

The Planning Board for the Town of Derry held a public hearing on Wednesday, September 3, 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; Gary Stenhouse, Town Administrator; Mark Cooper, Ann Evans,

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

Absent: Phil Picillo

Also present: George Sioras, Director of Community Development; Elizabeth Robidoux, Planning Clerk; Todd Connors, Sublime Civil Consultants.

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.

## **Escrow**

### **#08-34**

#### **Brandyrock Estates**

#### **GRD Realty, LLC**

#### **04046, 04056-001, 04056-002, 04054-001, Gulf Road**

The request is to approve Release #1 in the amount of \$720,684.93 for the above noted project. The amount to be retained is \$248,373.07.

Motion by Granese, seconded by Choiniere, to approve Release #1 as requested. The motion passed unanimously.
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## **Minutes**

The Board reviewed the draft minutes of the August 20, 2008 meeting. There being no changes noted, a motion was made by Choiniere, seconded by Granese. Ms. Evans and Mr. Stenhouse abstained.

## **Correspondence**

Mrs. Choiniere acknowledged the following correspondence.

There will be an update meeting with regard to the Brownfields program on September 18<sup>th</sup>. Several sites in Derry have been identified as a brownfield site; for more information on the meeting, members should see Mr. Sioras. Mr. Sioras noted that Craig Durrett, of the Department of Public Works will be attending as Derry's representative. Mr. Stenhouse confirmed the date of the meeting and commented he would be speaking with Mr. Durrett with regard to the Difeo property which is on the list.

UNH Cooperative Extension is offering a course entitled *Landscaping at the Water's Edge*; this will be held at Keene State College on October 8 and 15<sup>th</sup>, anyone interested should contact the Planning Department.

The CTAP Cluster Workshop meeting has been moved from September 9<sup>th</sup> to October 7<sup>th</sup>; see the Planning Department for more information.

The Law Lecture Series has been announced; please see the Planning Department for more information or to sign up for the lectures.

The Board has received a new edition of *The Source*. The fall Planning and Zoning Conference will be held on Saturday, October 25<sup>th</sup> at Loon Mountain. Please see the Planning Office for more information.

The next meeting of the Planning Board, held on September 17<sup>th</sup>, will include the Master Plan Kick Off Session. There will be different topics covered and it is asked that people attend, or watch on CTV.

## **Other Business**

### Schedule Public Hearing – Agricultural Livestock Ordinance

Mr. Sioras advised the public hearing could be held on September 17<sup>th</sup>.

Motion by Granese, seconded by Choiniere to hold the first public hearing on the proposed Agricultural Livestock Ordinance on September 17, 2008. Discussion followed.
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Ms. Evans stated she was sorry she missed the last workshop. She did send emails to Marlene Bishop and Bob Mackey regarding the part of the proposed ordinance that deals with nuisance caused by sound. She felt that section may need some tweaking. This draft can still go to public hearing if no one agrees it needs more work. Her fear is that a salaried employee will be spending a lot of time responding to clucks and crows. Mrs. Roach noted the Board did not continue the workshop, therefore the Board should schedule the public hearing. Mr. Sioras explained the process is that the Board works on an ordinance in draft

form during workshops. The Board then schedules a public hearing during a public meeting, and then holds the public hearing. If there are changes made that are more substantive rather than editorial, then a second and sometimes third public hearing is held. This change can't be made until the public hearing because it is more substantive than editorial.

Mr. Granese stated the Board has worked diligently on this ordinance. Ms. Evans did a lot of work on it and he thanked her for that. The Board did discuss the nuisance section at the last workshop. Mr. Granese reported he had suggested that nuisance complaints should be documented so that town staff is not running off to investigate one cluck. The Board had also discussed the existing dog ordinance.

Mrs. Roach commented at the initial public hearing, the Board will hear additional information and receive input from the public. The Board can deal with the nuisance provisions at that time.

The motion carried with all in favor.

#### Request to reconsider denial of extension – H & B Homes

Mrs. Roach advised the Board has received a request to reconsider the decision made at the last meeting to deny the extension for the Middleridge subdivision. Attorney Boutin has provided a response and the Board took a few minutes to review the pertinent documents.

