

The Planning Board for the Town of Derry held a public meeting on Wednesday, November 5, 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; Phil Picillo (7:07 p.m.); Mark Cooper, Ann Evans.

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

Absent: Gary Stenhouse, Brian Chirichiello

Also present: George Sioras, Community Development Director; Elizabeth Robidoux, Planning Clerk; Eric Steltzer, Office of Energy and Planning; Todd Connors, Sublime Civil Consultants

Chairman Roach called the meeting to order at 7:02 p.m. The meeting began with a salute to the flag. She noted additional agendas and materials were available to the rear of the room and also noted emergency exits. She introduced staff and Board members present.

Mr. Tripp was seated for Mr. Picillo.

Escrow

#08-44

**Derry Business Center
Astoria Properties
31005-006, 3 Corporate Park Drive**

The request is to approve Release #3 for the above noted project in the amount of \$10,542.96 plus any accumulated interest. This is the final release for the project. The amount to be retained is zero.

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

#08-45

**Derry Retirement Residence
Harvest Development
25014-002, 7 Kendall Pond Road**

The request is to approve Release #2 for the above noted project in the amount of \$259,233.50. The amount to be retained is \$118,293.05.

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

#08-46**Chase Mill Condominiums
Jones & Wilson Realty
Chester Road**

The request is to approve Release #1 for the above noted project in the amount of \$76,966.84 plus accumulated interest. This is the final release for this project. The amount to be retained is zero.

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

Minutes

The Board reviewed the draft minutes of the October 14, 2008 meeting.

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

Correspondence

Mrs. Choiniere acknowledged the following correspondence. The NH Division of Historic Resources has copied the Board on a letter advising they disagree with an applicant with regard to the historic nature of the land surrounding Central Fire Station, which is located at the rotary. The Town of Pelham has sent a notice advising the Pelham ZBA will hear an application with regard to a telecommunication tower. That hearing will be held on November 10, 2008 at 7:00 p.m.

The CTAP Local Government Cluster Workshops will be offering a workshop on Impact Fees on December 17, 2008. The workshop will be held at the Derry Municipal Center. The Derry Planning Board will meet at 7:00 p.m., but will not take up public hearings on that date. The Local Government Center has sent a flyer advising of the cost of the books from the Municipal Law Lecture Series.

Mrs. Roach noted for the record that Mr. Picillo was now seated and Mr. Tripp would step down.

The Board has received a new edition of *Town and City*, as well as the new *Supply Lines with the Source* newsletter. SNHPC will be holding an Energy Workshop on November 6, 2008 at their office, beginning at 7:00 p.m.

Other Business

Request for Extension – Keenan & Associates (Enterprise Bank)

Mrs. Roach advised the Board has been asked to consider a one year extension on the site plan approval granted to Enterprise Bank on May 7, 2008. Additional time is required to complete the court appeal process initiated by an abutting landowner. The Court's decision is still pending. Mr. Sioras advised this is the first request for an extension. Typically, this Board does not grant extensions beyond six months, but given the circumstances, he would support the request for a one year extension. The applicant is still awaiting the court decision regarding the appeal of the ZBA. He feels this is a reasonable request. Mrs. Roach agreed; it is unknown when the court will render a decision. If the Board grants the typical six month extension, the applicant may need to request another six months. Mr. Sioras noted that even if a decision is provided, that decision could be appealed.

Motion by Granese to grant a one year extension for the Enterprise Bank site plan, located at 47 Crystal Avenue, given the status of the ongoing litigation. The motion was seconded by Picillo.

Picillo, Evans, Granese, Chase, Cooper, Choiniere and Roach all voted to grant.

Request for Extension – DM Kilrea Development

Mrs. Roach advised the Board has received a request to extend the approval granted for the DM Kilrea, 12 lot subdivision, located on ~~Gulf~~ Kilrea Road. The applicant would like additional time to secure the Letter of Credit.

Mr. Sioras advised this is a reasonable request. The engineer was unable to attend this evening due to a personal issue. This is the first request for an extension.

Motion by Granese to grant a six month extension for the DM Kilrea, 12 lot subdivision, located at parcel 04054, seconded by Cooper.

Picillo, Evans, Granese, Chase, Cooper, Choiniere and Roach all voted to grant.

Master Plan Surveys

Mrs. Roach advised that the Master Plan Surveys are available on-line at the Town of Derry website, the lobby of the Municipal Center, at Veteran's Hall, the Marion Gerrish Center, the Taylor Library and the Derry Library, and in the rear of the 3rd floor meeting room at the Municipal Center. They are due back by November 21st. They can be returned to the Planning Office by email, US mail, or by placing them in the drop boxes located in the rear of the 3rd floor meeting room or in the Lobby.

Small Wind Energy Systems Presentation

Mr. Sioras introduced Eric Steltzer, Energy Policy Analyst, from the Office of Energy and Planning. He recently presented the model wind turbine ordinance at SHNPC, which was attended by Mr. O'Connor, Mr. Picillo and Mr. Sioras.

