground system compare to what we have today, versus what it prohibits?

Mr. L'Heureux explained this is just a statement. They are really not needed in a subdivision. The site plan section of the regulation is more detailed. He wanted to make sure there was a statement to protect recharge. There are none under construction at this time. No one would typically install one in a subdivision because they are costly.

There was no public comment and the discussion went back to the Board.

Mr. Chirichiello had a question with regard to the proposed changes with respect to driveways. Why is this so specific? Has it been a problem? The landowner owns the driveway and the regulation is saying "you shall". Mr. L'Heureux stated there have been problems and that is how the town got the original driveway apron portion into the regulations. The developer could cause hardship when a developer wants to put a lot of lots in. The driveways should be incorporated into the roadway design for the protection of the future homeowner when they continue the driveway. It protects the town and allows a place (40 feet) to off load equipment. This adds to the specifics with regard to grades. He would want to make sure that the work on the apron is done in association with the roadwork so that the town does not need to chase the homeowner and make it costly for them. The homeowner or the developer is going to want good gravel in the driveway. This is not over-regulating.

Mr. Chirichiello asked if this is imposing a hardship on the landowner? They can develop as they see fit. Will this cut down on the number of lots a developer can get? Mr. L'Heureux said this is not causing a hardship. It is being realistic in terms of the property that is available. The last three subdivisions constructed had full cooperation in getting the driveways to this specification including the 40 feet, based on the permit process. It is an advantage to the developer because

they can do more work off pavement without damaging the road and it ensures the grades are not too steep for the future homeowner.

Mr. O'Connor asked if the past subdivisions complied with this? They did. He asked what happens with a developer who wants to develop 20 acres and roadway? Mr. L'Heureux said the developer constructs the first 40 feet of the driveway per the current regulations.

Ms. Evans verified the original text was presented this evening with regard to driveways in black and the proposed changes were in red. She said she would not support this proposed change. It is not right to tell people how to pave their driveway or how deep it should be. Driveways are what people make of them. Mr. Picillo inquired if this change says that homeowners can't put down pavers or gravel? Mr. L'Heureux said the change is asking for base pavement to the edge of the right of way so that gravel won't erode into the roadway, since most driveways slope to the road. Mr. Picillo asked if today with a 200 foot driveway, 40 feet of the driveway is paved? Mr. L'Heureux stated that homeowners only need gravel on the first 40 feet other than the 12 foot paved apron to the edge of roadway. The entire length of the 40 feet does not have to be paved. The rest of the driveway could be gravel. This protects against erosion. Steep gravel driveways have eroded into the road in the past and the town has had to get loaders out to the site to remove the gravel from the roadway during large rain events. This is done in the new subdivisions as part of the requirements.

Mr. Picillo asked if this calls for a 12 foot paved apron, and then the homeowner can do whatever they want? Mr. L'Heureux did not think the proposed changes would prohibit how people want to construct their driveways; it just calls for protection at the edge of pavement. Mr. Picillo inquired if the apron had to be asphalt? Mr. L'Heureux stated he has never run into a situation where someone wanted it to be anything other than asphalt. If someone asked to place pavers, there is no issue from a permit standpoint. They are just trying to protect the edge of pavement.

Mr. Granese said that what he was hearing is that the builders currently place 12 feet of pavement into the driveway. The builder completes the work in the subdivision and the escrow is released. This is done for the driveways whether the homes are built or not. After that, the home is constructed and the homeowner can do whatever they want after that 12 feet. If the homeowner wants a final coat, they can stamp it or pave it. He felt this protected the future homeowner.

Ms. Evans had an issue with the 5<sup>th</sup> bullet item that read all driveways, "shall be constructed with a minimum of 12 inch depth of NHDOT crushed gravel 304.3 specification for the entire length and width." There is not 12 foot length. Mr. L'Heureux stated this called for one foot of gravel for the first 40 feet, for the width of the driveway. He explained the distance to the Board. The Board felt it



was not clear this was only for the first 40 feet of the driveway and wording should be added to promote clarity. The Board would also want the distances for edge of pavement and right of way included as well.

Mr. Chase suggested changing the wording from “all driveways shall” to “all driveway **aprons** shall” to make it more clear.

Mr. Picillo suggested taking a look at this proposed amendment again, adding drawings so that the Board can have a visual of the proposed change to see what this amendment is trying to do. It would be helpful.

Mrs. Choiniere inquired if the requirement now is to have 12 inches of gravel on the driveway? Mr. L’Heureux said it is typical; more is better.

Mr. Granese reiterated that all of this is being done currently and protects the future homeowner. He likes the fact that it protects the homeowner. Mrs. Roach thought it made clear what the developer was expected to do. She asked Mr. L’Heureux to make changes to this section and bring it back to the Board.

There were no questions with regard to the stormwater proposed changes.

Motion by Granese, seconded by Picillo to approve the proposed changes to Sections 170-29 and 170-65 of the Land Development Control regulations.

Picillo, O’Connor, Granese, Chase, Evans, Choiniere, and Roach all voted in favor and the motion passed. Chirichiello was absent for the vote.

