

The Planning Board for the Town of Derry held a public hearing on Wednesday, August 20, 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, Chair; David Granese, Vice Chair; Randy Chase, Administrative Representative; Brian Chirichiello, Council Representative; Phil Picillo, Mark Cooper.

Alternates present: Maureen Heard

Absent: Jan Choiniere, Gary Stenhouse, Ann Evans, John O'Connor, Richard Tripp, George Sioras, Director of Community Development

Also present: Elizabeth Robidoux, Planning Clerk; Mark L'Heureux, Engineer, Derry Public Works; Robert Mackey, Code Enforcement.

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.

Ms. Heard was seated for Mr. Cooper who was present, but recused from the public hearings due to conflicts.

Escrow

There were no escrows to discuss this evening.

Minutes

The Board reviewed the draft minutes of the July 16, 2008 meeting and the August 13, 2008 site walk of the Cooper property. There being no changes noted, the Chair accepted the minutes as written.

Correspondence

Mrs. Roach acknowledged the following correspondence.

Tighe and Bond has copied the town on a Permit by Notification for PSNH, with regard to utility pole maintenance project within the Town of Derry. A copy is on file in the Community Development office.

Other BusinessRequest for extension of approval – H&B Homes

Mrs. Roach advised the Board has received a request from the applicant to extend the conditions of approval. All members have a copy of the request to extend the approval. This is the third request.

Attorney Peter Bronstein presented for the applicant. He provided the Board members with a letter outlining the reasons for the request for extension of approval of the 4 lot subdivision which will expire on September 7, 2008. The principal condition that cannot be met is the recording of the subdivision plan in Windham as there are several substantive issues that are holding up the final approval in that town so that they can record the Windham plan.

They were poised to construct the road in Derry prior to the end of the 2008 construction season, but that condition could not be met. The first issue is that the Windham subdivision was designed with a water system. Due to the cost of the proposed system, the amount of time involved, and the additional conditions imposed by the state, the applicant has revised the plan to utilize individual wells. That approval is now at the state level. Windham has approved the change, but a state subdivision approval is required. The second issue is the upgrade to the intersection of Route 28/Windham Depot Road/Kilrea Road. Originally, the upgrade of that intersection was on the State 10 year plan. Since the approval of this subdivision, it has been removed from the 10 year plan. The applicant is willing to do the work; the issue is the relocation of the utility poles, which will cost upwards of \$250,000.00, unless the state is involved and can do some of the work. Joe Maynard of Benchmark Engineering is working with DPW to get this intersection upgrade back on the State's 10 year plan. He has spoken with NH DOT and is attempting to obtain a memorandum of understanding. The third issue is the curb cut on Northland Road in Windham. They are waiting for state approval of this curb cut for Spruce Pond Estates – Phase II, for the required turning lane on Route 28. The Derry subdivision ties into this portion of the Windham plan. The fourth item is approval of the conservation easement documents by the Windham and Derry Conservation Commissions and Derry Town Counsel. That is in process.

Attorney Bronstein stated he felt it made sense to grant the extension of approval. There have been no changes in zoning, granting the extension does not affect the rights of the public, and not granting it would cause the applicant financial hardship. He does not feel that granting the extension would set precedent as in this case each town made its approval dependent on the other town. They are being held up by state approvals. He noted Brian Harvey of H & B Homes is present to answer any questions.

Mr. Picillo said he appreciated the logistics of the plan. He wondered if at this point, it was financially feasible for the applicant to construct the four lots in Derry. Are they that important to the plan? Will it cause a financial hardship if the lots are not approved? Attorney Bronstein explained that subdivision provides the third means of egress for the Windham subdivision. All approvals are dependent upon each other.

Mr. Picillo inquired of Mr. L'Heureux how the Route 28 improvements impact Derry? He recalls the Board wanted the improvements to assist with traffic issues and the applicant was gracious enough to say he would do the work. Are they now not going to do it? Attorney Bronstein stated they are being held up by movement of the utility poles. They are not backing away from the project, but would like to obtain some help from the state.

Mr. Chirichiello inquired what would happen if this intersection improvement does not go back onto the State 10 year plan? What hardship does it cause? Attorney Bronstein said they hope to get contributions from another source, and may have to do the work themselves.

Mr. Chirichiello inquired if they are waiting for Windham to approve the plan? Attorney Bronstein indicated they are before the Windham Planning Board this evening to discuss a cistern at this development. Mrs. Roach noted that in January, it was made clear that the applicant would build the four lots and only needed 4 months to obtain the necessary approvals. The Derry Planning Board did not want its approval based on Windham. She also feels that granting a third extension sets precedent. The Board has been known to turn people away after one extension.

