

The Planning Board for the Town of Derry held a public hearing on Wednesday, October 1, 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; Brian Chirichiello, Council Representative (7:55 p.m.); Phil Picillo, Ann Evans (7:01 p.m.)

Alternates present: John O'Connor,

Absent: Gary Stenhouse, Town Administrator; Maureen Heard, Mark Cooper, Richard Tripp.

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. Cooper this evening.

Escrow

#08-39

**Excavation and Restoration Plan
Lewis Builders
07075, Warner Hill Road**

The request is to establish Letter of Credit No. 20002779, drawn on TD Bank North in the amount of \$133,598.16.

Motion by Granese, seconded by Picillo, to approve the request as presented. The motion passed unanimously.

#08-40

**Rite Aid
Tropic Star Development
28005, 52 Rockingham Road**

The request is to approve Release #1, which is the final release of a cash escrow in the amount of \$5184.01, plus any accumulated interest.

Ms. Evans was seated at this time.

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

#08-41
Bunker Estates
JEMCO Builders
02020-001, Fordway

The request is to approve Release #2 on the Letter of Credit for the above noted project. The amount to be released is \$70,165.70. The amount to be retained is \$62,122.86.

Motion by Granese, seconded by Choiniere to approve the request as presented. The motion passed unanimously.

#08-42
Greenwood Realty Trust
Greenwood Realty Trust
03094, 179 Rockingham Road

The request is establish cash escrow in the amount of \$13,724.64 for the above noted project. Mr. Granese inquired as to the project and was advised by Mr. Sioras that this is for used auto sales at the old Kindellan Woodworking site on Ryan's Hill.

Motion by Granese, seconded by Choiniere to approve the request as presented. The motion passed unanimously.

#08-43
Etz Hayim Synagogue
Bishop of the Protestant Church
32062-002, 1.5 Hood Road

The request is to approve Release #1 for the above noted project in the amount of \$128,766.41. The amount to be retained is \$102,233.59.

Motion by Choiniere, seconded by Granese to approve as presented. The motion passed unanimously.

Minutes

September 17, 2008

The Board took a few minutes to review the draft minutes of the September 17, 2008 public hearing.

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

September 24, 2008

The Board reviewed the draft minutes of the site walk held on September 24, 2008 at 9 Central Street with regard to the Halcyon Club waiver request.

Mr. O'Connor suggested the following change to paragraph 3. "Board members viewed the existing 6' stockade fence along the property line between Mr. Cournoyer's property and 9 Central Street. Several members looked over the fence. Of note, on the southwest end of the property and abutting the stockade fence is a large tree (approximately 20' in height) along with a row of Lilac bushes running parallel to the right of way."

Motion by Granese, seconded by O'Connor to accept the minutes with the changes noted by Mr. O'Connor. The motion passed unanimously.

Correspondence

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

The Board has received a request to rezone 4 South Main Street from residential to commercial to be more in keeping with the existing uses in this area; SNHPC will hold a workshop on workforce and affordable housing on October 8, 2008 at their office; the Goffstown Planning Board is holding a public hearing with regard to a proposed cell tower on October 9, 2008 at 7:15 p.m.; and the LGC is holding its 67th annual conference in November. Board members should see Mr. Sioras if they have questions or require more information.

Other Business

Mr. Sioras advised the next Planning Board meeting will be on Tuesday, October 14, 2008, which is an off night for the Board. The Municipal Law Lecture Series will be hosted by Derry this year and will be held on October 15, 22, and 29, at

the Municipal Center. The lectures begin at 7:00 p.m. The Board will go back to meeting on Wednesday evenings in November.

Public Hearing

Halcyon Club Parcel ID 29193, 9 Central Street Waiver of Strict Compliance Continued from September 17, 2008

Motion by Granese to open the public hearing regarding the Halcyon Club, seconded by Choiniere. The motion passed with all in favor.
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Mrs. Roach confirmed with Mr. Sioras the Board will be making a determination on the waiver request. The Board took several minutes to review the relative materials. Included in the Board member's packets this evening were the following: A copy of the affidavit from Henry Cournoyer presented at the last meeting; copies of letters from Attorney Griffith dated September 16, 2008, and September 15, 2008; a copy of the application received September 2, 2008; minutes of the June 5, 2008 Zoning Board of Adjustment hearing regarding this parcel; and copies of pictures taken at the site walk on September 24, 2008.