Mr. L’Heureux will bring drawings from recent subdivisions to the Board for the next hearing when the Board discusses proposed changes to Section 170-26 when the Board discusses this again in July. He confirmed the Board did not require discussion on the amendments to Section 170-65.

## **WORKSHOP**

### Animal Ordinance

The workshop was not televised. Robert Mackey, Code Enforcement Officer and Robin Bordonaro presented the proposed ordinance.

A copy of the draft discussed is attached to this record.

Mr. Mackey provided an introduction to the latest draft. A few weeks ago, the Board heard the proposed animal ordinance. To recap, the Town Council wanted another look at regulating farm type animals and requested this be looked at again and put it in the Zoning Ordinance. This is the third workshop. At the last workshop, it was the consensus of the Board that the ordinance was

too much and it should be streamlined. Everyone should have a copy of the new version.

The two acre minimum has been reduced to a one acre minimum and wording has been changed with regard to "nuisance". The focus is on proper housing, and manure removal. Ms. Evans has submitted comments on this draft and he hopes the Board was copied on them. The Board was. Mr. Mackey stated this draft is the result of the last workshop.

Ms. Evans said in her comments, the Board may recognize a lot from the Londonderry Animal Control Ordinance, which is limited and is good.

Her first comment has to do with Section 165-154. Sheep, goats and pigs should be allowed on any size lot. A child may need to have a goat available for milk if the child is allergic to cow milk. The acreage requirement should be limited to horses. She does not feel 'large animals' includes sheep or pigs. The definition of livestock should be changed to horses and cows. The Planning Board serves the people, not Animal Control. She does not mean to add any issues to Animal Control. Marlene Bishop has mentioned the issue with regard to fowl flying over fences and defecating on neighboring lawns and in pools. She is suggesting changes. She does not feel this ordinance is hurtful to the general population of the Town of Derry.

She had a question with regard to the wording of the structure setback. Mr. Mackey advised the typical setback is 15 feet. Ms. Evans is suggesting 20 feet, so that the distance is definite and clear, rather than determining what is allowed in each zone.

Mr. O'Connor inquired if there is anything in the regulations pertinent to grandfathering of the existing location? Will the existing locations have to adhere to this ordinance? Mrs. Roach explained existing conditions are grandfathered. Mr. Chirichiello inquired how would this be monitored? Mr. Mackey said there are existing non-conforming uses and they would be treated accordingly.

Mr. O'Connor suggested removing the parentheses from Section 165-54 as it is defined below. Mr. Chirichiello inquired if hoofed animals will only be cows and horses? Ms. Bordonaro stated that miniature horses are smaller than goats. Mr. Chirichiello wondered if they defined hoofed animals as horses and cows only, would that work? Are sheep an issue? Ms. Bordonaro indicated that pigs would not be included in the definition and sheep issues are rare. She feels what Ms. Evans is suggesting is okay. Mr. Mackey suggested placing the wording "excluding miniature horses" in the definition of hoofed animals.

Ms. Evans noted that Londonderry has pens, runs and kennels at a distance of 25 feet from the lot line. She is suggesting 20 feet. Is there a consensus from the Board? Should they use what is allowed in each zone?

Mr. Chase felt it should be kept in line with what is currently required by zoning; it would eliminate confusion. Mr. Granese felt the distance should be 20 feet, in chase the zoning changes. Mrs. Roach felt a distance should be noted for clarity.

Ms. Evans suggested dropping the wording that states "roosters and peacocks are not permitted on lots of less than 3 acres". She felt this was more of a neighbor issue. Mr. Chirichiello asked Ms. Bordonaro what does she see for complaints? Ms. Bordonaro said roosters are noisy. The 3 acre minimum won't make a difference regarding the noise because they will be anywhere on the property. This is an issue for downtown properties, not so much in the rural areas. Mrs. Roach noted roosters would then be permitted on any lot, such as fowl. Mr. Chirichiello commented that would include a downtown lot on ½ an acre. Ms. Bordonaro said that does happen, but it is an unusual problem. Mr. Chirichiello thought this issue could be revisited and then finalized.

Ms. Evans asked if Bill Garvey was present in the audience? He was not. She read aloud his email to her. His residence is on Paul Avenue. She noted Norton Kelley was the only other person she knew who had peacocks. He also had emu. Peacocks are not common; neither are roosters. Many don't want roosters for their hens. Occasionally they are on property; they don't crow all day long. She noted this is New Hampshire and therefore more rural.

Mr. Tripp noted the title to this ordinance is "Agricultural Livestock" and the Board is discussing other animals. Should the title be changed? He does not feel a peacock is agricultural livestock. Mr. Mackey said he agreed because the Board just decided livestock is horses and cows, excluding miniature horses. Mr. Tripp felt peacocks were more decorative, and he agreed they should be left out of the ordinance. Ms. Evans said she understood how they got there, but she felt they were only loud for half an hour a day.