Mr. Chirichiello asked if there is any hardship if the request is denied? Attorney Bronstein said they could re-submit a plan next week. He does understand the concerns of the Chair, but the approvals are dependent upon each town. Mr. Chirichiello inquired if the request is denied, will the applicant be back before the Board? Attorney Bronstein explained it would depend upon when the engineer could get the re-application prepared. It would be in short order. Mr. Chirichiello asked can the Board grant a 2 month extension? Mrs. Roach said the Board has already been through this. Jim MacEachern had indicated a concern that the applicant might need a year to get all of the approvals in place and Neal Ochs had the same concern when the applicant requested the last extension. The Board does not normally grant 3 extensions. What if the applicant comes back in 2 months and requests another extension? Where does the Board draw the line?

Mr. Picillo inquired what would denying the extension do to Windham? Attorney Bronstein said it would delay the Windham conditions of approval. They want Derry's approval because it provides a third way out. Mr. Picillo noted that if an extension is approved this evening, it would expire in March of 2009. Ms. Heard

pointed out that is 2 years beyond the original approval date. Mr. Picillo commented the precedent concerns him, but he is more concerned with the improvements to Route 28 because as a Board, they were unified that work should be done. Mrs. Roach said that improvement is not tied to the Derry approval; it is tied to the Windham subdivision. Mr. Picillo said he felt the applicant will be back in six months asking for another extension. He does not feel that March of 09 is enough time to obtain the approvals from the state. Of the four items, which will take the longest to get done? What is the timeline on the items?

Attorney Bronstein said the state subdivision amendment for the wells can take up to three months. Discussions have been initiated with DOT with regard to the intersection improvements in an attempt to obtain a memorandum of understanding with regard to the movement of the utility poles. He cannot put a timeline on that item. The curb cut in Windham will take a few months and the easement documents are being circulated. He is not sure of the status of that.

Mr. Picillo asked what is the memorandum of understanding? It is an agreement between the state, the town and the applicant, delineating who will do what. Mr. L'Heureux stated that can be a quick process or a long one. Sometimes the Town has a hard time coordinating with the state on projects. Mr. Chirichiello agreed and noted the improvements to the Derry downtown intersection was pushed back again and has been in the works for two years.

There were no further questions or comments.

Motion by Picillo to grant a six month extension to March 7, 2009 (or the next business day if on a weekend), seconded by Granese.

Picillo voted no. He is concerned with the uncertainty of the timeline; it is an estimate. His preference would be for the applicant to come back when the four items in the letter are complete and he is sure the Board will grant a speedy approval to the re-submitted plan so that the applicant can get the four lots and the improvements to Route 28 and the egress. He feels the applicant will need to come back for a fourth extension. Chirichiello and Granese voted no for the same reason. Chase abstained. Heard voted no. Roach voted no for the same reasons noted by Picillo, adding that she knows the applicant has done a lot of work, but feels the Board will be having this same discussion with the applicant in March. The motion failed.

Mr. Picillo advised if all of these items are complete in a month, the applicant should come back and the Board can schedule it. Mr. Chirichiello added if additional information is received within a month's time, the applicant should come back and the Board can reconsider its decision.

Southern New Hampshire Planning Commission Appointment Recommendations

Mrs. Roach confirmed with Mrs. Robidoux that no additional names have been added to the list of people to consider.

Motion by Picillo to send a memo to Town Council recommending the appointment of David Gomez, Joel Olbright, John Dowd, and Beverly Ferrante as full members and Brian Chirichiello as an alternate to the Southern New Hampshire Planning Commission. The motion was seconded by Granese.

Picillo, Granese, Chase, Heard and Roach voted in favor; Chirichiello abstained.

Public Hearing

Cooper and Associates, Inc.

Parcel ID 03119, Lawrence Road and Stark Road

Acceptance/Review, 10 lot subdivision

Continued from July 16, 2008

Tim Peloquin of Promised Land Survey presented for the applicant. He handed out revised plans to the Board members.

Motion by Chirichiello, seconded by Granese to accept revised plans. The motion passed unanimously.

Mr. Peloquin advised this is a 23.6 acre parcel located on the corner of Lawrence and Stark Roads. Stark Road is designated as a scenic road. Kevin and Mark Cooper Development, LLC propose to create 10 frontage lots. This has been before the Board, and a site walk was conducted last week to view the scenic road and other features. They have addressed the Jones and Beach comments in the first letter and have received the second review. There are three remaining comments that can be readily addressed. The plans before the Board this evening are those prepared in response to the first Jones and Beach letter.

Mr. Granese inquired if it has been determined where they will relocate the monument? Mr. Peloquin stated the Stark monument land is owned by the local chapter of the Daughters of the American Revolution (DAR), and it is located on the south part of Stark Road. They want to transfer the 36 square foot parcel to the corner of Stark and Lawrence into a 3903 square foot stone enclosure. DAR is excited about it. The monument will have visibility. He has not spoken to the DAR since the site walk. His client has been having conversations with DAR, and his understanding is that they are fully on board. It was noted the monument will be placed inside the stone sheep corral.