Mrs. Roach advised the Board needs to discuss the letter from Soule, Leslie, Kidder, Sayward and Loughman, and then take action to record what the Board is doing. A motion would be in the affirmative to reconsider the extension. Ms. Evans noted she was not present at the last meeting; would she need to abstain? Mrs. Roach stated she is not so required. The motion would have to be made by someone who was present and had voted on the prevailing side, but she did not feel that Ms. Evans need not vote on it; that would be Ms. Evans' decision.

Mr. Granese confirmed there were no representatives from H&B Homes present.

Motion by Granese to reconsider granting an extension on the Middleridge subdivision approval, seconded by Chirichiello.

Chirichiello: No. No new information has been presented to change his mind.

Stenhouse: Abstain; was not present at the last meeting although he read the minutes and correspondence.

Granese: No. Does not see new evidence; also there is no representative present.

Chase: Abstain, as he did during the last vote.

Cooper: Abstain

Evans: Abstain  
Choiniere: Abstain  
Roach: No.

The motion failed by a vote of three against with five abstentions.

### Subcommittees

The Board briefly discussed holding off on this discussion as Mr. Picillo was not present. Mrs. Roach suggested the committee members should schedule their first meeting within the next four to six weeks. Mr. Sioras, herself, and Mrs. Robidoux should be informed of the date and time of the meetings so that Mrs. Robidoux can publish a notice of the meeting. The meetings do not require public input. Mr. Sioras noted the subcommittees can meet during off nights, after public meetings, during the day, or off site. Meeting rooms are available at the Municipal Center. He noted the Kick-Off meeting on the 17<sup>th</sup> is a brief informational meeting to explain the Master Plan update process.

### **Public Hearing**

#### **Samuel Kershaw**

#### **Parcel ID 03087 & 03089, Rockingham Road Acceptance/Review, Lot Line Adjustment**

Todd Connors of Sublime Civil Consultants presented for the applicant.

Mr. Sioras provided the following staff report. This is a subdivision plan of land located at the top of Ryan's Hill. The lots contain Pete's Scoop, the motel and a restaurant. The purpose of the plan is a lot line adjustment; the parcels are located in the General Commercial zone. Attached to the staff report is a letter from Sublime requesting several waivers; it is reasonable to approve the waivers as this is a lot line adjustment. Department signatures were not required for this application, nor were state permits required. He would recommend approval of both the waivers and the plan.

Mr. Connors advised that parcel 03089 contains the Robert Frost Motel; 03087 contains Pete's Scoop with cottages behind. The restaurant is located on another parcel [03087-001] owned by the Kershaw's and is not part of this application.

The proposal is to take one acre of land from the back of 03089 and adjust the lot line to place the acre on the Pete's Scoop parcel. They looked at the motel property and the one acre is an existing wooded area that is not being used for the home or the motel business. The owners would prefer to make it part of the Pete's Scoop lot. There is no site plan for the future use, but the applicants are making provisions to further the use of that property. They are requesting three

waivers from three separate sections of the LDCR, but the reasons for the waiver requests are the same. The waiver requests are from Section 170-24.A (11), (12), and (13). One is for the delineation of topographical information, another for HISS mapping and the third for wetland mapping. The reason they are asking for the waivers is that additional field work would be required and it is not necessary as the delineation of these items won't change the outcome or design of the plan. These are large lots. The motel sits on 6 plus acres and Pete's Scoop sits on 8+ acres. The intent is to transfer the one acre from the motel lot which will leave that lot with just over 5 acres. Since the acreage is over 5 acres, state subdivision approval is not required. They have met with Code Enforcement to discuss the lot sizing. The lot sizing is based on the septic flow rather than HISS mapping, so HISS mapping and mapping of the wetland does not change the lot sizing. This zone requires one acre plus 10,000 square feet for each 200 gallons per day (GPD) of sewage effluent after the first 200 GPD. They looked at the uses (ice cream dippers, employees, hotel use, and residences) of each property and placed this information on the plan. They used the calculated flow rate to determine lot sizing for each lot. The motel would require 4.2 acres and they are providing 5 acres. Pete's Scoop would require 2.2 acres and they are providing 9 acres. They are requesting the waivers from HISS mapping and wetland mapping as the information is not necessary to prove they meet the minimum lot size.

The Board had no questions at this time.