Mr. O'Connor, a member of the Wind Turbine Subcommittee, said he attended the presentation by Mr. Steltzer who is on the forefront of the development of this ordinance. He gave an excellent presentation at SNHPC. In July of this year, Governor Lynch signed the law for the new wind ordinance. The OEP was also charged to produce a model ordinance and technical bulletin regarding alternative energy for municipalities to draw on. He confirmed the Board members had a copy of the bulletin and the model ordinance.

Mr. Steltzer advised that in July of this year, HB 310 was passed. The original bill began during the legislative session of 2007; there was no ordinance prior to the signing of HB 310. There has been a growing demand for clean, renewable energy systems. There are installations in New Hampshire in the communities of Bedford and Kensington, as well as in Kittery, Maine.

Previous to this bill, there was an inadequate process with regard to building permits, specifically issues with height restrictions which would require a variance. When applications went before the Zoning Boards, they did not look at the other standards, aspects and concerns specific to wind turbines.

Mr. Steltzer provided an overview of HB 310. There are new RSAs (674:62-66). The laws speak to regulations municipalities can have to regulate the wind systems. They spell out what cannot be done in a town; for example, wind turbines can't be prohibited, setbacks need to be a certain distance, there are height restrictions, sound requirements, and the codes can't be stricter than the state building codes. It has been established that the building inspector issues the permits and oversees the process. There is a comment period prior to the issuance of a building permit. The building inspector is responsible for noticing abutters and for making the determination of regional impact. If the building inspector feels there is regional impact, the criteria for notification is already spelled out under RSA 36:55. Lastly, RSA 672:1, III-a and III-d speaks to encouraging renewable energy, similar to agriculture. It clarifies 'unreasonable interpretation'.

What is a wind turbine? There are several different types. Small scale wind turbines have a generating capacity up to 100kW and are regulated under the model ordinance. They are typically 50 to 100 kW. Residential systems are typically between 1 to 10 kW. Large scale turbines with a generating capacity greater than 100 kW and up to 30 MW have additional siting concerns and are regulated under normal land use regulations. They can be up to 250 feet tall and generate up to 660 kW. Any utility scale electric generation facility 30 MW or more is regulated under the Energy Facility Siting Process

before the Site Evaluation Committee (SEC) which brings all state entities together in one group.

The review process for wind systems is outlined in the model ordinance. When towns are reviewing the model to create their own ordinance they should consider the following: The building inspector reviews the project, the systems should be allowed in all zones, what is a complete application, abutter notification, the 30 day comment period, and regional impact.

The ordinance itself should consider setbacks. This is the key to keep falling equipment from an abutting property. It also helps alleviate sound concerns as the setback creates a buffer. The model ordinance utilizes a tiered process and offers the following requirements. The tower height is restricted to 35 feet above the tree canopy within a certain radius and the height is capped at 150 feet. Sound is capped at 60 dBA. Shadow flicker is not a big issue with small systems as they move so much faster than utility systems that they do not cause the flicker. Signs, other than those noting the manufacturer, are prohibited. Regarding code compliance, state building codes and FAA requirements should be incorporated. Visual impact should be minimized with regard to color, the site and artificial lighting.

There are many different types of turbines, but the model ordinance spells out that for small wind turbine systems, the manufacturer must be approved by the California Energy Commission (CEC) or the New York State Energy Research and Development Authority (NYSERDA), or a similar list approved by the state of New Hampshire if available. This prevents the installation of man made structures.

There are also net metering requirements that restrict public access to the generators. With regard to land clearing, no additional vegetation can be cleared other than what is necessary to complete the installation. An abandonment procedure should be included. The model outlines a specific process to allow the abandonment. It grants municipalities action rights in the event the applicant is negligent. Violations should also be included. There is a grandfather clause for those systems installed prior to the adoption of the ordinance, and penalties should be noted.

Mr. Steltzer advised this is a model ordinance and should be adjusted to meet the needs of each municipality. The law is clear that the building inspector needs to issue the permit. The Planning Board can add to it with a conditional use permit, or specify a special exception is required through the ZBA. Site standards can be adjusted. The level of a small wind turbine system should not be adjusted below 100 kW. Towns could cap the height, but need to be aware that the applicant needs to be able to reach the wind.

Regarding regulations, the key items are the outline of the new procedure, state RSAs, criteria regarding abutter notification and regional impact, setbacks both visual and auditory, sound levels and the approved wind turbine list.

Mr. Steltzer opened the floor for questions.

Mr. Tripp inquired with regard to the maximum decibel level. Is there any leeway? Mr. Steltzer advised for small wind systems the dBA cannot be below 55, it can be higher. Mr. Tripp asked if when the model was written and the distance of 35 feet above the treeline was set, was consideration given to the fact that the trees will grow? Mr. Steltzer said tree growth can be taken into account in the ordinance. They felt it was best to use a quantifiable number to avoid "install to meet manufacturers' specifications". The purpose was to have a quantifiable number in the regulation. This is a common height in the wind industry.