Mrs. Roach inquired if the road changes were acceptable to the DPW? Mr. L'Heureux indicated the applicant has made adjustments to the shoulder and swale and the revised roadway plan has been approved by DPW.

There was no public comment.

Mr. Peloquin advised they do have two waiver requests. Todd Connors of Sublime Civil Consultants explained the requests.

The first is a waiver from the road slope construction standards. They are requesting a waiver to allow a 2:1 embankment for the proposed roadside swale and cut improvements where the regulation calls for 4:1 slopes. This would be for the area from the bottom of the swale to the roadway on Stark Road. They would like to have the 2:1 slope to minimize the impact to the scenic road. Mr. L'Heureux noted that MHB did not have steep slopes to deal with on their subdivision which was approved previously on Stark Road. This request will still allow the 4 foot shoulder. This slope comes out of the swale and up the side. Mr. Peloquin reiterated the intent of the waiver is to minimize the tree cuts on the scenic road.

Mr. Picillo inquired as to the length of the roadway? Mr. Connors stated this would apply to all of the slope work along Stark Road. Mr. Peloquin noted the swale could be seen on sheets 11 and 12. Mr. Granese asked if this was discussed at the site walk? Mr. Connors said they will end up with a distance from the edge of pavement of 12 feet off the current edge of pavement and that is where the slope starts. Mr. L'Heureux said a slope of 2:1 is acceptable to obtain growth. Mr. Picillo inquired if there would be any drainage impacts? Mr. Connors said no.

Mr. L'Heureux had a question with regard to the second waiver which was from the required culvert pipe cover. This had been discussed in the field. Can 2 feet of cover be achieved? He wants to ensure the pipe can accommodate H20 loads.

Mr. Connors explained the second waiver is to reduce the amount of cover over the culvert from 3 feet to 1 foot. The ditch is 2 feet deep, and the culvert is 15". This gets a minimum of 1 foot of cover. The real issue is the strength of the pipe. He anticipated this question and has information regarding the loading of the pipe proposed to be used for the driveway culverts. The pipe can accommodate a tractor trailer axle load without damage. They feel that structurally, this is acceptable for this condition. Mr. L'Heureux reviewed the information and said it seemed acceptable. He would still endeavor during construction to obtain 2 feet of cover when they can as each crossing will be unique. Mr. Connors said they would be happy to pursue the waiver to 1' of cover and adjust the cover to 2 feet if they can in the field.

Mr. Chase inquired, given the waiver request, would DPW be more apt to want a closed drainage system or reinforced concrete pipe if they can only get one foot of cover, rather than using the poly pipe? Mr. L'Heureux said he is in favor of concrete pipe over poly in some instances, but if the ditch is shallow, concrete pipe will have less cover over the bells, which will make the driveway more susceptible to frost heaves. He feels what has been presented for drainage will work. This will be a substantial improvement.

Mr. Picillo inquired of Mr. Connors as to his position with regard to the one foot of cover as it relates to frost. He assumes the driveways will be asphalt at some point. Mr. Connors said one foot is not ideal pipe cover, but it is rather typical. If they try to get three feet of cover, such as in a closed drainage system, the downhill side would be below the ditch and it tends to be more invasive. He feels comfortable with the design as shown. Mr. Peloquin stated where the swale meets the driveway they may be able to make field adjustments and steer the swale towards the driveway to obtain more cover.

Ms. Heard inquired if there is any documentation from the DAR that they have approved this plan and think moving the monument is a good idea? Mr. Peloquin recalled an article in the *Derry News*. Mrs. Roach would like to receive a letter from the DAR stating they accept the monument being moved. Mr. Cooper stated the Chapter only meets once every four months. Mr. Picillo stated he thought this was being communicated to the DAR all along during this process. Mr. Cooper stated they voted on it and approved it at one of their meetings. Ms. Heard stated she would prefer to see a copy of the minutes of that meeting. Mr. Peloquin said he would make sure they provide that upon final approval and signature of the plans.

Mr. Granese had a comment with regard to the rock wall. The plan says it will be relocated. He wants to know where it is going. Mr. Peloquin directed the Board's attention to Sheets 11 and 12. Near lot 4 there is a note indicating the existing rock wall will be relocated to the top of the swale. The agreement with the Conservation Commission was that they would relocate the wall as feasible and it will be at the edge of the tree line. Mr. Granese stated he wants to be consistent with what was approved for MHB further down Stark Road because this is a scenic road.

Motion by Chirichiello to accept jurisdiction, seconded by Granese. All voted in favor.

Motion by Granese to approve a waiver from Section 170-26.A (17) of the LDCR to allow a 2:1 slope along the embankment of the proposed roadside swale rather than the required 4:1 slope. Picillo seconded the motion.

Chirichiello, Picillo, Granese, Chase, Heard and Roach voted in favor.