Mr. Mackey spoke to fowl pens. Regardless of the size of the property, fowl should be properly contained so that they don't run amuck. Ms. Evans felt it was okay to move the enclosure requirement to 2 acres. Mr. Mackey noted that there is a chance that any of the problems noted can be compounded on a smaller lot. Ms. Evans did not feel it was very expensive to add a roof to the fowl enclosures.

### Section 165-156

Mr. O'Connor suggested adding the wording, "and should be clear of any waste, debris, free of infestation and not create a health and safety hazard." This will allow a caveat for the Health Officer. Ms. Evans said she understood the thought behind that but did not want to legislate housekeeping. Mr. O'Connor said they are legislating safety and health. Ms. Evans still felt it was housekeeping and did not want to legislate it. She would leave it up to the Humane Society. Mr.

O'Connor asked who heads up the Humane Society in town? Members thought that was Barbara McCarthy. Mr. Tripp inquired if the Humane Society has jurisdiction over this ordinance? Ms. Bordonaro said in the past they have had issues with improperly stored grain that caused a rat infestation. The Animal Control Office works under state laws. Mrs. Roach noted the town does have a Health Officer. Mr. Mackey said if a complaint was raised to the level of a health issue, the Health Department would become involved. Ms. Evans felt Section 165-156 was okay as written. Mr. Mackey said the intent was to make sure that animals are properly housed and adequately sheltered. Mr. Tripp asked if this means a barn or a three sided structure? Mr. O'Connor also noted that the Board had previously suggested placing a net over fowl structures to adequately contain the fowl and prevent them from flying out. Mr. Tripp said the netting is to keep them from flying out of the hen yard. Netting is not necessary for sheep and goats. Mr. Mackey said there is a section dealing with fencing to contain the larger animals. Mr. O'Connor had no issue leaving this section as written, so long as the Health Officer can enter the yard if there is a complaint. Mrs. Roach said they would if it rises to the level of a health complaint.

Ms. Evans read aloud Section 165-157. She would take out the last two sentences. Mr. O'Connor and Mr. Granese agreed. Mr. Tripp inquired if a pasture is an enclosure? Mr. Mackey said it is if animals graze there. Mrs. Choiniere thought that would fall under the minimum setback requirement. Ms. Evans said pastures do not. They are different from pens. A pasture is a large area. It makes no sense to fence in a pasture, especially where it might be bounded by a stone wall. It would not look right.

Ms. Evans read aloud Section 165-158. She has no issue with this section but suggests changing the distance from 150 feet to 100 feet. Mr. Chirichiello thought there were state laws with regard to manure storage. Mr. Mackey agreed, stating that manure needs to be at least 75 feet from wells. Mr. Chirichiello asked if this mirrored state law? If so, then why does it need to be here? Mr. Mackey said it mirrors state law with regard to the wetland setback. He does not know if there is any law regarding the distance to an abutting home. Mr. Chirichiello suggested deleting this section. Ms. Evans read aloud the email she received from Rachel Lonergan and noted that most people are considerate with regard to manure storage.

Mr. Tripp asked if this is covered under state law? Mr. Mackey said he would double check but did not think the state would speak to the distance to an abutter. Ms. Bordonaro said this is seldom an issue. Most people are considerate and have no issues with regard to stock piling. Ms. Evans said this is not in Londonderry's ordinance, so they must not think it is necessary. Mr. Tripp wondered if the number of flies attracted by stockpiling would be considered a nuisance? Ms. Bordonaro said it would have to become a health issue.

Ms. Evans felt Section 165-159 was okay, except she did not want to include rabbits. She does not think there will be commercial piggeries or mink farms in town. Mr. Mackey said this wording is found in a lot of Zoning Ordinances, but he agreed this use was not seen in this area. Mr. Chirichiello asked, then why have it? Mrs. Roach thought the wording with regard to rabbits should stay. Mr. Tripp thought this wording was probably targeted toward animals in residentially zoned districts. Ms. Evans clarified this ordinance applies to all of Derry. Mr. Chirichiello indicated there must not be any agricultural districts. Mr. Tripp thought then that if someone had a commercial farm, they would be prohibited from raising pigs and mink, but could raise cows for dairy production. Mr. Chirichiello stated if there is no problem currently, the wording should not be in the ordinance. This ordinance should protect the neighbors. Mr. Mackey was of the opinion that as the town becomes more urbanized, one would not see this type of use often. Mr. Chirichiello said this can always be added later.

Ms. Evans thought Section 165-160 was okay. Mr. Chirichiello asked if there is any current law? Mr. Mackey indicated there is nothing specific, but people need permission from the ZBA to run a business from the home. Mr. Chirichiello felt that since that regulation already existed, this duplicated it and did not need to be in this ordinance. Mr. Mackey said it clarifies that no more than 2 litters per year are allowed. Mr. Chirichiello asked if there had been any public complaint? Mr. Mackey said there was one issue, but that one went away and it was taken care of under the existing Zoning Ordinance. Mr. Chirichiello asked if there are any problems with puppy mills? Ms. Bordonaro said not any longer. If someone is breeding more than 2 litters per year, they have to be inspected by the state. Mr. Mackey noted most other towns have ordinances that are pretty basic and limit the acreage requirement.

