

The Planning Board for the Town of Derry held a public hearing on Wednesday, September 17, 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; Jan Choiniere, Secretary; Randy Chase, Administrative Representative; Mark Cooper, Ann Evans.

Alternates present: John O'Connor, Richard Tripp.

Absent: Phil Picillo, Brian Chirichiello, Council Representative; Gary Stenhouse, Town Administrator; Maureen Heard

Also present: George Sioras, Director of Community Development; Elizabeth Robidoux, Planning Clerk.

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, extra agendas and meeting materials at the back of the room.

Mr. O'Connor was seated for Mr. Picillo this evening.

Escrow

#08-35
38 Maple Street
Pentucket Construction
29117, 38 Maple Street

The request is to approve the final release of the above noted escrow. The amount to be released is \$136,089.72.

Motion by Granese, seconded by Choiniere, to approve the final release as requested. The motion passed unanimously.

#08-36
Stark Road Subdivision
MHB Development
03130, Stark Road

The request is to approve Release #1 for the above noted escrow. The amount to be released is \$16,433.28. The amount to be retained is \$17,431.20.

Motion by Granese, seconded by Cooper to approve Release #1. The motion passed with all in favor.

#08-37**John Picirilli, Site Plan (aka Weber's Auto)****John Picirilli****03165, 135 Island Pond Road**

The request is to establish cash escrow, drawn on Citizen's Bank, in the amount of \$5,000.00.

Motion by Granese, seconded by O'Connor to approve the establishment of cash escrow. The motion passed with all in favor.

#08-38**Derry's Harvest Estates****Ronald Mead****10015, 10024, 10025, Hampstead Road**

The request is to renew Letter of Credit #89, formerly known as Letter of Credit #85, in the amount of \$1,423, 972.87 for the above noted project. Mr. Granese inquired if the original Letter of Credit is expiring? It is.

Motion by Granese, seconded by O'Connor to approve the renewal of the Letter of Credit. The motion passed in favor with Cooper abstained.

Minutes

The Board reviewed the draft minutes of the September 3, 2008 meeting.

There being no changes noted, a motion was made by Granese, seconded by Cooper to approve the minutes as written. The motion passed unanimously.

Correspondence

Mrs. Choiniere acknowledged the following correspondence contained in the member packets.

There will be a Planner's Roundtable at the SNHPC office on September 23; there is a CTAP workshop opportunity available to the Planning Board; the Town of Auburn will hold a Zoning hearing on September 23rd, with regard to a request for special exception at 990 Londonderry Turnpike; and there have been changes to the Right to Know law. For more information on these items, see Mr. Sioras. There is a new edition of *Town and City*. The Board has also received a

request from Jose Rebeiro to rezone Pinkerton Street from residential to commercial. This request is deferred to the Rezoning Subcommittee.

Other Business

Request for Extension – Tessies Too Trust, PID 04037

Mrs. Roach advised the Board has received a request to extend the approval granted for the Tessies Too Trust for an additional 12 months. She read the letter into the record. The applicant cites the economic climate is such that they would like to postpone further action. Mr. Granese inquired if anyone was present representing the applicant. There was not. He noted that normally the first extension is granted for 6 months. Mr. Sioras advised this plan was a two lot subdivision, located at the corner of Goodhue and Gulf Roads. Mr. Granese wondered if six months would be enough for this applicant. Mr. Sioras stated that normally, the Board grants 6 month extensions, and then the applicants come back to the Board if they need more time.

Motion by Granese to grant a six month extension for this project pursuant to past practice, seconded by Evans.

O'Connor, Granese, Chase, Evans, Cooper, Choiniere, and Roach all voted in favor and the motion passed.

MASTER PLAN KICKOFF

David Preese, Director of Southern New Hampshire Planning Commission (SNHPC) and Jillian Harris, Planner of SNHPC were introduced by Mrs. Roach. Mrs. Harris advised she would be working with the Board and the town over the next 15 months on the update of the Derry Master Plan. She had a PowerPoint presentation that this evening was available as a handout. Members of the Board and interested members of the public had copies of the handout. She provided the following overview of the Update process.