Motion by Granese to approve a waiver from Section 170-29.J, to allow a minimum cover of 1 foot over the driveway culverts where 3 feet is required. DPW will determine on site if 2 feet of cover can be obtained. Chirichiello seconded the motion.

Picillo, Chirichiello, Granese, Chase, Heard and Roach voted in favor.

Motion by Granese to approve the roadside improvement design pursuant to RSA 231:158-II, Scenic Roads, seconded by Picillo.

Mr. Chirichiello confirmed the Board had held a public hearing on this matter; Mrs. Robidoux stated that was the purpose of the July 16, 2008 hearing.

Chirichiello, Picillo, Granese, Chase, Heard and Roach voted in favor.

Motion by Granese to approve the application subject to RSA 676:4:I, Completed Application, subject to the following conditions: comply with the most recent JBE report; add note to the plan that the dwellings are constructed with sprinkler systems in accord with NFPA requirements; subject to owner's signature; subject to onsite inspection by the Town's Engineer; establish escrow for the setting of bounds, or certify the bound have been set; establish appropriate escrow as required to complete the project; obtain written approval from Doug Rathburn that the GPS disc has been received and is operable; note approved waivers on the plan; the above conditions be met within 6 months; a \$25.00 check, payable to RCRD should be submitted with the mylar in accordance with the LCHIP requirements; the rock wall will be relocated as is at the top of the slope; provide a letter from DAR approving the movement of the monument or a certified copy of their minutes of the meeting where they approved the plan to move the monument. Chirichiello seconded the motion.

Mr. Picillo inquired of Mr. Cooper if he had any involvement with the development on the other end of Stark Road? Mr. Cooper said he did not.

Chirichiello, Picillo, Granese, Chase, Heard and Roach voted in favor.

**Pennichuck East Utility
Parcel ID 05038, 1 Cabot Drive
Site Plan Determination pursuant to Section 170-51 of the LDCR
Water Booster Station**

John Boisvert of Pennichuck presented. Also present was Carl Foley of Meridian Land Services, Inc.

Mr. Boisvert advised the plan is for the Maple Hills Water Booster Station. The background of the project is as follows. The subdivision is serviced by Pennichuck's community water system. There are two community wells and treatment and storage facilities. The system is reaching its maximum useful life and water quality which requires a treatment system upgrade. They reviewed the options available beginning two years ago. They performed a cost analysis which included the option of an interconnection agreement with Derry, which ended up being lower than the cost to demolish and reconstruct their system. This spring, they met with town staff and have signed an agreement with the Town of Derry and Manchester Water Works. They have obtained an interconnection agreement with the Town of Derry. They met with DPW staff and this booster station will also be part of the town's upgrade on Bedard Avenue. Town staff determined a variance was required for the station and one was obtained from the ZBA in May of 2008. They presented the plan to the Conservation Commission which had no concerns as there are no impacts to wetlands or buffers. The Commission did request a few changes to the proposed screening plantings. A significant issue with this site was the appearance of the building, hence the additional notification of abutters on Cabot. The biggest issue for abutters is the screening of the facility and they have provided a landscape plan. The original landscape plan was modified at the suggestion of the Conservation Commission to plant trees that would be more acceptable. They have worked with staff through the TRC process and feel they have addressed the issues.

The station will be approximately 18 x 26 in size. The size may be reduced, but will not be larger. It will service 182 customers in the Maple Hills area with a water main upgrade that will pass fire flows into a portion of the Maple Hills system. They will put in a hydrant and decommission the existing fire cistern. The station is proposed to be single story with a pitched roof. The pumps will be electric, with a standby power source. The residents in the area need this station to accommodate the required water pressure.

The station will be unmanned, and will have approximately one trip per week to it. The station is fully automated and requires little activity at the site. The water mains will be underground and electricity will come from pole across the street, and run underground to the facility. They are still in the process of reaching an agreement with PSNH. This would prevent a new pole and overhead wires. There will be a generator, run by propane, to provide backup power. The propane will be stored in an underground tank.

Mr. Chase inquired if Pennichuck anticipated, with the increase in pressure and flows, given the issues with the existing system, that there will be increased water main breaks? Mr. Boisvert stated they have had water main breaks in the area. The new system will maintain the upper and lower ends as it does now. They will not go outside the acceptable operating range. The system will be on a variable speed drive to maintain the pressure, while the flow will vary. They

installed the same system on another project and went from 52 leaks in 52 weeks to less than 8 leaks the following year. There may be main breaks, but there would be no more or less than there are now.

Mr. Granese inquired as to the color of the building? He noted the plan states it will be vinyl sided. Mr. Boisvert said it would be white clapboard with fake windows that will be black. Currently the lot is open space with a cistern. Mr. Foley presented photos of the site to the Board. The photos were retained for the record.