Mrs. Roach inquired if the Board members had any questions on the material they were reviewing and did any member need more information? She noted the Board had the minutes from the last meeting and the site walk, site walk photos and additional copies of the material contained in the packet from September 17, 2008. She noted representatives for the Halcyon Club were present [Mr. Wood, Attorney Caron] if the Board had further questions.

The Board had no questions, nor did any member request additional information.

Mrs. Roach inquired if anyone had any additional material to present to the Board that was not presented at the last meeting? Ronald Caron, counsel for the Halcyon Club introduced himself to the Board, noting Attorney Rancourt was out of town this evening. Attorney Caron reported to the Board that this week his client was before the Rockingham Superior Court on further hearings on the matter briefed for the Board by Attorney Rancourt as part of her submission. There had been a motion for contempt filed for failure to comply with the Supreme Court Order. Justice Lewis, in a chambers conference, disposed of the matter and ratified his prior order that this matter comes before the Planning Board. Justice Lewis also stated that any further remedies sought by Property Portfolio Group would need to be through the municipal process, not his court.

John Griffith, attorney for Property Portfolio Group, the abutter located at 7 Central Street, stated Attorney Caron misspoke when he said the Court affirmed the Order and remanded it to the Planning Board. It was remanded back to the ZBA, as an appeal from the ZBA is remanded back to the ZBA. An appeal has been filed with the ZBA and he feels that is the appropriate place to discuss the issue.

Mrs. Roach advised the Board the matter before the Planning Board this evening is a request for a waiver of strict compliance with the Land Development Control Regulations.

There was no further public comment.

Motion by Granese to close the public hearing, seconded by O'Connor. The motion passed.

There was no Board discussion.

Motion by Granese to grant the waiver from the Land Development Control Regulations, Section 170-64(c), regarding the residential buffer requirement. O'Connor seconded the motion. Discussion followed.

Ms. Evans asked for a restatement of the motion. Mr. Granese advised his motion was to grant a waiver from Section 170-64 (c), of the LDCR which requires a residential buffer. The applicant is asking for a waiver of this requirement. The regulation requires the installation of a rear buffer on the Halcyon property. Granting the waiver would mean they did not have to install the buffer.

Picillo: Abstained. He did not attend the meeting in September when the bulk of this issue was discussed and out of fairness to all parties did not feel he should vote on this matter.

Granese: Yes.

Chase: Yes. He feels there will be no negative impact to 7 Central Street, and per the Cournoyer affidavit, he feels the existing fence is an adequate buffer.

Evans: Yes.

O'Connor: Yes. He agrees that based on the site walk and abutter comments that the parking lot had been there for over 8 years and he had no complaints with that. With regard to the site, the view of vehicles pulling in and out of the lot would be blocked so that abutters would not see the lights.

Choiniere: Yes for the same reasons as stated by Chase and O'Connor.

Roach: Yes for the same reasons. She also feels that it would cause a hardship to remove 20' of parking area, which is the intended use of that lot. She agrees with Mr. Chase and Mr. O'Connor.

The waiver was granted.

Mr. Griffith called for point of procedure. The Board did not vote to take jurisdiction. Mr. Sioras advised that Attorney Clark had indicated to the Board there is no plan on the table for which the Board would take jurisdiction.

Mrs. Roach confirmed with Mr. Sioras there is no other action required for this request and reiterated the waiver had been granted.

Zoning Ordinance Amendment - Agricultural Livestock Workshop

Approximately 6 members of the public were in attendance over the course of the workshop.

The Board opted to televise the workshop.

Mrs. Roach noted the Board members all had the minutes from the last meeting which contained the issues raised by the public. Ms. Evans noted that there was only one person in the audience at this time. Mr. Granese commented the Board has worked diligently on this and it has been pared down from a multi-page document. He would keep it as it is and not add anything.