It is important to know why Master Plans are so important. It is law, and it provides guidance and legality to ordinances. The Town of Derry will look at growth within and outside of the town to determine how surrounding communities will affect Derry, as well as the role and impacts of the I93 expansion on Derry's growth. The Town will also look at regional growth. There have been some new legislative changes which will be incorporated into this document which include regional impact, Smart Growth, sustainability and the formation of a Town Vision Statement. Elements of the plan will include the Community Profile/Visioning Session, the formation of a Vision statement, regional considerations, an update of demographic trends, an evaluation of community facilities and services, a determination of future public utility and energy needs, a review of historic and

cultural resources, an identification and evaluation of housing needs, a description/update of natural resources and an identification of protection needs; identification of economic development opportunities, and a transportation study will be conducted. The process will also include preparation of existing and future land use and build out analyses, and finally, the Board and SNHPC will prepare implementation strategies and recommendations. SNHPC and the Board will have shared roles and responsibilities throughout the process. The Board will be responsible for the Community Visioning Session and other elements. The process will be divided into two Phases over the next 15 months, with the first Phase ending in May, and Phase II beginning in April. Board members all have a copy of the proposed schedule.

Mrs. Harris advised that she has begun drafting the Demographic and Housing Chapter and she provided a snapshot of the information and statistics to the Board.

Mr. Sioras thanked Mr. Preese and Mrs. Harris and acknowledged the department heads and townspeople who attended this evening. The plan is to get input from all of the major players and the public throughout the process.

He has been working with Mrs. Roach and Mrs. Robidoux on the initial Community Survey and a target date of January has been set for the Profile/Visioning Session. This is planned for a Saturday and is a public participation event to see what the public wants as a vision for the future. That vision will be incorporated into the Master Plan, as well as the information obtained from the Survey.

Mrs. Harris said the next steps will be to work on each section, and as the sections are completed, they will be presented to the Board for review and comment. The Profile will occur concurrently with the background work.

Mr. Sioras took a moment to further acknowledge Mr. Holmes, Mrs. Thompson, the Library Trustees, members of the Conservation Commission and Zoning Board of Adjustment, and Councilor Wetherbee for attending this evening. During future meetings they will be contacted to obtain specific data. He appreciated their attendance this evening.

Motion by Granese for the Board to recess pursuant to RSA 91-A:2, I (b), to consult with legal counsel, seconded by Cooper.

O'Connor, Granese, Chase, Evans, Cooper, Choiniere, and Roach all voted in the affirmative and the Board recessed at 7:21 p.m.

The Board reconvened at 7:58 p.m.

Public Hearing

Halcyon Club Parcel ID 29193, 9 Central Street Waiver of Strict Compliance

Attorney Jaye Rancourt presented for the applicant, The Halcyon Club. John Wood representing the Halcyon Club, was also present. She wanted to clarify her letter to the Planning Board. She noticed she cited the wrong regulation in the letter. She cited Section 170-11 of the LCDR, which falls under the subdivision regulations. The waiver from strict compliance refers to site plans, which fall under Section 170-50. The waiver provision is the same in both sections, but she did read the objection and wanted to make that clarification. Her citation of the Zoning Ordinance as it relates to the installation of a buffer, is cited only as the Zoning Ordinance relates back to the LCDR, which the Planning Board does have the authority to waive.

The Halcyon Club is a social club located at 11 Central Street. They own a lot at 9 Central Street which is a parking lot. It has been used as a parking lot since 2000. The lot was purchased in 1997, the vacant building was razed, and the lot was paved in 2000. Approximately four years later, the abutter at 7 Central Street had issues with regard to the buffer requirement that resulted in litigation against the town and the Halcyon Club. The litigation proceeded to Supreme Court. The trial court, the Town and the Halcyon Club interpreted the LDCR and Zoning Ordinance in the same manner, such that the buffer is not a requirement between multi-family and commercial uses. The Supreme Court disagreed and said the LDCR does require a buffer. The ZBA in June of 2008 addressed the issue of the buffer, discussed the Supreme Court case, and stated that any further matters having to do with the buffer would fall under the Planning Board's jurisdiction.

Since the Supreme Court decision, the Club has ripped up pavement for an eleven foot space between the lot lines of 7 and 9 Central Street. They installed a 6 foot stockade fence, planted a minimum distance between trees of 10 feet in compliance with the LDCR, and filled the area with mulch. The plan was submitted to the town, reviewed and authorized by Bob Mackey prior to the installation. There is a page in the packet that shows what the lot looks like today and she has also included pictures.

The issue tonight is the rear buffer. They would like to request a waiver from the requirement that would have them remove 20 feet of pavement to the rear and a waiver from the completion of the other requirements of the LDCR, such as a fence at the 20' mark, the planting of trees and the installation of topsoil, grass

and mulch. The reasons for the request for the waiver are spelled out in the submission.