The floor was opened to public comment. Abutters had been present at the beginning of the meeting; they met with Mr. Connors while the Board discussed administrative business.

Nancy Griffin, 8 Skylark Drive, asked that if there is future construction or businesses proposed on the Pete's Scoop property, the neighbors would like to know about it ahead of time so that it can be discussed and they can advise of their concerns. They have had issues with that property as evidenced by the police logs. There is often activity at the restaurant and she wanted it placed on the record that the neighbors had concerns.

Mrs. Roach advised that any plan that came before the Planning Board would require notification of the abutters.

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

Mr. Chirichiello inquired as to the zoning on Skylark? Mr. Connors stated that both parcels on this application are in the General Commercial zone. The abutting properties that have frontage on Skylark are he believes, in a residential zone. The zone line follows the westerly property line, so would have the required buffers if anything further happened on the site. Currently there are trees. He is unaware of a site plan for either of these properties and understands

that any changes to either of the parcels would require the implementation of the 50 foot buffer. He would try to incorporate the existing trees and fill in the gaps with new trees on any new application for site plan approval.

Motion by Granese to accept jurisdiction of the plan, seconded by Choiniere. The motion passed unanimously.

Motion by Granese to accept the waivers from Sections 170-24.A (11), 170-24.A (12), and 170-24.A (13), seconded by Chirichiello.

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

Motion by Granese to approve the Lot Line Adjustment for parcel 03087 and 03089 pursuant to RSA 676:4,III, Expedited Review, subject to the following conditions: Subject to owner's signature; establish escrow for the setting of bounds, or certify the bounds have been set; obtain written approval from Doug Rathburn that the GPS disk is received and operable; note approved waivers on the plan; the above conditions are to be met within 6 months, and a \$25.00 check, payable to RCRD should be submitted with the mylar in accordance with the LCHIP requirements. Chirichiello seconded the motion.

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

## **Other Discussion**

### NH Railroad Revitalization Association

Peter Griffin introduced himself to the Board. The NH Railroad Revitalization Association was founded as a non-profit organization in 1992. The goal of the Association is to restore rail service to New Hampshire and to restore balance to transportation in New Hampshire and the region. Until the year 1930 transportation was multi modal: there were trains and trolleys that serviced Derry and provided connections to other communities. Mr. Griffin outlined his credentials, which includes an extensive planning background.

The definition of transportation today has shrunk in scope. We now look at adding lanes to existing roads or more roadway and that contradicts how we live our lives. Our daily lives require choice and we are limiting our choice in transportation to the point where our only choice is driving on the road.

Regionally, there is the Down-Easter service that runs from Portland, Maine to Boston. That service will expand to Brunswick and from there on a restored railcar to Rockland, Maine. Train service is a vehicle to economic development.

Saco Mills has experienced redevelopment, there is the Haverhill renaissance, Old Orchard Beach has experienced economic expansion, UNH now utilizes the service to Boston as a means to attract students and faculty. In Massachusetts there is the South of Boston initiative to restore service to the south coast, and the Greenbush corridor has stabilized the real estate market which has benefited the region. Interestingly, people were vehemently opposed to re-establishing rail service along this corridor. Those same people who owned land along the corridor are now in favor and have benefited from the rail service. There is an initiative in Springfield which will expand service from New Haven, Connecticut to Springfield and then to Brattleboro, Vermont, and there has been recent extension of a line between Green Airport to Boston. In New Hampshire, they are looking at extending the service beyond Lowell to the Nashua/Manchester/Concord area.

Boston is the economic denominator. The City of Manchester committed two separate, independent studies two years ago. The result of both studies indicated if you can connect to Boston your economic development initiative will be on autopilot, and the most successful communities have transit stations. All of the initiatives reported have had support of local economic development organizations and the Chambers of Commerce. Derry and Salem came about as towns because of rail and both have historic and mercantile centers.

Mr. Griffin reported on the I-93 transit study. He has provided the Board members with a copy of one of the more recent studies. [See [www.I93transit.org](http://www.I93transit.org)] The scope of that study is fairly large and began two years ago. One of the items looked at was the status of the rail corridor. It was originally suspected that the easements were no longer in existence or there were homes across the old railroad beds. There have been relatively few encroachments on that corridor. The study also looked at the location of economic development opportunities to expand the tax base in the communities along the rail corridor.