Mr. Granese inquired as to the location of the propane tank as it is not indicated on the plan. Mr. Boisvert said it would be in front of the building, tucked up to the building. Mr. Granese inquired in which direction does the generator exhaust face? It faces towards the Watt's property; if someone was facing the building on Bedard Ave, it would exhaust to the right. The generator is equipped with a critical silencer and will run in the 50-55 dB range. It may run for half an hour each week for exercises and during power outages.

Mr. Picillo inquired if Mr. Boisvert anticipated or had a concern for vandalism at this station? Will the station require a fence? Mr. Boisvert said at this time, they have no plans for a fence. Vandalism is a concern and that is why they went with the vinyl siding. The abutters did not want to see chain link fence around this station and they wanted the building to be low. This is a well traveled intersection and is not remote. Mr. Picillo felt the building might be a target, given the recent issues with school properties.

There was no public comment.

Mr. Chirichiello confirmed the generator will kick on when the power goes out. Mr. Boisvert added that if one were to stand at the door of the station, one might hear the pump running. An abutter is not going to hear it. Mr. Chirichiello asked for more information regarding the landscape plan. Mr. Boisvert said there is a filled slope behind the station and they will plant fir/spruce. They will also plant along Cabot Drive. The key is to shield the building from views. Meridian performed a survey, noting locations of windows of abutters with the purpose of making sure that where the plantings are placed will block views of the building from those locations.

Mr. Chirichiello inquired about the cistern. Mr. Boisvert stated the plan is to remove the top of the cistern, fill it in, and then regrade and loam and seed over it. They have a written agreement with the town to that affect. Mrs. Roach requested that a note be added to the plan. Mr. Chirichiello also inquired if the site will be lit at night? Mr. Boisvert stated they will have a down facing flood light that will be on a motion sensor in the event the station needs to be serviced after hours. The sensor light will not spill onto the road.

Motion by Granese to accept jurisdiction, seconded by Picillo. All voted in favor.

Motion by Granese to approve the site plan determination application pursuant to Section 170-51, Site Plan Determination including the site plan titled Proposed Booster Station dated June 18, 2008 amended to July 23, 2008 as presented, thereby waiving complete and formal site plan review, subject to the following conditions: subject to onsite inspection by the Town's Engineer; establish appropriate escrow as required to complete the project; obtain written approval from Doug Rathburn that the GPS disc is received and operable; the above conditions are met within 6 months; the Planning Board shall be provided with an As-Built plan; a note shall be added to the plan indicating the cistern will be filled in and loam and seed placed over the area and a hydrant will be installed per the agreement with the Town of Derry. Picillo seconded the motion.

Picillo, Chirichiello, Granese, Chase, Heard, and Roach all voted in favor.

Mrs. Roach added this will be a nice building.

Barbara Schibbelhute
PID 09084, 164 Hampstead Road
Acceptance/Review, 3 lot subdivision

Tim Peloquin presented for the applicant who was present in the audience. This is a 6 acre parcel with frontage on Hampstead and Olesen Roads. The proposal is for 3 lots. This plan was originally approved in November of 2006, and there was a one year lapse without acting on the conditions of approval. There were issues beyond the control of the applicant which did not allow the conditions to be completed. The applicant desires re-approval of the plan. Mr. Peloquin advised he met with Mr. Sioras, who suggested updating the State DOT driveway permit. That has been done and is in the file. TRC signatures were also obtained. This is the identical plan that the Board approved in November of 2006. The monuments have been set, and that will be indicated on the mylar if the Board deems this plan acceptable.

There was no public comment.

Mr. Chirichiello asked for confirmation that this will be for 2 new house lots. Mr. Peloquin explained the intent is to subdivide off two new building lots from the existing lot which contains the applicant's home. One lot will front on Hampstead Road, the other new lot will front on Olesen Road. Mr. Picillo inquired if anything had to be done for the new driveway? Mrs. Roach advised the town will only have purview over the driveway on Olesen as Hampstead Road is a state road. Mr. L'Heureux noted this is a fairly flat property and he does not foresee any issues achieving the appropriate slopes.

Mr. Chirichiello inquired as to the location of the wells? Mr. Peloquin advised there is an abandoned well noted on the plan on the applicant's lot. One lot will be on Pennichuck water service, the other will be served by a private well. The applicant is serviced by town water.

Motion by Granese to accept jurisdiction, seconded by Chirichiello. All voted in favor.

Motion by Granese to approve the application pursuant to RSA 676:4:1, Completed Application, subject to the following conditions: subject to owner's signature, subject to onsite inspection by the Town Engineer; establish escrow for the setting of bounds or certify the bounds have been set; establish appropriate escrow as required to complete the project; obtain written approval from Doug Rathburn that the GPS disc has been received and is operable; the above conditions are met within 6 months; and a \$25.00 check, payable to RCRD should be submitted with the mylar in accordance with the LCHIP requirement. Chirichiello seconded the motion.