The Halcyon Club lot began as a 5814 square foot (SF) lot, used for parking. When the side buffer was installed, the lot was reduced to 4692 SF. They eliminated 8 spaces. If the 20 foot buffer is installed to the rear with the fence and other items, it would prevent the use of the 20 foot area as parking. This decreases the usable space to 3772 SF and eliminates an additional 6-7 spaces. It will leave the Halcyon Club with approximately five parking spaces and renders the lot not useful for the purpose it has been used since 2000. It is used as a parking lot once or twice a month for parking for senior dinners, or town parades. It is locked during the week. The lot has a chain link fence along the street. The gate is only open during special occasions as mentioned by Mr. Wood.

The purpose of the buffer requirement in the LDCR is to protect abutters from higher intensity uses on abutting property. This evening, she has a signed affidavit from Henry Cournoyer who owns the property to the rear of this lot. They have discussed with him the requirements of the LDCR. He feels as if the stockade fence that exists is an adequate shield and does not feel the lot needs another 20 foot buffer area. She understands the abutter at 7 Central Street may argue that they may be affected by the failure to install the 20 foot buffer. They are shielded from the 11 foot buffer that currently exists. Her position to the Planning Board is that the 11 foot buffer between 9 Central Street and 7 Central Street adequately protects the abutter at 7 Central Street from the more intense use at 9 Central Street. There is an eleven foot space there, separated by a 6 foot stockade fence, trees, and mulch between that area.

Cars that park against the fence are shielded by the fence from the residents at 7 Central Street. It is possible to see a car in the lot at 9 Central Street, but that does not mean the existence of a car in the lot at 9 Central Street decreases value or enjoyment of 7 Central Street. They feel the buffer adequately shields 7 Central Street, and it meets the purpose of the LDCR.

Attorney Rancourt stated that her client and the rear abutter [Cournoyer] agree the rear fence adequately shields the abutting residential use to the rear. The Halcyon Club has agreed to install another 6 foot stockade fence in the event that Mr. Cournoyer should remove the one on his property. She feels their proposal adequately protects the rear abutters and the requirement of a 20 foot buffer would be a detriment because it limits the use of the lot and renders the use of the lot as parking lot useless.

The Board had no questions at this time and the floor was opened to the public.

John Griffith advised he represents Property Portfolio Group, at 7 Central Street. He has submitted two letters to the Board on this matter with regard to the Board's jurisdiction. Attorney Rancourt has answered the question with regard to

the appropriate section of the LDCR. This is not a subdivision application. The problem is this is not a site plan. The applicant has not submitted an application for a site plan for review or even a site plan determination application. The code [LDCR] is clear that the waiver only applies to site plans, so the Board has no jurisdiction for the waiver request. The Court has ordered the Halcyon Club to put in the buffer per Section 170. The Board is being asked by the applicant to act as a super Supreme Court and to overrule the Supreme Court. He does not feel the Board has that authority or jurisdiction.

With regard to hardship, when did the Halcyon Club come before the Board to change the use of 9 Central Street from residential to non-residential? The Town took the position at court that the vote on May 18, 2005, when they approved the site plan determination for the Fire Hall Pub & Grille which included parking at 9 Central Street, affectively changed the use from residential to parking for the Fire Hall Pub & Grille. The Court order said the lot can be used for parking for the Fire Hall. That put 9 Central Street in the middle of a parking lot. The hardship before the Board is that on May 18, 2005 the Board granted permission for the Fire Hall Pub & Grille site plan determination. Halcyon said they will let the lot be used by patrons of the Pub & Grille, and the patrons can also use Halcyon's other lot at 2 Central Court. If the Halcyon Club is so desperate for parking, why would they give it up? This buffer will decrease the lot by 2 spaces; they can still use the lot for residential purposes and he does not feel that is an unnecessary hardship.

Steve Trefethen advised he represents 24 families that surround the Halcyon Club and the Fire Hall Pub & Grill, as well as three businesses. He is concerned with the waiver for the parking lot. Mr. Cournoyer's fence backs up to 7 Central Street, which is the lot, but it does not back up to the Halcyon Club or his lot. His lot [8 Storer Court] backs up to 9 Central Street and all the car lights hit the bedrooms in the 6 units located in the back of his building at 8 Storer Court. There is no buffer there. He is concerned with waiving the buffer requirement. If it is waived here, what about 11 Central Street which is a garage, which also backs to 8 Storer Court? Will it be waived there also? He knows the Fire Hall situation and that the waiver of site plan allowed them to park in that lot. He is not sure how many spaces they lost. Lastly, all of this has come before the Board without the owners going to the neighbors first and it has become costly for the town and the applicant. Neighbors should be contacted so that they can work together rather than going to the Planning Board first to work out the issues. Number 7 and Number 9 back up to his residential lot with no buffer at all. So when the Board waives this buffer requirement, where does this leave him? He feels more work needs to be done on that before the Board votes on the request.