Ms. Evans inquired if Mr. Granese would remove the word "sound" from the nuisance section? Mr. Granese noted he brought that up at the last meeting. Ms. Evans said that sound is with regard to nuisance. She would go with sight and smell and would remove sound. Mr. Mackey had said he would go to homes and people would need to get rid of their roosters. Roosters are not going to be illegal. This would take the burden off him and avoid killing roosters. Mrs. Roach felt "sound" was subjective. Mr. O'Connor said the Code Enforcement Officer can make the determination with regard to nuisance. An aggressive rooster can be placed in a box – if it can't raise its head, it can't crow. That could be a recommendation for containment and training so that the rooster does not crow at inconvenient times.

Mr. Picillo inquired what is the Board's interpretation of sections of this article that apply to grandfathering? Mrs. Roach advised that animals and acreage would be grandfathered. Items such as building setbacks need to be met for a new structure. Mr. Picillo asked if today's existing structures are grandfathered? Mrs. Roach said they are, as is the current acreage. Mr. Picillo asked if someone had a horse on 5000 square feet of property in the down town would that be

grandfathered? Mr. Sioras said it would. This would be looked at in the same manner as an existing non-conforming use. Anything new would fall under this ordinance.

Mr. Picillo felt the proposed Sections 165-156 and 157 are as subjective as the Board can get them and the interpretation would be up to the opinion of the Code Enforcement Officer. The Board is not setting a standard for the size and material of the structure.

Mr. Chase stated Mr. Mackey will be using Guidelines and Best Management Practices put out by the state regarding waste management and housing, so it is not that subjective. Mr. Picillo suggested if the Board wants to apply the Guidelines and Best Management Practices to the whole ordinance, the Board might want to spell that out – that the Code Enforcement Office would be enforcing the BMPs. Maybe the reference to the BMP Manual should be in its own section. Ms. Evans did not agree.

Mrs. Choiniere inquired if the ordinance does not take into account the state RSAs would the town be challenged? Mr. Sioras stated with subdivision regulations or the Zoning Ordinance, the regulations cite state statutes. The Board may want to reference the state statutes noted in the handout. Mrs. Choiniere felt if the town imposes the regulations, residents can go over the town's head. Mr. Sioras said that legally, there is precedent to reference the state statute. He provided an overview of what was discussed with regard to grandfathering to those members of the public who had joined the meeting.

Phil Ferdinando inquired if the ordinance will say that or will it be implied? Mr. Sioras advised the Board would put an effective date on the ordinance and anything in existence up to that date would be grandfathered. Mr. Ferdinando stated he has placed his property in a conservation easement so it can be agriculture forever. If he retires, or something changes and the land is purchased by someone else, what happens to the grandfathering? Mr. Sioras advised that Mr. Ferdinando is protected under the right to farm law, RSA 432:33, which states, "No agricultural operation shall be found a public or private nuisance as a result of changed conditions in or around the locality of the agricultural operation, if such agricultural operation has been in operation for one year or more and if it was not a nuisance at the time it began operation. This section shall not apply when any aspect of the agricultural operation is determined to be injurious to public health or safety under RSA 147:1 or RSA 147:2."

Mr. Picillo further explained that if Mr. Ferdinando purchased an additional 140 acres across the street, the ordinance would apply to the new land, not the existing property. He also stated he is not so sure he agrees with the reference in the ordinance to the BMPs. He is not sure what benefit that provides.

Mr. Ferdinando said the BMPs were set up as guidelines specifically for what is in this ordinance. It is already in place under state law and works well for most applications. The BMPs should be referenced and used. He felt the BMPs that were already in place were better than this ordinance.

Ms. Evans said if the Board does not put this ordinance into affect this year, the next Planning Board will be tougher and the ordinance will be more elaborate. She does not feel this ordinance, if it goes into effect, will change. There is a risk in not developing this ordinance now. She feels there is a degree of safety with this draft and it is a minimal ordinance. She wants to maintain the farming heritage and lifestyle that the residents love in Derry.

Mr. Granese reiterated this ordinance is not to stop farming. This is to help keep Derry the way it was and the way it is today, as much as the Board can. He is relatively new to town. He commented on the letters written by the young ladies who wanted to be able to keep and raise chickens. This ordinance is broken down from the original which was much more extensive. The Board wants agriculture and farming in Derry.

Mr. Ferdinando noted that Robert Johnson, from the NH Farm Bureau was in the audience.