Picillo, Chirichiello, Granese, Chase, Heard, and Roach all voted in favor.

**Greenwood Realty Trust
PID 03094, 179 Rockingham Road
Site Plan Determination pursuant to Section 170-51 of the LDCR
Change in use to auto sales**

Dan Koravos of DK Engineering presented for the applicant. Robert Hersey was also present.

Mr. Koravos advised this is the site of the Kindellan Woodworking that burned down. The color sheet that he handed out was taken from the Town GIS and shows the lot as it was prior to the fire. Sheet 2 of the plan shows the previous store; the existing garage, as well as the original paved entrance. The intent is to have a change in use to an auto dealership. The plan is to modify the driveway entrance to 24 feet wide and create a display and parking area for visitors and employees. He showed the paved area on the plan which is shaded in gray. They intend to have 7 spaces for visitors. There will be no new structures to be built. They will use the existing garage as a sales office and everything with exception of the paved area will remain the same. There is an existing building and septic in the back and water comes from well on an abutting lot. The only other improvements would be the addition of lighting. The current light in the middle will be moved to the side and a new light added. .

They will sell cars but will need an area in the garage to inspect the cars for state inspection stickers. There will be no oil changes performed on this site, nor gas

sales. The only work will be that required to prepare cars to pass inspection standards. The well is on a different lot and the applicant has an easement with rights to the well. The easement plan is in the file. Mr. Chirichiello inquired if there were any MTBE issues on the site? There are none that the applicant is aware of.

There was no public comment.

Mr. Picillo confirmed there will no longer be furniture manufacturing at this site. With regard to liquids, does the state or town grant environmental permits? Mr. L'Heureux advised the applicant will need a business permit from the state. Robert Mackey, Code Enforcement Officer, explained there are no environmental permits issues through his office. Mr. Chirichiello said he would have an issue if cars were being repaired on this site. He believes there were MTBE issues on Frost Road, but they did not have anything to do with this site. He wants to be cautious for the abutting properties on Frost Road. Mr. Mackey recalled there were issues on Frost Road. The state did find MTBE in the wells and treatment systems were installed. The state was not able to find out the cause and is still monitoring the wells. The levels have decreased.

Mr. L'Heureux stated during TRC changes had been discussed to ensure there was a proper storm chamber system. He asked Mr. Koravos to look at the recent changes made to the LDCR with regard to test pits and soils. Mr. Koravos stated they used the previous test pits performed for the septic plan and used existing soils information. The changes to the system from what was originally proposed include roof runoff draining to an infiltration system. There is not much of an increase in runoff. The roof runoff is non contaminant and will infiltrate. Mr. L'Heureux stated he is looking at capacity of the soils to absorb water in relation to the groundwater level. The applicant will need to meet the regulation which was changed earlier this summer. Mr. Koravos said that even without mitigation, the increase in runoff is minimal, approximately a few tenths of CFS in a 25 year storm. He does not see it as an issue and they will comply with the regulation.

Mr. Granese confirmed the hours of operation are as noted on the plan, 8:00 a.m. to 8:00 p.m. Where will the light pole be relocated? What type of fixture will be used? Mr. Hersey indicated the light points downward and into the site, and will have shields on the abutting side. It will be similar to what PSNH puts up, with shields. At least one light would be on at night for security purposes. Mr. Picillo inquired with regard to signage. Mr. Koravos advised they will use the existing sign.

Mrs. Roach advised there shall be no repairs performed at this site, the use is limited to inspection stickers and auto sales for up to 40 cars. A note to that effect should be added to the plan. Mr. Picillo requested the drainage on site meet the requirements contained in the LDCR.

Motion by Chirichiello to accept jurisdiction, seconded by Picillo. All voted in favor.

Motion by Granese to approve the site plan determination application pursuant to Section 170-51, Site Plan Determination, thereby waiving complete and formal site plan review, subject to the following conditions: subject to onsite inspection by the Town Engineer; establish appropriate escrow as required to complete the project. The above conditions shall be met within 6 months. There will be no repair of vehicles conducted on site, only what is necessary for inspection stickers. This shall be added as an additional note on the plan; drainage shall meet the requirements of the LDCR, and shall be subject to review by DPW. Chirichiello seconded the motion.

Picillo, Chirichiello, Granese, Chase, Heard and Roach all voted in favor.

Mrs. Roach announced a five minute recess prior to the Board entering a workshop on the Animal Ordinance. The Board recessed at 8:38 p.m.

WORKSHOP

Animal Ordinance

The workshop was not televised and began at 8:42 p.m. Robert Mackey, Code Enforcement Officer presented the proposed ordinance. Mr. Mackey advised this is the third workshop on this ordinance. After the last workshop the suggested changes were incorporated into the draft. Minor modifications had been made to bring it in line with the comments. The result is what is found on page 2 of the handout. The first page shows the changes. The draft ordinance is pretty basic at this point. The two acre minimum has been pared down to a one acre minimum for cows and horses. Provisions are provided with regard to nuisance that will give Code Enforcement and Animal Control some teeth when something rises to the level of a nuisance. The Board had removed "public" from "public nuisance" at the last meeting, which makes it better from an enforcement standpoint.