Mr. O'Connor inquired if in the eight years the parking lot has been there, have there been any complaints made to Mr. Trefethen by his residents, or has the Club been called with regard to complaints? Mr. Trefethen said the parking lot is not used often, mostly during the day. His bedrooms now have darkening

shades. When people come in and turn, the lights will hit the bedrooms, and he has tried to address it with the shades. It is not a big deal, but the issue is, should there be a buffer between his property and 9 Central Street?

Mr. O'Connor asked again if Mr. Trefethen had ever called the Halcyon Club with a complaint? Mr. Trefethen said he did not; he did something on his own with his money.

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

Attorney Rancourt advised that the Fire Hall is no longer operating as a restaurant and the agreement between the Fire Hall and the owners of the Halcyon Club to use the lot as overflow parking is no longer applicable. Nor are there any agreements with future owners of the Fire Hall lot. The Halcyon Club lot is for the use of the Halcyon Club only going forward. The 6 foot stockade fence goes to the property borderline and any opening would be along the 7 Central Street lot.

Ms. Evans noted that parking is limited in the downtown area. This is a 5000 SF lot. She can see a hardship. The applicant has submitted diagrams and pictures and it is very clear. The Board has duly listened to all of the comments and there have been two good presentations. She does feel there is a hardship. The downtown and the Halcyon Club need parking.

Mr. Granese inquired how long ago was the stockade fence installed? Attorney Rancourt advised the Court decision came down in April; and the fence was installed within 90 days of that decision. Mr. Granese inquired what was there previously? He was advised that there was pavement to the property line and a stockade fence on the Cournoyer lot since at least 1997 or before. Mr. Granese asked if there is now a fence across the opening of the lot, because the pictures do not reflect that. Attorney Rancourt explained the chain link fence was installed after she took the pictures, sometime in July. The lot is used once or twice a month. The Halcyon Club also owns a lot across the street from the Club, and has its own lot which is used by its patrons. The two parking lots [11 Central Street and 2 Central Court] are typically used by the Club patrons. This lot [9 Central Street] is used for overflow for senior dinners or special events where the Club is rented, as well as town events such as parades. Mr. Granese inquired if the area was secured when the lot is not in use? Mr. Wood advised the area is locked during the day and when it is not in use, and there are no lights during the evening.

Mr. Granese recommended the Board hold a site walk in order to review the area to determine if the buffer is required.

Motion by Granese to hold a site walk regarding this issue, seconded by O'Connor.

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

The Board discussed times and dates for the site walk. The Board will be meeting next Wednesday at 7:00 with legal counsel and could meet at 6:00, or they could hold the walk on a Saturday morning. Mr. Granese felt it would be beneficial to view the area at dusk. The Board decided to hold the site walk on **Wednesday, September 24, 2008, at 6:00 p.m.** Permission was granted by the owner for the site walk and abutters are welcome to attend.

Motion by Granese to continue this public hearing to October 1, 2008, at 7:00 p.m., seconded by Chase.

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

Mrs. Roach advised there would be no further additional notice to abutters.

Zoning Ordinance Amendment - Agricultural Livestock

Approximately 20 members of the public were in attendance.

Motion by Granese to open the public hearing with regard to the proposed Animal Livestock Ordinance, seconded by Chase. All voted in favor and the public hearing opened.

Mrs. Roach invited members of the public to speak.

Jim Rausch, 65 Gulf Road, advised that this evening, he is speaking as a veterinarian. This past year, he acted as a consultant to the Town of Salem Planning Board. He suggests this Board define "kennel" or it will be defined for the town. Salem had an issue with 90 dogs, with 12 outdoor runs in a residential area, because they did not define "kennel".

Dr. Rausch provided his comments on the proposed ordinance as follows. Section 165-54, includes horses and cows, but excludes miniature horses. The State of New Hampshire, under Section 21-34 defines livestock to include but not be limited to: dairy cows and the production of milk, beef animals, swine, sheep, goats, as well as domesticated strains of buffalo or bison, llamas, alpacas, emu, ostrich, yak, elk, fallow deer, red deer, and reindeer. Would the Board mean to include all of those on 1 acre? Dr. Rausch advised he is very pro-agriculture and pro-farming. However, the Board has potentially created an issue when the animals are placed one acre. Under RSA 466:28, titled *Killing Dogs Legalized*, a farmer has right to kill a dog that is intending to harm or worrying his livestock.