Robert Johnson, Director of the NH Farm Bureau Federation introduced himself to the Board. He has looked at the list of members by county and Rockingham County has 50 members; he received a few calls from Derry regarding this ordinance. He has been following this ordinance. He spoke with Dick Uncles who oversees the BMPs as well as Steve Crawford, the state Veterinarian. He would invite the Board to meet with Mr. Uncles who lives in an adjacent town. They all reviewed the draft ordinance and they do have some concerns. The definitions are incomplete when compared to the state definitions of the same terms and there are some inconsistencies. For example, under the definition of fowl, turkeys are not included; guinea hens are a type of chicken. With regard to the poultry enclosures, why did the Board specify wire mesh or poly mesh roofing? Why not just say the fowl should be contained; there are other materials that could be used.

Regarding Section 165-158, what is "waste manure"? Perhaps the term should just be "manure". That is an oddity of wording that could become a problem for the town in the future. Some people may not feel manure is "waste".

Mr. Johnson reported that Mr. Uncles' office would be the one to contact if the town needed state assistance with issues related to this ordinance. Mr. Uncles recommends specifically referencing the state manual [Manual of Best Management Practices for Agriculture in New Hampshire, published by the NH Department of Agriculture, Markets & Food] because there are other manuals.

The fact sheets published by UNH Co-operative Extension and the equine council manuals are not the same.

Regarding Section 165-155, what is "sight"? What would that be? He can see having sound and smell in that section. Mr. O'Connor stated 'sight' might be a dilapidated building. Mr. Johnson thought other sections of the Zoning Ordinance would cover that, and that would be more of a safety concern. He urges the Board to utilize the BMP Manual. It has recommendations and guidelines. There are numerous statutes that mandate this manual be followed, regardless of the acreage of the property.

Mr. Granese stated sight might have to do with complaints regarding peacocks, buildings or pig farms on a front lawn. That is why the Board added sight to this section; it interferes with property owner's rights – similar to junkyard storage. Mr. Johnson stated in the case of a peacock, that would be more of a sound or trespass nuisance. Mr. Granese felt that sight is when you observe something. For example, a 5000 square foot lot with chicken coops on the front lawn. Mrs. Choiniere thought this would apply to more residential than rural neighborhoods. Mr. Johnson said he would still be concerned with the inclusion of sight in the nuisance provision of this ordinance.

Ms. Evans stated Mr. Mackey will have discretion to enforce or not and he can make a determination if something is offensive and then work with the homeowner. She feels sight should be in there. The town does not want "Sanford and Sons" on the front lawn. Sometimes a word or a line in an ordinance is enough to make people happy. This is a tool for Code Enforcement. Mr. Granese reiterated the Board is not trying to stop farming or agriculture. The Board just wants to be able to address the issues and control those few people who do not know how to take care of their animals.

Ms. Evans spoke with regard to the poultry netting. That was a recommendation from the Animal Control Officer who wanted that placed in the ordinance. Mr. Johnson commented he is raising 150 turkeys in a 100 x 100 pasture area that is rotated. They are contained by a three foot high woven wire fence and he has never had a problem with them getting out of the enclosure. The mesh requirement would vary with the type of poultry. Ms. Evans commented Mr. Johnson's total acreage of 160 acres would make him exempt from the ordinance. Mr. Johnson said that with this ordinance, someone who wanted to raise a few turkeys for Thanksgiving dinner, in the manner that he raises his, would be prohibited. He felt netting would not make a difference in some applications and would be an added expense. Ms. Evans commented that she sells turkeys and not many people are buying them these days.

Jim Rausch, 65 Gulf Road apologized for missing the prior workshops. He did pick up some information on them from the Planning Office. He has also spoken with the state Vet, Dr. Crawford. Dr. Rausch said he has some major concerns

regarding health and safety as this is written. The definition of agricultural livestock *includes* horses and cows but this definition will also include all those animals listed in the state definition of agricultural livestock. Some of those animals are dangerous. By this definition, the Board is legitimatizing them. Mr. Ferdinando, is by any definition, an agricultural farmer. Dr. Rausch stressed that he is pro agriculture but he is also pro health and safety, pro-animal and human. These large animals on one acre put children at risk for injury and there are sanitization issues. He spoke with Dr. Crawford, who recommended a guideline of one acre of space per large animal. The town has a dilemma and is trying to solve a nuisance problem [the rooster] by this ordinance. He is worried with regard to children and the wells.