The ordinance provides an outline for shelter, enclosures, setback and manure management. He did check various resources after the last workshop and there is nothing in the state regulations with regard to setbacks to abutting properties. He did look at the nuisance section. The sentence that exempts domestic pets can become an issue – he is investigating one now- and he would suggest that sentence be removed.

Marlene Bishop provided Mrs. Robidoux with her suggested changes to the draft and those suggestions have been provided to the Board. In the first section, she would like to remove "unless an exemption is granted by the Animal Control Officer." She agreed with the removal of the sentence in the second section with

regard to exempting domestic pets. Under the definitions, she wanted to add sheep, goats and pigs to the definition of agricultural livestock. At the last meeting, the Board had been very clear about limiting that definition and wanted it limited to cows and horses.

Mr. Mackey feels this ordinance has been pared down to a minimum and this may be it.

Mr. Granese stated the Board has been working very hard on this, especially Ms. Evans. With regard to Ms. Bishop's suggested change in the first section with regard to her granting exceptions, she can always say no. Mr. Mackey advised Ms. Bishop was unable to attend the meeting this evening. Mr. Granese said he assumed there is a town ordinance with regard to barking dogs, so he can't see removing that sentence from section 2. Mr. Mackey said there are regulations with regard to barking dogs, but he is not sure it covers all domestic pets such as cats. He and Mrs. Robidoux had discussed this section and it could be that a goat could become an issue and a resident could say that it is a "pet", which would make it exempt from the nuisance provision. That is why he would like that sentence removed from section 2.

Mr. Chirichiello said he had no issues with Ms. Bishop's suggested changes. It would take the onus off her so that she is not accused of favoritism. Will this be in the LDCR? Mrs. Roach advised Council had requested this be placed in the Zoning Ordinance. This went to Town Council as an issue and they sent it to the Planning Board. Mr. Chirichiello thought it was supposed to be in the LDCR. Mr. Mackey said most towns keep this type of ordinance in Zoning. 20 years ago, it was proposed as a standalone ordinance, but did not pass. Town Council determined they wanted this part of the Zoning Ordinance.

Mr. Chase said he agreed with the changes to the definition of livestock. Hoofed animals had been crossed out because the Board did not feel sheep and goats should be under the one acre minimum. He has no issues with the proposed changes other than that.

Mrs. Roach said she was okay with removing the exception provision from section 1, but did not want to reinvent the wheel on the rest of the ordinance and reinsert sections. She would like this to move forward. Mr. Granese suggested incorporating the first change but nothing else.

Mr. Picillo agreed with not putting Ms. Bishop in a position that would be uncomfortable but feels this whole ordinance creates a new set of enforcement issues for Animal Control and Code Enforcement.

Mr. Mackey suggested not adding the word "exotic" before birds and keeping agricultural livestock as is.

The Board agreed to the following change to the draft: Section 1: remove the wording, "...unless and exemption is granted by Derry Animal Control."

Mrs. Roach opened the floor to the public if they had new comments.

Robert McCullough, 1 Squamscott had concern with the definition of fowl. There are other fowl, for example guinea hens. He also felt there needed to be a restriction on how many fowl can be kept; there should be some sort of limit. Mr. Chase felt that 500 guinea hens would rise to the level of a nuisance and that would be handled under the nuisance provision. Mr. Mackey recalled the Board discussed limits and had talked about limiting roosters to a 3 acre minimum, but after due consideration, removed that limitation. He is familiar with the situation near Mr. McCullough and feels this second section will help with that. Mr. Chirichiello had a concern with the domestic pet exemption. Mr. Mackey said if that sentence is left in, someone can claim a nuisance animal is a pet. There was discussion regarding the specific type of bird defined under "fowl". Mrs. Roach noted a peacock could be deemed an "exotic bird", but peacock is defined under "fowl". The Board did not feel people would complain about birds. Ms. Heard suggested adding "not including fowl" just after "birds" in the definition of "Domestic Pets". The Board agreed.

Mr. McCullough asked who shall residents contact at 2:00 a.m. when an animal is a nuisance? Mr. Mackey said the residents should start by documenting the issues so that a good record can be constructed. There is a good start on that in Mr. McCullough's neighborhood. This ordinance will need to go to public hearing and then to Town Council, which will schedule their own public hearing. If Town Council approves the Ordinance, it will go into effect 30 days after their approval.

Mr. Granese noted the Board has been working on this diligently. Mr. Mackey noted the final version of the Ordinance will be up to Town Council and what the Board comes up with can be further modified. Mr. Chirichiello stressed that residents should get in touch with their Councilors and the three Councilors-at-large, and let them know how they feel about this. It is important that the Councilors are aware of how their residents feel ahead of time.