This can be a problem in a one acre per lot subdivision when Sam the neighborhood golden retriever comes to visit.

Section 165-155 exempts domestic pets. Under RSA 466:31, there is a whole list under *Dogs, a menace, a nuisance or vicious*, and what happens when a dog barks for longer than a half a hour. How does this coincide with the proposed Section 155 and its exemptions?

Under Section 165-157, the Board is making sure the animal does not escape, but in a one acre subdivision, you can successfully control horse with white tape and an electric fence. What about the children who want to visit the animal and it is potentially a dangerous animal that they might not know how to approach?

One of the reasons he was asked to consult with Salem was with regard to waste. There will be problems with how the Board defines stockpiling of waste. He questioned the 150 foot distance. Is this from property lines or abutting homes? Some of these products, even with a dog, can create a problem with a roundworm parasite. If the animal is not properly wormed, the eggs can get into the runoff and cause a health issue if it gets into a neighborhood sandbox. That can harm children if ingested and lead to possible blindness. This is a density situation and the Board has nothing here to deal with density. There are also no penalties. What is the penalty for violations?

With regard to livestock, there is an agricultural livestock RSA [21:34-a], which includes "The breeding, boarding, raising, training, riding instruction, and selling of equines." State law takes precedence, because you are using the terminology "agricultural livestock", and the state has defined it; all of those uses can be allowed on one acre per this ordinance. Equine normally need more than one animal in order to thrive. The additional animal may be another horse, or it could be a companion goat. This provision allows new people to enter a one acre subdivision and begin a farm. That means that all the operations of a farm can occur because that is how the state defines it. This may cause potential hardship and conflict in a neighborhood.

Dr. Rausch informed the Board he had not heard the Board was drafting this ordinance until he saw the notice in the paper. He would have liked to have attended the workshops and provided input there. His experience in Salem is that this needs to be in the Zoning Ordinance because common sense does not always prevail. RSA 466:28 is a rural farm environmental provision. It is not meant for one acre subdivisions and the neighborhood pet. This ordinance will create issues for the dog officer and there are no penalties.

Manure can create a breeding ground for infectious diseases depending on the environment and how manure is controlled. There are ways to control it, but manure is a problem in residential areas which encroach on the farming

community. This ordinance puts farm communities in residential neighborhoods; and there are no provisions to handle manure in those circumstances.

Dr. Rausch offered his assistance on any further drafts of this ordinance.

Phil Ferdinando, 112 English Range Road, advised he has raised livestock cattle for his entire life. He may be in violation of some if not all of the provisions in this ordinance every day. He thinks this needs work. The ordinance references Guidelines and Best Management Practices (BMPs). He is not sure if this is referring to the NH Department of Agriculture BMP manual or not. That is a great manual to use and is used statewide. It spells out provisions for livestock and poultry. He has at times as many as 50 – 60 head of cattle on less than an acre of land. The animals are well fed and cared for. He does have land to dispose of the manure because he has a farm, but he does not know how the acreage requirement ties into what he does.

He is uncertain with regard to Section 165-155 with regard to nuisance. He creates all of these types of nuisances every day and is not sure how it would be enforced for him. He makes his living doing this and is one of the last producing farms in Derry. He does not want an ordinance that works against him. He feels this ordinance needs more input and is happy to provide input on it if requested to do so. The ordinance as it is written is not workable for what he does.

Ms. Evans inquired how many acres of land did Mr. Ferdinando own? He owns 137 acres. She noted it was his choice to confine the cattle at times to one acre of that entire parcel. She did not see a problem because the whole acreage counts. Mr. Ferdinando felt he did not have a problem now, but the ordinance could be interpreted down the road differently with regard to nuisance and how it relates to his property. He does not want this to be enacted and then someone can say that he can no longer spread his manure or stockpile it any more. Ms. Evans advised the Building Inspector has discretion over the provisions and would make a judgment on any filed complaint and determine if it was a reasonable complaint. She said Mr. Ferdinando is not having problems with his neighbors now and did not think it was likely he would have any. Mr. Ferdinando said he still does not think this is good, especially for those who want to start raising animals; this is discouraging. This will have bad affects.