Ms. Evans thought peacocks should be added to the fowl definition. Mr. O'Connor suggested removing the abbreviation, "etc." from the fowl definition.

Mrs. Roach suggested if Section 158 is covered under state law, it could be removed. Ms. Evans commented there were many members of the public present and typically, workshops are for Planning Board discussion only. She would not mind if the public spoke, but pointed out this ordinance is pared down considerably with regard to what is allowed compared to the last draft. Mr. Granese noted Ms. Evans did a lot of work on this ordinance and commented to Mr. Mackey that this draft looks good. He felt since the members of the public took the time to come to this workshop, they should be given an opportunity to speak.

Sean Wilson, 42 Kilrea Road, expressed concern with regard to roosters and peacocks. He agrees that people who have issues should speak to their neighbors. He tried that and was greeted at the door with a shotgun. The last three weeks, the roosters crow and keep his children up all night. This is a health issue for his family. The children are being affected by the crowing. The

rooster is out of control. The neighbor does have a fence but their quality of life is affected.

Mr. Tripp noted that dogs that bark all the time are considered a nuisance, what about roosters? Mr. Mackey said the Animal Control Officer may have some regulations regarding noise, but he is not sure that covers roosters. Mr. Tripp thought it might be covered under 'public nuisance'. The members of the public present said en masse that the rooster crows all night. Mrs. Roach reminded them that they will have a chance to speak.

Mr. Wilson said the rooster is crowing in the early morning hours between 1:00 a.m. and 4 a.m.; it is like having a party going on next door, all night long. Mr. Chirichiello said this is where the Board needs to look at this. It sounds like many neighbors agree. Mr. Tripp felt this was a noise problem, not a rooster problem. The Board could write an ordinance against any animal; the town does not have a barking dog ordinance. Ms. Bordonaro said that dogs are not allowed to bark for more than half an hour a day or after 11:00 p.m. There are laws about that; if there is no law, the ACO can't enforce it. Mrs. Choiniere said this ordinance would not affect this situation because it would be grandfathered. Mr. Chirichiello said the Board should discuss how these grandfathered uses can be documented.

Robert McCulloch, 1 Squamscott Road said that for over a year now, this has been an issue. The neighbor moved in and he is not amicable. The neighbor has ducks, geese, chickens and hens that come into his yard four to five times per day. Nothing is being done. Mr. McCulloch said he lives on 1 ½ acres. The neighbor is at the back of his place and is not sure that the neighbor even has an acre. The pen is to the rear of the property. Mr. McCulloch said he spent the spring chasing chickens out of his yard. The Police Department and ACO can't do anything. He was woken up at 3:45 the other morning to the rooster crowing. He had to turn the air conditioner back on so that he could sleep. He can't sit outside because this thing goes all day and all night. [Those present indicated the neighbor in question lives at 2 West View Drive] This is a nice neighborhood. Mr. McCulloch said he tried to do all the right things. The neighbor now has a roof over his pen, but how many animals is he allowed to have? Feces is dumped at the back of the lot and the prevailing winds blow into Mr. McCullochs yard, bringing that and feathers. There are now foxes and dogs being attracted. Where is the line drawn? The neighbors all feel the same and this particular neighbor does not care and does not want to be amicable.

Mr. Granese said this sounds like it would be covered under the nuisance law. He agrees with Mr. Chirichiello that the Board needs to look at grandfathering. Public nuisances should not be grandfathered. Mrs. Choiniere suggested adding "sight, smell and sound" to the ordinance under Section 165-155. Mr. Chirichiello said that weighs in heavily with regard to real estate. This ordinance forces the hand to make the neighbor more responsible.

Mr. Mackey said he would look at the section dealing with that area and do something under grandfathering. This would not apply to area requirements. He hoped he could deal with this under the proper nuisance section.

Jay Latulippe, 132 Hampstead Road, said he could sympathize with people who have a neighbor who does not maintain their property. His concern is that the ordinance may put a blanket over everyone. They have chickens and a rooster that does crow, but they also have neighbors with dogs that bark. He can hear radios. Chickens are relatively quiet. His kids have the benefit of raising the chickens. They keep the pen and area clean. Just because a certain person in town is not complying, does this exclude everyone from the benefits of having these animals? Mr. Picillo inquired if Mr. Latulippe had ever had any neighbors come to him? He replied he has not. One neighbor has a horse on land containing less than 2 acres and the horse is well cared for. He feels the Board needs to focus more on where there is a problem and what can be done, rather than a blanket ordinance.

Mr. Granese acknowledged the letter written to the Board members by Mr. Latulippe's daughter, Anna. The Board took that under consideration. Mrs. Roach noted that unfortunately, 5% of the people caused this ordinance to come about.