Ms. Evans said the original complaint that brought about this ordinance was with regard to a horse on less than one acre. There have not been any complaints with regard to goats or sheep and that is why those animals were not included in the definition. Dr. Rausch maintained that by defining "agricultural livestock", the town is legitimizing anything defined as "agricultural livestock" under the state statutes. The town would be better off not doing anything, because by putting this definition in the Zoning Ordinance the town is allowing the animals. Dr. Rausch provided the following statistics that he obtained from Dr. Crawford. One lactating cow will produce 50 pounds of manure per day, which equals 9 tons in a year. One horse will produce between 30 and 40 pounds of manure per day. A horse is not a solitary animal and needs a companion to thrive so there would need to be another horse or at the very least a goat. This produces 5-7 tons of manure on one acre. He can't understand the minimum distance of 150 feet to the abutting houses. What if the house is on one side of the property but the well is in the middle? This creates the potential for someone to stockpile tons of manure which can contaminate the residential neighborhood. Where does the run off go? This does not apply for large farms. Mr. Ferdinando's operation does not threaten anyone. But a farming operation on one acre is a threat. Is the large animal a stallion? Is it a cow or bull, a cow and a bull? A pony? Is it three horses or two cows? The town may be better off with nothing. Board members can inquire of the Humane Society what is the main cause of the society rescuing animals? It is because there is not enough feed. On one acre of land which contains a house, a garage, a septic field, stockpile areas for manure and a well, an owner would need to purchase all the grain and feed from a supplier and it would be very expensive. This is why the humane society confiscates so many animals; the owners cannot afford to continue to feed them.

He feels the Board is committing a serious error by not defining or limiting livestock. The landmasses are too small for large animals. Poultry can be a nuisance but won't hurt a child. But a horse or bull can hurt a child. The Board also did not define kennel which can also create problems. The stockpiling of manure, as this ordinance is written, is improper and he feels the Board is jeopardizing the health and safety of neighborhoods.

Mrs. Roach advised that in her neighborhood, there are 4 people with horses, and she lives in a 1 acre zone. One person has 3 horses, one person has 2 horses, and the other two each have one horse. They are all within a quarter to half mile of each other. Dr. Rausch thought they might be the good examples of animal husbandry and share with the neighbors information on what they have. The problem the town has been having with the rooster is more a result of someone not utilizing good practices and not being neighborly. He feels this ordinance legitimizes multiple expansion of the problems. Mrs. Roach commented a few neighbors were glad this ordinance was going to be put into place as she has received a few complaints regarding the smell of manure.

Mr. Granese disagreed with Dr. Rausch. Currently there are no restrictions with regard to livestock. Town Council wanted something put in place. Regarding manure, if someone piles manure on their well, they are creating their own problem. This ordinance has some control for Code Enforcement and allows the town officials some leeway. He still thinks that Dr. Rausch is of the impression the Board is trying to stop agriculture and the Board is not. This ordinance is for the people who don't take care of their animals on ½ an acre. The town needs something in place so that people with small acreages can't have large animals so as to protect the children and agriculture.

Dr. Rausch felt Mr. Granese misunderstood him. He does not think the Board is trying to restrict agriculture. He believes one acre is too small for large animals. Large animals need at least two to three acres – this does not apply to poultry. But the Board has not excluded other large animals as defined in the state statutes. Some people are now raising ostriches. They can be very dangerous. Mr. Granese inquired if some of the concern would be alleviated if the term changed from 'agricultural livestock' to 'livestock'?

Mr. O'Connor wondered if 'animal husbandry' would be better? Would that smooth it towards what the town is trying to do? Regarding manure, maybe the Board needs to polish that section more and specify a specific RSA so that Code can deal with any manure issues under that RSA.