Ms. Evans stated this ordinance has been pared down to be less restrictive. The Planning Board wants to encourage the agricultural heritage of Derry and not lose it, especially for our children. This is milder than what the Board started with. The Town Council asked the Board to develop something as a result of a complaint, and the Board did. Chester does not have a livestock ordinance; Londonderry's is modest. The Board wanted something livable. She stated Mr. Ferdinando is an important part of Derry's agricultural heritage. Mr. Ferdinando said he understood the reason for the ordinance but felt some of it was restrictive and will depend upon future interpretation of the ordinance. Mrs. Roach stated

she is sure there will be further work on the ordinance after the Board receives the public input.

Ruth Provencal, 246 Island Pond Road said she has 6 ½ acres of land. She was upset when she saw this ordinance. Derry was always known to be farmland. She worked in the corporate world for 21 years in order to be able to retire here and work a small farm in 2001. She wants to continue as a small farm. Derry has been traditionally known as a farm community. She felt if city people don't like farms, they should go back to the city. She reads this ordinance to say that she needs a fence, 20 feet from the property line all along her 6 ½ acres. This will cause her to lose 2 acres of land that she uses for pasture for her goats and chickens. Is she missing something? Mrs. Roach advised pastures are excluded. Mrs. Provencal said that pastures are for cows and horses, not for goats, poultry or swine.

Mr. Chase explained that the structures (i.e., shelter for a horse) and enclosures need to be 20 feet from the property line, not the fences. If chickens are kept on less than 2 acres, they have to be covered and in an enclosure and that has to be 20 feet from the lot line. They are not telling her that she has to put a fence up 20 feet from the lot line. Mrs. Provencal advised she lives next door to 80 acres of conservation land. Does that mean she can't put a small house against the stone wall? This ordinance says she needs to be 20 feet away. The structure setback in the Zoning Ordinance is 15 feet. The Board should consider changing this. One acre is a small area in a residential development. She is on farm land with more than one acre and has 168' of electric fence for her poultry. Not one of them has left the property. She does not think the town should tell her she has to use metal fencing to enclose her chickens. Mr. Chase explained the ordinance is requiring that anyone with poultry on two acres of land or less, must enclose the poultry. Mrs. Provencal thanked Mr. Chase for clarifying her questions.

Chris Peterson, 58 Floyd Road, advised many of the farmers take care of their animals because they mean something to them, agriculturally or emotionally. Not everyone sees it the same way and he can see a need for something like this when people keep horses on postage stamps. It is not fair to the animal. He has concerns over this ordinance. He has 8 ½ acres and runs a small farm. He feels this ordinance is inconsistent with the rest of the Zoning Ordinance. He recently put up a barn and had Gove Environmental Services come out and map the wetland so that they knew where they were and what they needed to meet the 30 foot setback for the barn since the wetland was less than one acre in size. This ordinance means he would need to truck manure 35 feet further away from the wetland. The wetland setback for manure should reflect the building setback. He feels this ordinance is "coming at us [farmers]". What will thing bring to us? Property value is important to all of us. It makes sense that there are rules, but he wished that the farmers who are doing things right could be "certified" so that they are not subjected to predatory neighbors. He thought the building setback

was 15 feet and is not sure why an agricultural building should be 20 feet. Mr. Chase said it was because of the use. Mr. Peterson does not really agree with this. His barn is cleaner than the pasture which can go right up to property line. He would like to see some consistency if it does go forward. He feels like the farmers have been snuck up on and did not have a lot of input, and he does not think he is the only farmer who feels this way.

Mrs. Roach advised there have been several workshops and notice was posted publicly, in the libraries as well. They tried to make the workshops as public as possible.

Riccardo Buzzanga, 8 North Shore Road, said he is also a member of the Conservation Commission and also has a small farm. His concern is sociological. Although the Doctor made good points, He does not feel that Derry resembles Salem, and Derry is different than Londonderry. He thinks we are more closely aligned with Chester. He does not want this ordinance to discourage the small farmer. An ordinance like this redefines the town. He does not want the town redefined as a town that is unfriendly to the small family farmer. Someone may come into town and be discouraged from getting a horse because of this ordinance. The town should foster this type of activity; 4H is important to the community. He respects the amount of work the Board has done and that the town needs an ordinance for irresponsible people and their actions. Does the Board begin to redefine the community, or let people do their own thing? He thinks the people of Derry will do the right thing most of the time. He would suggest a one line statement that gives Code Enforcement the ability to police irresponsible livestock owners. His suggestion would be, "Agricultural livestock shall at no time create a nuisance as to sight, smell, sound, or anything else as deemed by the Code Enforcement Officer, or his designee." This would take care of loud roosters, and dirty horses. It would also alleviate a newer resident from complaining about the spreading of manure. He hopes the Board will start over on this ordinance.