James Daley, 78 Gulf Road, said he understood that his area was zoned agricultural/residential. Will this ordinance only apply to residential zones or agricultural? He feels there are conflicts with the state mandates with regard to horse structures. During certain periods of the year, a horse needs a three sided, roofed structure. Some horses can break through almost any enclosure. With regard to the nuisance provision, he commented you can't please everyone. They have 12 acres. Manure management is important. This ordinance seems to be all encompassing and a neighbor can say something is a nuisance and is unsightly. There should be other ordinances available to control the people who don't care. He supports having an acre of land for a horse. That does not mean that there needs to be a lot of grazing area; but horses can be hay fed.

David Lamontagne, 3 Squamscott Road, stated he lives behind the neighbor in question on West View Drive. The neighbor has a small pen, with a large concentration of different fowl in that pen that creates a noise issue. They squawk all day. He is not sure if there is an ordinance against that. Mr. Chirichiello wondered if the housing was inadequate for these animals. Are they squawking all day because they do not have enough room? Mr. Lamontagne said his opinion is that this type of thing should not be allowed. He can't speak to cruelty to the animals. The noise is the issue.

Kim Lamontagne, 3 Squamscott Rod, said the main issue is they tried to reason with this neighbor and were not successful. They are looking for help. This is a

beautiful neighborhood but they can't enjoy their backyards because of the noise. The roosters make noise all day long. This does affect property values and the quality of life has gone down. They are willing to be flexible and hope an ordinance is put into place that can help them.

Jerelyn Nordelus, 4 Squamscott Road, agreed the quality of life has decreased. Her son can't sleep at night because the rooster is too noisy. This is an issue.

Mike King, 10 Squamscott Road, agrees with all the neighbors. The rooster crows all day long. He is seeing more hawks over that area and has a 3 ½ year old son. He asked the Board to help them.

Arthur Caras, North Shore Road, noted people are having problems with their neighbors and roosters. He does not think the Planning Board should take away agriculture because of one neighbor who is abusive. The town needs agriculture, dirt, livestock and farmers. Everyone can see the effects of global warming. People need to be self sufficient. If he had a rooster on Beaver Lake, everyone would hear it. He can hear Pinkerton Academy football games at his home and he lives 2 miles away. One neighbor should not be the reason for the downfall of agriculture in our town. Some people might feel a horse looking over the fence at them is a nuisance. The town now has Broadview Farm and the development rights to the Ferdinando parcel. The town should want to move forward, not backward. Don't buy next to a farm if you don't want to live next to one. The town should not want to zone out 4H opportunities as that program creates good citizens. The town should be careful in what it sets into motion.

Mr. Granese said this ordinance does not restrict agriculture, or prohibit what is done. Derry has changed over the years and many homes have been constructed in the last few years. This ordinance has been cut down to 3 paragraphs from its original draft. The main concern is noise. There needs to be something to control people who don't take care of their property. This does not say you can't live life the way you want to, but keeps people in check. There needs to be rules and he does not feel this ordinance is restrictive.

Mr. Caras did not feel people with animals could be restricted by their neighbors. Large animal owners and small animal owners can't be victimized by their neighbors. You can't tell a rooster to stop crowing; but you can bring a dog into the house. The town should want to keep and promote livestock. He feels bad for the people who are having problems. He does not know the solution. Sound will carry. The town wants self sufficient citizens in town. The number one reason to have open space in New Hampshire is for horses, so that you can hay and feed the horse. Animals promote open space.

Mr. Chirichiello felt that got back to quiet enjoyment of your property. There needs to be something in the ordinance, but no ordinance will be perfect. When one person infringes upon 15 neighbors, it is an issue. This Board is trying hard



to do the right thing. Mr. Caras noted new subdivisions could put restrictions against animals in their by-laws.

Jay Latulippe asked for clarification. What are the consequences of acting against this ordinance? Mrs. Roach explained any animals on a property now are grandfathered. It would depend upon how the final ordinance is written. There may not be a problem with a new rooster (once the old one dies) if the Board says it can be on less than 3 acres. Mr. Latulippe asked if someone had a little over one acre and moved here with their animal, would they be denied? Mr. Sioras said it would depend upon the ordinance; they might need a variance. Mr. Latulippe inquired if there is a sound ordinance against barking? Mr. Sioras said there needs to be something so that Mr. Mackey and Ms. Bordonaro can enforce the three to four people who are causing problems and can address the noise and health issues. Regarding the rooster, they can't do anything now, but in the future will be able to do something.

Mr. Mackey stated that is the bottom line. There is nothing specific on the books regarding roosters. They can do something about a barking dog. They do try to work with people. The whole point is not to do away with farms and livestock. The bulk of the people take care of the animals. But there are instances that rise to the level that affect many, as has been seen tonight. The intent was to put a few restrictions on the books. This goes back to Town Council because they wanted it. The Board votes to approve the ordinance during a public hearing, and then it will go to Town Council, who will have to approve or disapprove it. Unfortunately, not everyone deals with their neighbors.

Mrs. Roach inquired with regard to dogs. Mr. Mackey explained dogs are covered under state regulations, not zoning.