Mr. Picillo inquired what would be grandfathered in this ordinance? Mr. Mackey said items such as setbacks and acreage. Things like nuisances, manure storage, and enclosures would not be grandfathered.

Les Seaboyer, resident, felt there was a clash of transitioning culture occurring in the town. This has traditionally been a farm/agricultural community and it has evolved over the last 20 years which is resulting in this clash of cultures. More people are creating mini-farms, and the majority of people take good care of their animals and property. Many builders have covenants in place that make it very clear what residents can and can't have on their property. He feels the Board needs to further address the manure storage section. The average house lot is

normally 150 feet wide and 175 to 200 feet long. The challenge is that homes are built staggered to each other and the way a house is set up may create a challenge for an owner with regard to manure storage areas. He feels the Board should look at that. Also, the definition of agricultural livestock excludes miniature horses. Is one horse on one acre much more of a challenge than 10 miniature horses? He feels a horse is a horse and this definition opens a challenge. What defines a mini-horse? He requests the Board take into consideration more reasonable accommodations with regard to the 150 foot manure storage setback. He noted "dog kennels" bounces in and out of the agricultural livestock portion of the ordinance. He defines a kennel as a fenced enclosure – does that push residents to a one acre minimum? Mr. Chirichiello advised there are state regulations with regard to kennels. Mr. Seaboyer confirmed the Board meant 'kennel' to define the number of animals, not the enclosure. He also felt guinea fowls needed to be specifically included in ordinance. They take care of ticks but are very boisterous. Regarding covering of enclosures, he has a friend who has a poly-mesh net over the enclosure and it ends up on the ground during winter months because of the weight of the snow. He is personally in favor of clipping wings to keep the birds from flying.

Mr. Granese inquired what would Mr. Seaboyer suggest for minimum distance for manure storage? Mr. Seaboyer felt 50 feet was sufficient, unless someone is grandfathered, it will create an issue for some. He would not have an issue with that distance to his home if the manure storage was properly maintained. Mr. Granese said that is why the Board felt 150 feet was a better distance. Mrs. Roach noted the 150 feet is the distance to the house not the lot line. Mr. Chirichiello said the ordinance needs to be reasonable and have some give and take.

Mr. Seaboyer inquired what constitutes a nuisance? He felt the term was subjective. Some might find two chickens to be a nuisance. He can understand and respect the reason the Board feels the manure storage distance should be 150 feet, but feels it may unreasonably restrict some people. Mr. Granese suggested documenting nuisances with things like cameras or video. That creates a good record. With regard to the roof on enclosures, if someone has an issue, they should make the enclosure more structurally sound.

Mr. Chirichiello felt this draft ordinance is a starting point. The Board is trying to be responsible to all parties and Mr. Seaboyer brought up good points. Mr. Seaboyer said his concern is that there is some middle ground. Mrs. Roach noted in her neighborhood, of the 4 people who keep horses, only one of them maintains them well. This ordinance has been pared down from 4 pages to 1.

Mr. Seaboyer asked what is the Board's position on grandfathering? Mrs. Roach stated items such as fencing and roofing need to be updated. Mr. Mackey said lot sizing would be grandfathered, but items such as proper fencing and manure storage and disposal would apply and not be grandfathered. Mr. Chirichiello said

if the town receives a complaint, it will be responded to. If people are responsible, there will not be any issues. Mrs. Roach noted it is a shame 5% of the people resulted in this ordinance.

Mr. Seaboyer suggested the court be educated to the challenges that are before the town and how it works. He has seen situations where people need to be brought back into the norm, but does not want the town to become extreme on either end. The Board indicted this is what they are trying to do. Mr. Chirichiello said there will be more opportunity for public input at the public hearings.

Inga Seaboyer, 56 Scobie Pond Road, had a question specific to her situation. She has chickens on a small non-conforming lot; she also owns an abutting lot that has greater than 20 acres. She felt this is a situation where allowing the Animal Control Officer to grant an exception would be helpful. Do the setbacks apply in her instance? She wants to follow the rules of the town. Mr. Mackey said she would fall under an existing condition with regard to the setback and would be grandfathered for that. Any new uses would be subject to the ordinance. Mr. Picillo asked the public to keep in mind this is a preliminary draft and is subject to change during public hearing.

Sean Wilson, 42 Kilrea Road, said this is the first time he has been involved in a process such as this and he wanted to thank the Board for what they have done.

Mrs. Roach advised the ordinance will be placed on the September 3, 2008 public hearing to schedule a public hearing.

Ms. Heard inquired if the Board would object to adding guinea hen to the definition of fowl? The Board agreed to the addition.

Motion by Chirichiello, seconded by Granese to adjourn. Motion passed and the meeting stood adjourned at 9:25 p.m.
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