Dr. Rausch explained animal husbandry is the science of taking care of animals. That is a program that is taught. He is not sure how the Board can put that into an ordinance. If the Board uses "livestock", it still needs to be defined. Currently, the definitions says, "including..." Because the state defines it, he feels the town would default to the state definition which takes precedence. Mrs. Roach said in Londonderry the ordinance states "Agricultural livestock, poultry, and horses will not be permitted except on lots containing two acres or more." Any town with this type of ordinance would have the same problem. Dr. Rausch said he sees two things: the town has had noise complaints and wandering complaints – those are nuisance issues. He is more concerned with health and safety issues of large animals on small acreage. Dogs as a nuisance are covered under the state law, but the Board has exempted them under this provision. Mrs. Roach

explained that they did not include dogs, as Mr. Mackey had advised he can use the state statutes to enforce those issues. Dr. Rausch said it made sense then if the town was covered elsewhere.

Mr. Chirichiello asked what would Dr. Rausch like to see? Dr. Rausch said he noted during prior versions of this ordinance there was a requirement for an agricultural review committee. Personally, he feels that was a good approach because the acreage was subject to review. It might be okay to have large animals on small acreage if you have a lot of open space, but it might not be if your lot is full of oak trees. Even one acre can potentially work if you are next to conservation land and you have approval to graze on it, or if the ZBA has placed provisions. The difficulty is there are no numbers in this ordinance and no one reviews it. The prior application for the permit had numbers for large animals. Two horses on 2 acres might be okay, but a riding stable with six horses on less than 2 acres might not be. He feels the current draft is leaving openings for people who don't know animal husbandry, for example what the actual cost of feed will be and the safety issues involved with large animals. People who know animal husbandry are not going to have or cause an issue. Town involvement in the type and number of animals makes sense.

Mr. Chirichiello asked if Dr. Rausch knew of another town's ordinance that was more appropriate the Board could review? Dr. Rausch did not. He said Salem had issues because 'kennel' was not defined. In a residential cul-de-sac neighborhood, a 90 dog kennel was proposed. The lawyers determined that because the term was not defined and 'kennel' was allowed in a residential neighborhood, the use was allowed. Mr. Chirichiello noted that no two acres of land are the same. The town tried to give some leeway so that Mr. Mackey can enforce and there would be some teeth to the ordinance that could resolve some of the issues. He is not sure the Board is doing the town a service by making the ordinance very specific.

Dr. Rausch said that as he reads the ordinance the way it is written, he is afraid the town will end up in court. Nuisance is defined, but he is concerned with regard to wells and manure storage and feels the Board should look at that more closely. Mr. Chirichiello felt Dr. Rausch brought up a valid point with regard to the manure storage distance to wells. The state requires a 75 foot well radius; perhaps that could be included here. Ms. Evans felt if it was state law it did not need to be in this ordinance. Mr. Granese pointed out the state requires a radius of 75 feet for septic systems. Mr. Rausch commented that applies for underground systems. Manure is out in the open and subject to runoff. This ordinance as written may be better than nothing, but he is concerned with regard to safety. This creates a dilemma. Mr. Granese pointed out for the record that Dr. Rausch did agree that having an ordinance in place is better than not having an ordinance at all. Dr. Rausch's response was okay.

Robert Mackey, Code Enforcement, noted that it seems the Board is coming full circle. This is a difficult task. It started out as a more detailed ordinance and has been worked down to a minimal one to get something passed. He is not sure that more specifics and detail will have the full support of the town. The Board is not going to satisfy everyone. Good points have been raised. Many towns have a bare bones ordinance that specifies a two acre minimum and cites BMPs, but these are mostly land restrictions. The Town of Bow has a chart that lists the size of the lot and the number of animal.

Mr. Picillo inquired when were most of the surrounding towns ordinances enacted? Mr. Mackey was not certain but thought possibly over the last 10 years or so. Where the town goes from here is up to the Board. This can be sent back to subcommittee and they can look at the surrounding town ordinances again and maybe come to a compromise. The town should have something. Town Council felt that there needed to be something with regard to enforcement. More specific language in the ordinance is easier to enforce because there is less gray area. But if the ordinance is too involved, it may not pass.

Mr. Granese felt that something in place would help with enforcement. Ms. Evans agreed, even as minimal as this ordinance is.

Mr. Mackey stated the majority of the complaints are with animals on tiny lots. Minimal regulations are better than none. Ms. Evans commented again that Mr. Mackey is very good about working with people and can do a lot with his knowledge and personal skills. Mr. Mackey stressed that his department goal is always compliance.