Al Dimmock, High Street, noted that Mr. Ferdinando would be grandfathered and the rules can't be changed on him. He realizes the reason for the ordinance; there were people who were trying to have horses in downtown Derry. Mr. Ferdinando mentioned the UNH program and BMPs. He has not been to any of their meetings but recalls that in Storrs, Connecticut at UCONN, it was recommended that each large livestock (horse, cow), have a minimum of one acre of land without buildings on it. One acre with three buildings is not one acre. The ordinance should state no more than one large animal per acre, minus buildings. He believes the town has a nuisance ordinance and related a story involving noisy peacocks on his street. He commends the Board for coming up with the ordinance, but there are issues to be addressed related to health issues. We need to control manure for people and for good of the animals.

Aaron Chapple, 4 Orchard Drive said he lives on 2 acres, and has no animals. He has an issue with the wording with regard to the BMPs. He does not think the town should reinvent the wheel and should use existing wording to keep it simple and avoid conflicts with the state. Section 165-155 is very vague. There is nothing in this section to say that 10 years from now, someone could be offended by Mr. Ferdinando's farm. The town needs an ordinance, but he does not want it to be something that is used to go after people who treat their animals right and have reasonably existing properties. There is nothing in here with regard to enforcement or penalties.

Mrs. Roach advised that as this ordinance is part of the Zoning Ordinance, they cannot add a section with regard to penalties. It would be covered under the penalty section of the Zoning Ordinance [165-132]. The Code Enforcement Officer enforces the Zoning Ordinance. Mr. Chapple asked what would prevent him from calling and saying that he does not like the way J&F Farms smells? What protects Mr. Ferdinando from erroneous complaints? Ms. Evans said the complaint would be given to the Building Inspector, and he can make the judgment that it is not a valid complaint. Mr. Chapple said we can all hope that would happen, but what in this ordinance provides that protection?

Bob Mackey, Code Enforcement Officer, stated in the case of nuisances, it is hard to say if it should be specific, because 'nuisance' can be subjective. Existing farms have expected activities associated with them. A practice that has gone on for many years, he would not feel is a valid complaint. Mr. Chapple asked that the Board create an ordinance that is easy to understand and enforce. He would agree that the wording in this ordinance can change.

Mr. Peterson inquired if there is a grandfathered piece of this ordinance? It is not stated here. Mr. Mackey advised there is. Just like any other Zoning regulation, there would be grandfathering. Right now there are no registered farms. Town Council had concerns and this began as a three page ordinance. It has been pared down to a few paragraphs.

The Board wants a basic regulation, not to discourage agriculture, but to have basic regulations for small properties. This document may need to change and there is a possibility it could change in the future.

Ms. Evans did not want to add anything to this ordinance. She would like to remove the word "sound" from Section 165-155. She asked for Mr. Mackey's opinion on removing the word "sound". People with farm animals are not in control of when the animal makes a noise. They can't bring those animals, such as a guinea hen, into the house as you could a dog. What happens with a sound complaint? How do you tell people to stop their hens from clucking? She feels this would put Mr. Mackey in a bind.

Mr. Mackey stated that given the number of complaints with regard to sound, he would not remove the word from the ordinance. He would prefer to leave it in. Sound can be subjective. He has looked at the dog regulations and the definitions associated with it. A chicken clucking is probably not a nuisance, but a rooster that crows continuously at 2:00 a.m. may rise to a level of a sound nuisance. Ms. Evans inquired how do you deal with it and have agriculture, but not have someone knocking on your door? Mr. Mackey said the word could be left in and complaints would be taken care of on a case by case basis so that there is something to work with. Continuous noise at night may be a nuisance. Residents would need to contain the animal creating the noise and find a solution; that would be their responsibility.

Mr. Granese recalled the issues raised with regard to sound at the workshops. He appreciates all the comments and wish that they had been made during the workshops. The town needs something to protect animals as well. There needs to be manure management because manure can be a health issue.

Mrs. Provencal advised that she has a bee colony on her property. Manure is placed 40 feet from her hives. Manure is not killing her bees; commercial fertilizer is killing her bees. Organic fertilizer is what makes our gardens grow. People with a few acres or more need a place to put waste. There is no harm to people because of smell. She feels people get more diseases from restaurants than from manure. She feels people are being hard on farmers, attacking them and insulting farmers by saying they don't belong here. She agrees you do need at least one clear acre for a horse, and two horses, or cows or goats, because they need a companion or they will die.