Mr. Latulippe said he agreed with Mr. Caras. In general, it is important for young people to learn to deal with livestock. They may need to do that in the future. People should be able to do it properly, in a sanitary way that does not affect the neighbors.

Mr. Chirichiello said they are looking for a win/win situation.

Mr. Wilson said he wanted to make it clear that the situation they are discussing arose last year. The majority of the neighbors have been there for 10 to 12 years.

Mrs. Roach said the Board has worked hard on this and the acreage requirement will need to be dealt with at the next workshop. This workshop will be moved to the August 20<sup>th</sup> meeting. A notice will be placed on the town webpage. She said the Board wants to make good decisions and not rush through the process.

Mr. Sioras inquired if anything can be done for these neighbors in the short term? Mr. Mackey said he has tried to deal with it in regard to keeping fowl contained. He can explore further and see if there is a different avenue. He has a good record of the complaints. He has not been out to the property recently, and is not aware of any public health issues. Mr. O'Connor felt there could be a concern for salmonella. Mr. Mackey noted the neighbor can be difficult to work with, but he did put up the enclosure when asked to do so. Mr. Tripp suggested looking at the RSAs to put some rationale in the ordinance.

Mr. Picillo thanked Ms. Evans for working on this ordinance and thanked the public for their input. It is not often the Board gets non-hostile feedback and thanked them for giving both sides of the issue.

Motion by Chirichiello to adjourn, seconded by Granese. The motion passed and the meeting stood adjourned at 9:14 p.m.

Minutes prepared by Elizabeth Robidoux, Planning Clerk.

Amend Article IV, Application and Submittal Requirements, Section 170-24.C, to require electronic submission of plans

**Section 170-24 Final Application Phase Submittals (And Section 170-61.C)**

Two copies of the final subdivision plans submitted to the Board for approval and recording at the Registry of Deeds shall be on Mylar of a size and quality meeting the requirement of the Register of Deeds.

All ~~submitted~~ plans shall ~~also~~ be submitted to the Community Development Director in the two (2) electronic formats noted below.

1. Adobe Acrobat pdf.

2. Drawing file: Two forms shall be submitted, GIS Coordinator in a .dxf (Drawing Exchange File) format. ~~AutoCAD drawing (.dwg) format can be used as an alternate format if necessary and a .dwg. (AutoCad drawing format).~~

3. Electronic Filing Requirements: The above shall be accomplished with the following guidelines:

1.4. Horizontal and vertical features shall be adjusted tied to the Town of Derry Geodetic Control Network (Second Order – Class II, NAD 83/92-NGVD-~~2988~~). Information pertaining to existing geodetic control points is available from the GIS Coordinator;

2.5. All digital Files shall be submitted on a 3.5" floppy disk. 5.25" floppy disks shall not be accepted. CD-Rom. Arrangements may be made to send digital data via FTP or e-mail on a case-by-case basis;

3.6. If submitted via disk the following information shall be labeled on the disk: file name; property owner name; parcel identification number (tax map and lot number); and name of submitting consultant;

4.a. The submitted digital file shall be rotated to grid (-NAD 83/92);

5.b. Horizontal control points shall have an adjusted accuracy of 1:10,000 (Third Order, -Class I);

6.c. Vertical control points shall be tied to at least two Town of Derry geodetic control stations. The misclosure tolerance between stations shall be a maximum of 0.50 foot.

7.d. Entities and their DXF layer properties shall correspond to the following:

1. Proposed Pproperty lines entities shall be created on a “P-LLLot Line” layer and shall be green in color. Former property lines will be created on a “F-LL” layer and be yellow in color. Existing property lines shall be created on an “E-LL” layer and be black in color.

- ↷2. Parking lots shall be created on a **“Pplot”** layer and shall be **gray** in color.
- ↷3. Driveways shall be created on a **“Driveway”** layer and shall be **gray** in color.
- ↷4. Building or any structural feature outlines shall be created on a **“Structure”** layer and shall be **cyan** in color.
- ↷5. Distance and bearing annotation shall be created on a **“Dimtxt”** layer and shall be **black white** in color.
- ↷6. The digital file shall have a layer named **“NHSPCS”**. NAD83 referenced points and the easting, northing and vertical descriptions of the required points shall be annotated on this layer. The NHSPCS layer shall be **magenta** in color.
- ↷7. All lines representing property lines shall consist of continuous line work snapped to endpoints. Stonewall representations, unless created using a line type will not be accepted.

Amend Article VI, Performance Guarantees and Procedures, to require electronic submission of plans.

#### **Section 170-37 As-Built Plan Requirements (And Section 170-72)**

In order to provide a permanent record of the locations, dimensions and characteristics of various items and features, delineated on plans presented to the Planning Board for approval (or which are otherwise required in connection with the development), the Planning Board shall require the applicant to provide as built drawings, sealed by a licensed professional engineer, or Licensed Land Surveyor, prior to the final release of performance guarantees pertaining to such items. As-built plan requirements and content shall conform with applicable standards established by the Public Works Department. In addition, a digital submission of as built plans shall be submitted to the Community Development Director, in the format set forth under Section 170-24.