Mr. Chase had a suggestion with regard to kennels. Boarding kennels are not allowed by right in a residential zone and that is already covered in the Zoning Ordinance. Is there a way to avoid that gray area, if someone says that because they only have 9 litters, it is not a business? Maybe the Board should change the word "kennel" in Section 165-154 to "enclosure". Did Mr. Mackey have any suggestions with regard to wording to avoid people skirting the zoning? Mr. Mackey thought changing the wording to 'enclosure' might help. Mr. Granese asked what do other towns call this section of their ordinance?

Mr. Mackey advised the Town of Salem, in its permitted uses in a Rural district allows," Farming and forestry activities, as defined by RSA 21:34-a, the keeping of cows, goats, sheep, horses, and other domestic non-commercial livestock (excluding the keeping of pigs), greenhouses, kennels, and nurseries, provided that no such use shall be allowed on a lot less than 2 acres (87,120 sf.) in size." Hampstead, in its Residential zones, permitted uses, states, "Large animals such as horses and cows shall not be kept on lots of less than four acres unless they meet the following conditions: No more than one large animal shall be kept on a two acre lot; no more than three animals shall be kept on a three acre lot and no more than five animals shall be kept on a lot of less than four acres." Windham

is similar in that its ordinance states, "For lots of less than two (2) acres in the Rural Zone, the keeping of horses, sheep, cows, chickens, goats, and other farmyard animals shall be allowed only with a Special Exception from the Board of Adjustment. The Board of Adjustment shall grant a Special Exception under the following conditions", and there are four criteria to meet. In Auburn, it is handled under animal husbandry and there are three paragraphs. In Londonderry, "Agricultural livestock, poultry, and horses will not be permitted except on lots containing two acres or more." The Town of Bow has the most substantial ordinance, with four to five paragraphs and a chart. It is called the Grazing, care, raising or keeping of livestock. Mr. Granese noted most towns don't have a separate ordinance under zoning.

Dr. Rausch wanted to clarify commercial kennel falls under licensing laws and that is why some communities got in trouble years ago. Anything over 10 litters falls under commercial kennel licensing. But that is not meant to be a zoning tool, it is only a number for licensing under RSA 466:6, Group Licensing. Commercial kennel is defined, but only under that licensing RSA; it is not meant as a zoning definition.

Mrs. Choiniere stated she would have no objection to raising the acreage requirement.

Mr. Granese suggested removing "agriculture" from the definition of "livestock". Regarding the acreage, he could see maybe raising it to an acre and a half. Mrs. Choiniere thought it should be a two acre minimum and Ms. Evans wanted to leave it at one. Mr. Granese suggested removing the word 'sound' from the nuisance section of the draft ordinance.

Mr. Chirichiello noted the town acreage requirements in the zones are either one, two or three acres. This ordinance should reflect that and perhaps the minimum acreage requirement should be two acres. Ms. Evans still thought the minimum acreage should be one acre. There have been no problems previously; only on lots of $\frac{1}{2}$ or $\frac{1}{4}$ acre.

Mr. Picillo suggested limiting it to one horse per acre and also limiting the number. Ms. Evans disagreed because people can't afford to have 5 horses unless they have a lot of acreage. Mr. Picillo noted that with this ordinance, someone could have one acre with 5 horses and three goats, as Mr. Rausch had said. He is not sure he would want to allow that. Mrs. Choiniere suggested if the acreage requirement is left at one acre, then perhaps they could implement the oversight to Mr. Mackey's discretion and it would need to go before the ZBA. Ms. Evans felt the Board had a good ordinance and she does not feel they should give up anything. The problems came from $\frac{1}{4}$ acre lots. She is not out to rearrange the world, the Board is just here to respond to a problem and nothing more.

Mrs. Roach agreed that "kennel" could be changed to "enclosure", and she agreed with removing "sound" from the nuisance section. Mr. Chirichiello noted the rooster was a nuisance because of sound. Ms. Evans said the Board went through this at the last meeting. She thought, until this evening, that the only solution was to kill the rooster. She liked Mr. O'Connor's suggestion. Kids want fertile eggs to raise chickens and broiler males; she does not want to kill roosters. Mr. Granese said the sound component is still covered under any other action and people can video/record the nuisance and show it as documentation.