Mrs. Choiniere asked, if the tower height is where the generator is located on the pole, does that take into consideration that the blades will be higher than the generator and the blades will need room to rotate without hitting trees? She also asked for an example of what 55 dBA sounds like. Mr. Steltzer said 55 dBA is conversation level, similar to what people are hearing in the room this evening. It is typical for a residential neighborhood.

Ms. Evans asked if the state allows wind turbines in commercial or industrial zones? Mr. Steltzer said a small scale turbine could be for a commercial entity. The purpose is to offset energy use. The energy cannot be sold back to the grid and money made on the commodity.

Ms. Evans asked if the towers could be attached to a roof? Mr. Steltzer said the technology for that is in its infancy and still developing. The ordinances do not address that as those types are not on the approved lists from CEC or NYSEDA. Ms. Evans asked if there are any businesses that serve residences? Mr. Steltzer said there are. The cost for a residential installation, producing 3.2 KW runs between \$25,000.00 and 35,000.00. The larger systems, such as the one in Kittery which produces 50 kW, is about \$150,000.00. The payback in Kittery is expected to be within 5 years and the average lifespan of the system is about 25 years.

Where the turbines are sited is based upon the wind resource. If there is no wind, there will not be a payback on the system. The Derry resources have been mapped. Derry is not a huge wind resource and is considered a Class 2 or Class 1. The resource should be at least a Class 2. Class 2 areas have winds averaging 8 – 9 MPH. To be really beneficial the resource should be a Class 3, which has sustainable winds of up to 13 MPH as an annual average. The best areas are along the immediate coastline and on ridge lines. It is possible to find an anomaly area near the edge of a lake.

Mr. Picillo thanked Mr. Steltzer for his presentation. He inquired how close was the mapping with regard to locus? Mr. Steltzer said the mapping is at 200 meter resolution. Mr. Picillo thought the map would be overlaid on the Derry street map. Mr. Steltzer cautioned the data was available on line up until 3-4 months ago. It has since been taken off line. OEP is now working to see what can be done with the raw data. The raw data had been produced by the National Renewable Energy Laboratory. OEP does not

have its own maps to date. Mr. Picillo inquired as to the number of approved manufacturers? Mr. Steltzer thought the lists encompassed about 20 companies. Within those, there are between 40 and 50 turbine choices. He believes that there is one manufacturer that produces both the tower and the turbines.

Mr. Tripp asked if Mr. Steltzer could explain flicker shadow. Mr. Steltzer stated as the sun goes through the system, it casts a shadow on the ground. With small scale systems, the blades rotate fairly quickly and do not produce the dark to light effect that is seen with larger systems. Mr. Tripp recalled there was significant abutter complaint in Maine with regard to the “whomp, whomp” sound the turbines were producing. Mr. Steltzer said the small scale systems produce more of a hum than a “whomp”.

Mr. Tripp asked if guy lines are included in the setback? Mr. Steltzer explained they should meet existing setback standards in the town. Mr. Tripp asked if there is a restriction on the number of towers on a property? Mr. Steltzer noted the model ordinance does not address the number, but it does address the purpose of the towers, which is to offset electrical consumption. Mr. Tripp confirmed the RSA caps the kW at 100 kW per tower. Mr. Steltzer stated that 100 kW is the net meter and he would need to look into that further. Mr. Tripp posed a hypothetical. A condo association would potentially require more use and might warrant more turbines on the property. Mr. Steltzer felt in a situation like that, the applicant would be more apt to go for a larger tower, which would produce more electricity, rather than multiple towers.

Mr. Cooper noted there is a company in the Rockingham Mall that sells residential systems. He believed the cost to be between \$15,000.00 and 20,000.00.

The Board thanked Mr. Steltzer for his presentation and the information.

Mrs. Roach announced the Board would be entering a workshop to discuss the draft open space ordinance. This workshop would not be televised. The workshop began at 7:53 p.m.

Open Space Ordinance Workshop

Mrs. Roach noted the Board members had the latest draft of the ordinance in front of them. This is the result of the May 21, 2008 workshop. The Board should decide this evening if it wants to schedule this draft for public hearing. This draft has not gone to legal for review. If the Board decides to move forward with the draft then that would be the next step. The question was posed would this ordinance would have support at the Council level. The Board noted a lot of work had gone into the ordinance. The Board, after a brief discussion, decided to send the draft ordinance, as written, for legal review. Once a legal opinion has been rendered, the Board can hold a public hearing and then send it on to Town Council.

Motion by Granese, seconded by Choiniere to adjourn. The motion passed in the affirmative and the meeting stood adjourned at 7:57 p.m.

Minutes recorded by Elizabeth Robidoux, Planning Clerk.