Mrs. Roach assured those in attendance the Board is not attacking farmers. The Town Council directed the Board to draft an ordinance. The Board pared it down. 95% of the people take care of their animals. The people who don't take care is the reason why we are here. The Town Council requested it and the Board needs to do it. The Board will hold the public hearings, refer it to Town Council and they will have a hearing as well.

Mrs. Provencal felt this was giving Town Council control over farmers. She feels this ordinance is nit-picky and petty. Mrs. Roach advised the Board will more than likely go back and work on this and will be taking into consideration everyone's comments. She reiterated the Board is not attacking farmers.

Mr. Mackey spoke to the section regarding manure. As the Board worked on this ordinance, it was with the intent not to discourage farming or farmers from spreading manure. This section is meant if there are stockpile areas to ensure the manure is stockpiled a certain distance from an abutting household so that there are no issues. The section also promotes the use of BMPs for manure storage. It won't prevent any of the normal farming activities or where it will be used for fertilizer.

Dr. Rausch wanted to clarify that he is pro-agriculture and pro-farming. He has a concern with the way the Board is using the word "agriculture". Spreading manure is a good farming practice. But one acre, defined as agriculture, means that the Board will allow whatever the state defines as agriculture on that one acre. Do you need to designate a larger land mass? All of the residents who have spoken this evening have larger land masses and should be commended.

Mr. Buzzanga said that he has not heard any arguments or support for this ordinance. He urges the Board to vote against it, or to reinvent it. If people who own existing farms or future farms get a 'seal of approval' from the town, that would be a good thing. His farm has probably had chickens on it for 120 years. His land is now surrounded by new homes. It would be disappointing if a new neighbor, in a new home, had a complaint and he was asked to do something with them.

Sean Wilson, 42 Kilrea Road, had a comment regarding livestock and the level of liability associated with them. They are not wildlife. Mr. Granese noted his previous comment was related to sound. Mr. Wilson said noise is as much a nuisance as sight and smell. There needs to be a give and take to help the abutters. The town can't ask someone to not have animals; that is not right. Nor is it right to not consider the abutters when you do have animals. He requested the Board leave the word "sound" in the ordinance. Derry is a reactive town. He agrees this ordinance has been streamlined and is satisfied with how it is written.

Robert McCullough, 1 Squamscott agreed with Mr. Wilson, but added he has been living with this for over one year. Sound and smell and animals encroach on the abutters. He has followed all the rules and he wants to be able to sleep at night. They are all tired and affected because of one irresponsible person. There should be an ordinance against that person, not the livestock. He agrees the word sound should be left in. Mr. Granese asked if Mr. McCullough agrees with what has been presented as an ordinance? Mr. McCullough said he did. It is too bad that this needs to apply on a grand scale because of a small minority.

Mr. Granese said the issue of attacking agriculture and farms has been brought up this evening. The Board does not want that to happen. Mr. McCullough said this is not about an ordinance. This is about control over 5% who do not want to adhere to neighbor's rights. He does not want to change anything but just wants to be able to sleep at night.

Mr. Peterson said he feels bad for this neighborhood. His family put their roosters down when he had a complaint from his neighbors. He now has over 50 under his brooding light. As farmers, they are wondering what this ordinance will start that will be felt in 20 years. The Board members are all nice people, but what will this precedent slide to? The Board is working hard for this, but what will he be able to do in 10 years?

Ms. Evans commented that the members of the Board change each year. It is a good thing this ordinance is being written now. There may not be a farm store lady on the Board in the future who wants to promote continued agriculture, and there may be a Board that would tie the farmer's hands. The Board wants farmers to continue to have animals and to promote agriculture. The ordinance as it is written will probably sit for years.

Mr. O'Connor advised that he has degrees in dairy science. He understands the concerns with regard to manure storage and the importance of BMPs. This Board is looking out for the farmer.

There was no further public comment.

Motion by Granese, seconded by Choiniere to close the public hearing. The motion passed unanimously.

Mrs. Roach advised that there will be further discussions on this matter by the Board. She thanked the public for their input. A workshop was set for October 1, 2008 to discuss the public comments.

Motion by Granese, seconded by Choiniere to adjourn. The motion passed and the meeting stood adjourned at 9:39 p.m.

Minutes prepared by Elizabeth Robidoux, Planning Clerk