Mr. Chirichiello asked Mr. Mackey if he felt sound should be removed from that section of the ordinance? Mr. Mackey said if that section is specific, it eliminates conjecture of when does sound rise to the level of nuisance. He supposed he could still pursue enforcement action, but leaving sound in gets him to the point a lot quicker. Mrs. Roach said if sound is in that section there would need to be a number or decibel attached to it so it is not subjective. There needs to be a balance between an actual nuisance and what some might find annoying. Mr. Chirichiello felt it would give Mr. Mackey a chance to document and if he goes to a lot 15 times, that gives good documentation. Ms. Evans does not feel that is the right thing to do. She does not want Mr. Mackey telling someone they need to get rid of their rooster. Mr. Chirichiello was not sure if this version of the ordinance would pass. He explained that what he meant by that statement was that this Board was having a hard enough time agreeing on a final version and it will still need to go under the scrutiny of the Town Council which has 7 members. Ms. Evans said she was ready to rip it up. Mr. Chirichiello commented on how hard this Board has worked on this. Mrs. Roach said the Board really wanted this to be a stand-alone ordinance and not part of the Zoning Ordinance. Mr. Chirichiello said any final ordinance can always be revisited in the future.

Mr. Granese said he thought the Board agreed with what is on the table with few exceptions. Why not take what the Board has and push it up the ladder and see what the result is instead of going around and around on it.

Mr. Mackey suggested amending the nuisance section to "At no time shall a nuisance be created that would interfere with nearby property owner's rights."

Mr. O'Connor suggested after incorporating the changes discussed this evening that the Board send this to legal for review. Mr. Sioras said the final draft would go to legal for review, and then it would come back to the Board, be scheduled for public hearing and then moved to Town Council for review. The attorney may find something in the wording that will need to be adjusted or a state statute to reference.

The Board agreed with Mr. Mackey's suggestion with regard to the change to the nuisance provision.

Mr. Chirichiello suggested adding “well” to Section 165-158. The Board agreed. Mrs. Choiniere confirmed the distance from stockpiled manure to abutting homes is 150 feet. Mr. O’Connor suggested changing “waste manure” to “manure”. This was left for the attorney to review and recommend. “Kennel” was to be changed to “enclosure”. Mrs. Choiniere inquired if the ordinance should reference the specific state BMP manual? Mrs. Robidoux suggested the Board should as there are several different livestock BMP manuals.

Mrs. Roach suggested putting a statement or note at the beginning of the ordinance that references that BMP Manual. Mrs. Choiniere asked if the Board wanted to remove the definitions as they are covered under the state definitions? Ms. Evans said she did not feel Derry had a big sheep, goat or pig problem, so she did not feel the need to change the ordinance. Mrs. Choiniere suggested changing the livestock definition from “livestock includes” to “livestock are”. Mrs. Roach said she would feel comfortable having Attorney Boutin’s office wordsmith the definition. Mrs. Choiniere felt that as the definition is written today, it is inclusive. If going forward the town is going to limit livestock to be a certain type of animal, it should be spelled out.

Mr. Chase inquired what would happen if someone wanted to bring in buffalo or yak? Mrs. Choiniere said they would have to go for a variance. Mr. Chase pointed out this ordinance makes no reference to that. Mrs. Roach felt Attorney Boutin’s office could provide direction on that issue. Mr. Granese agreed.

Mr. Sioras asked if the Board wished to change the acreage requirement? Mr. Chirichiello said if the definition is only horses and cows then he would up the acreage requirement. Mr. Mackey said no issues or complaints come to mind with respect to multiple horses on one acre. Mr. Chirichiello felt it could be left as it is, and be changed later.

Mrs. Roach requested the changes be incorporated and forwarded to Attorney Boutin’s office. Once the Board receives the legal response, the ordinance can be scheduled for public hearing.

There was no other business to come before the Board.

Motion by Choiniere, seconded by Granese to adjourn. The motion passed in the affirmative and the meeting stood adjourned at 8:51 p.m.
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Minutes prepared by Elizabeth Robidoux, Planning Clerk