Amend Article V, Design and Construction Standards, Section 170-30 to update the reference to the correct NFPA edition.

#### **Section 170-30 Fire Protection**

B. Fire cistern specifications

- 3. The cistern design and capacity shall conform to the most recent edition of Standard ~~1231~~ 1142 of the National Fire Protection Association (NFPA).

Amend Article III, Application and Approval Procedures, to amend fees and costs in accordance with LCHIP legislation.

#### **Section 170-17 Fees and Costs**

- A. The following fees shall be paid at the time of application.
  - 1. Application fee \$20 per lot (including voluntary mergers)

2. Notice Fee: The current cost of certified/return receipt mail postage per abutter or other person receiving notice.
- ~~2.3.~~ Recording Fee: Per sheet/document fee for plans and documents, according to the most recent fees established by the Rockingham County Registry of Deeds, as well as a \$25.00 LCHIP surcharge for each applicable recording.
- ~~3.4.~~ Subdivision Fees (final application phase submittals only)
- a. Minor Subdivision Applications (Maximum of three new lots with no new roadways or off-site roadway, drainage and/or utility improvements) \$350.00 flat fee.
  - b. Major Subdivision Applications (Any application not qualifying as a Minor Subdivision Application): \$350.00 base fee; plus \$50.00 per lot over 3 lots; plus \$1.50 per linear foot of new or improved public or private roadway.
- B. Plan review fees shall not apply to voluntary mergers or lot line adjustments.

Amend Article IX, Application and Approval Procedures, to amend fees and costs in accordance with LCHIP legislation.

#### Section 170-56 Fees and Costs

The following fees shall be paid at the time of application.

- A. Application fee (final application phase submittals only) \$100 per site.
  - B. Notice fee (design review phase and final application phase submittals only). The current cost of Certified/Return ~~Receipt~~ Receipt mail postage per abutter or other person receiving notice.
  - C. Recording Fee: Per sheet/document fee for plans and documents, according to the most recent fees established by the Rockingham County Registry of Deeds, as well as a \$25.00 LCHIP surcharge for each applicable recording.
- ~~D.~~
1. Non-residential Site Plan Review Applications: \$350.00 base fee; plus \$500.00 per acre of total land area to be disturbed by construction activity, on or off site.
  2. Multi-family Residential Site Plan Review Applications (including applications for approval of Independent Adult Communities): \$350.00 base fee; plus \$50.00 per dwelling unit; plus \$1.50 per linear foot of new or improved public or private roadway.
- ~~E.~~ Internal review & Escrow Development (final application phase submittals only)
1. Commercial / Industrial: \$250/acre or fraction thereof
  2. Multi-family Residential: \$20/unit (\$250 min)
  3. Single Residential: \$20 /unit (\$200 min) (Effective 5/18/05)

Amend Article V, Design and Construction Standards, related to engineering and construction requirements.

#### Section 170-26 Streets

16. Driveway curb cuts will be installed prior to the placement of wearing course of hot bituminous asphalt pavement. No driveway locations shall be amended or relocated once the curbing is installed and wearing course is in place. All proposed driveway aprons shall be constructed to a point 40 feet inward from the edge of pavement on all streets at the time of street construction. (Effective 5/18/05)

**All Driveways Shall:**

- Slope away from the edge of the road at no less than 3% for open drainage and slope toward the road at no more than 3% in closed drainage subdivisions for a minimum of 10 feet.
- Maximum grades allowed for next 30 feet are 5% and -5% respectively.
- Be no wider than 24 feet except that the Driveway may be flared at the entrance.
- Have a minimum site distance of 200 feet in both directions 10 feet from edge of traveled way.
- Be constructed with a minimum of 12 inch depth of NHDOT Crushed Gravel 304.3 Specification for entire length and width.
- Include minimum 2" thickness of bituminous asphalt base course pavement between EOP and ROW.
- Be completed along new roadways as part of the road drainage feature as a factor for Substantial Completion and Eligibility of Occupancy Permits.
- Be completed along existing roadways as part of the road drainage feature as a factor for completion of all off-site improvements and Eligibility of Occupancy Permits.

**Section 170-29 Storm Drains**

- K. Storm sewer and appurtenances shall be constructed of materials in accordance with the standards set by the Public Works Department for the Construction of Storm Drains, latest edition. All catch basin grates and frames shall be heavy duty gray cast iron meeting ASTM A48 Class 30 (American Foundry) with a 24" x 24" opening a two inch (2") square opening pattern on grate, unless otherwise approved by the Planning Board. Polyethylene liners shall be installed in all proposed catch basins. (Effective 5/18/05)  
All grates or hatches at outlet control devices shall be fabricated from stainless steel or hot dipped galvanized steel (ASTM A123/A123M).
- L. No underground storm water collection basins or infiltration systems shall be permitted.

Amend Article XI, Design and Construction Standards, related to engineering and construction requirements.