There are three categories of ownership along the corridor. The NH DOT began a rail bank program in the 1980's. Derry owns land along the corridor and the City of Manchester owns some as well. Originally, the I-93 transit study looked at 8 different options that have since been whittled to two. The first option of alternative transportation is a bus shoulder on the highway. This would be a segregated corridor or lane on I-93 North and South to be used by buses. Massachusetts would need to participate in order for this to be successful. The second option is to restore service on the Manchester/Lawrence corridor. This is more than just moving people. This is a connection to a medical, cultural, sports, retail and educational destination. It is an opportunity to attract business along the corridor. It is anticipated there would be stops along the line at Exit 5, Derry, Salem, Methuen, Lawrence, Andover, Woburn and Boston. This would not replace the widening of I-93, but would compliment it. It restores a choice in transportation to the region. This is consistent with what is happening nationally

and in the region. Ridership on alternative means of transportation went through the roof when the gas prices spiked.

Planning Boards need to make tough decisions when they are looking at current projects relative to long term outcomes. Derry has worked hard to restore the town and he would like the town to think about how the rail would help in the downtown restoration initiative and how it could help in terms of marketing the town for economic development as a destination location.

Mrs. Roach noted she takes the train from Haverhill and has done so for eleven years. She has seen firsthand the tremendous impact on that area. There are now luxury condos, all types of restaurants, and various activities that were not available before.

Ms. Evans asked for clarification. Did Mr. Griffin say that the rail would use the old B&M track, and does he assume that all the land along that track belongs to the town or the state? She believed that to be an incorrect assumption and thought that her family actually owned some of the land along the Derry corridor and that it was not on an easement. She stated that land is essential to the operation of her business. She would not support this idea; she is not certain the town would like a train to travel right outside the municipal center and she also does not want to go out of business. Mr. Sioras advised there is a 30 foot easement as part of a three party agreement along the rail corridor which was left as part of an agreement between the railroad, the town and the state. The area was left for light rail tracks or fiber optics.

Mr. Chirichiello expressed appreciation for the information provided by Mr. Griffin. He wondered how the bike path would be affected if rail came through the corridor? Mr. Griffin stated he is well aware of the bike path initiative and they are currently looking at how they can collaborate with the bike path. They may be able to share some areas, but the bike path may need to deviate in other areas. In those areas the benefits of recreational opportunities would need to be weighed against an increase in the tax base and what is best for the whole. If Derry chooses not to take advantage of this opportunity and explore it further, he feels the town may be putting itself at a competitive disadvantage. I93 will not serve all the town's needs.

Mr. Chirichiello inquired if all the communities along the corridor had to be on board for this initiative to move forward? Mr. Griffin stated he was not sure. He feels it would need to be determined that this is for the regional good. His purpose this evening is to put Derry in a position to know what is going on.

Mr. Chirichiello commented he wished Mr. Griffin had been before the Board a few months ago. The town is constructing a new road along the corridor and has just spent approximately \$125,000.00 on it. He does not see enough space



there for rail, the road, and the bike path. Mr. Griffin said the town would need to see if it could do both, or if the bike bath could strategically be re-routed.

Mrs. Roach noted it takes a while for this type of project. Plaistow has been working on their initiative for 10 years.

Mr. Stenhouse thanked Mr. Griffin. He agreed the town should be kept up to speed. The future of light and medium rail would depend upon population density, the price of fuel and alternative sources of energy and timing.

Ms. Evans inquired as to the source of funding for this type of project. Mr. Griffin explained the various options, which included TIF districts. Nothing has been determined to date. She asked if the federal government provided any funding? Mr. Griffin said they provide funding as they do for transportation projects. The initiative would require an alternative source to raise the funds to match what is given by the federal government. He noted the Planning Board is a great body in any community. The Board balances development versus the community needs and this is hard task. Regional Planning Commissions are a great resource. This initiative is not driving 'willy-nilly' build out. The Board always needs to balance growth without ruining the town. He thanked the Board for its time this evening.

Motion by Granese, seconded by Choiniere to adjourn. The motion passed and the meeting stood adjourned at 8:01 p.m.
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Minutes prepared by Elizabeth Robidoux, Planning Clerk