**Section 170-65 Stormwater Management Requirements**

- J. Storm sewer and appurtenances shall be constructed of materials in accordance with the standards set by the Public Works Department for the Construction of Storm Drains, latest edition. All catch basin grates and frames shall be heavy duty gray cast iron meeting ASTM A48 Class 30 (American Foundry) with a 24" x 24" opening a two inch (2") square opening pattern on grate, unless otherwise approved by the Planning Board. Polyethylene liners shall be installed in all proposed catch basins.

All grates or hatches at outlet control devices shall be fabricated from stainless Steel or hot dipped galvanized steel (ASTM A123/A123M). ~~All storm drains shall be constructed with reinforced concrete or high density polyethylene pipe unless otherwise approved by the Planning Board.~~

- K. **Underground Detention Basins:** No arches shall be permitted. Pipe materials shall be dual wall HDPE or RCP with H20 loading capacity. Bedding for pipe systems shall be a

- minimum of twelve (12) inches of  $\frac{3}{4}$ " washed stone below invert to spring line of pipe. The trench width extents shall be two (2) feet greater than the nominal pipe size or a minimum of three (3) feet, whichever is greater. Filter fabric shall be placed securely over all stone and sand placed to one (1) foot over top of pipe compacted in six (6) inch lifts. All underground detention basins shall start from a minimum four (4) foot diameter precast concrete drain manhole or catch basin and terminate at a minimum four (4) foot diameter precast concrete drain manhole or catch basin that is designed to control discharge according to the stormwater management plan. All materials and fasteners related to construction of flow control devices shall be constructed of stainless steel. The minimum depth of cover from the pavement or ground surface to the crown of the pipe shall be not less than three (3) feet.
- L. Infiltration Systems:** Test pits must be completed and logged on the plans showing the estimated seasonal high ground water level and soil classifications as determined by Certified Soil Scientist in New Hampshire. The bottom of proposed infiltration Systems must be a minimum of two (2) feet above the seasonal high ground water level and or two (2) feet above ledge. Infiltration Systems shall only be permitted in areas of permeable soils with percolation rates of two (2) minutes per inch or better. No arches shall be permitted. Pipe materials shall be dual wall HDPE with H20 loading capacity. Bedding for pipe systems shall be a minimum of twelve (12) inches of  $\frac{3}{4}$ " washed stone below invert to spring line of pipe. The trench width extents shall be two (2) feet greater than the nominal pipe size or a minimum of three (3) feet, whichever is greater. All infiltration systems shall start from a minimum four (4) foot diameter precast concrete drain manhole or catch basin. In the event of failure, all infiltration systems shall be designed with an outfall. The minimum depth of cover from the pavement or ground surface to the crown of the pipe shall be not less than three (3) feet.
- M.** Underground Detention Basins and Infiltration Systems shall be designed to optimize access for maintenance purposes. A maintenance plan shall be included with the plan that details inspection and cleaning activities and be incorporated into the deed of the property.

## Article XX. Agricultural Livestock.

Section 165-154. Agricultural livestock (including any hoofed animal) will only be permitted on lots containing one or more acres. All buildings, pens, runs and kennels (excluding pastures) will meet all requirements set forth herein including setback requirements.

Section 165-155. At no time shall a public nuisance be created as to sight, smell or any other action that would interfere with nearby property owner's rights. Exempted from this provision are domestic pets (as defined in the definition section). Roosters and peacocks are not permitted on lots less than three acres.

Section 165-156. All such animals shall be properly housed in structures designed to adequately provide shelter for the particular type of animal(s) being kept.

Section 165-157. All such animals shall be properly enclosed. Fencing shall be adequate to prevent the animal escaping and trespassing on public or private property. Single strand electric fencing will not be allowed. All enclosures must be located a minimum of ten feet from any property boundary.

Section 165-158. Waste manure shall be stored or stockpiled at a minimum of 75 feet from wetlands, waterbodies, drainage swales and a minimum of 150 feet from abutting houses and in such a way to prevent runoff from reaching such areas. Waste manure cannot be stockpiled so as to create a nuisance or health hazard. Reference is made to Guidelines and Best Management Practices, a copy of which is available in the Code Enforcement office.

Section 165-159. Commercial piggeries, mink farms or rabbitries established for the raising, care, and keeping of pigs, minks or rabbits as business in any district shall not be permitted. The raising of pigs or rabbits for one's own home shall be permitted, providing that in so doing, a public nuisance is not created and the operation does not offend by reason of the emission of smoke, noise, odors or fumes.

Section 165-160. Commercial dog breeders or kennels (greater than two litters per year) need approval from the Zoning Board of Adjustment if located on a residentially zoned lot. At no time shall a nuisance be created by reason of noise that affects abutting properties.

Definitions to be added to Definition Section:

**Domestic pets** shall mean animals commonly kept as household pets such as dogs, cats, small caged animals and birds and caged reptiles.

**Agricultural livestock** means any hoofed animal.

**Hoofed animal** means horse, cow, sheep, goat or like animal.

**Fowl** means chickens, roosters, ducks, geese, etc.