

The Planning Board for the Town of Derry held a public hearing on Wednesday, January 7, 2009 at 7:00 p.m. at the Derry Municipal Center (3<sup>rd</sup> Floor) located at 14 Manning Street in Derry, New Hampshire.

Members present: Virginia Roach, Chair (7:06 p.m.); David Granese, Vice Chair; Jan Choiniere, Secretary; Brian Chirichiello, Council Representative; Phil Picillo, Ann Evans, Mark Cooper

Alternates present: John O'Connor, Maureen Heard

Absent: Gary Stenhouse, Town Administrator; Richard Tripp, and Randy Chase, Administrative Representative

Also present: George Sioras, Director of Community Development; Elizabeth Robidoux, Planning Clerk, Mark L'Heureux, Engineer, Derry Public Works

Vice Chair David Granese called the meeting to order at 7:05 p.m. The meeting began with a salute to the flag. He introduced the staff and Board members present, and noted the location of emergency exits.

*Mrs. Roach entered the meeting at 7:06; Mr. Granese stepped down as Chair Pro Temp.*

## **Escrow**

### **#08-52**

#### **Weber Truck and Auto**

#### **John Picirilli**

#### **03165, 135 Island Pond Road**

The request is to approve Release #1 in the amount of \$5000.00 plus accumulated interest. This is the final release. The amount to be retained is zero.

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

**#08-53**

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

The request is to approve Release #3, in the amount of \$97,557.05. The amount to be retained is \$20,557.05. Mr. Picillo inquired as to the amount of the release with regard to landscaping. Mr. L'Heureux advised that much of the work was done a while ago and amounts are being held to make sure the plantings hold. Mrs. Roach noted the Clerk's correction that the amount to be retained is \$20,736.00

Motion by Choiniere, seconded by Granese to approve the release as corrected. The motion passed.

**#08-54**

**Car Tunes, Etc.  
Brien Realty  
35024, 2 Laconia Avenue**

The request is to approve Release #2 in the amount of \$8,394.84 plus any accumulated interest. This is the final release. The amount to be retained is zero.

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

**#08-55**

**Indian Hill Development  
Stone Hill Builders  
04003, Goodhue Road**

The request is to accept the amended Letter of Credit number 4952 for the above noted project. The new expiration date will be November 29, 2009.

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

**#08-56**

**McDonald's  
McDonald's Corporation  
36020-001, 45 Crystal Avenue**

The request is to approve Release #2 in the amount of \$72,333.32. The amount to be retained is \$20,859.12.

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

**#08-57**

**Bunker Estates  
JEMCO Builders  
02020-001, Fordway**

The request is to approve the renewal of Letter of Credit #20001082 in the amount of \$62,122.86 for the above noted project. The new expiration date is December 11, 2009.

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

**#09-01**

**River Bank  
River Bank  
36019, 51 Crystal Avenue**

The request is to approve Release #1 in the amount of \$104,414.83. The amount to be retained is \$40,594.61.

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

**#09-02**

**Gennaro Estates  
Gennaro Cella  
04075 & 04074, 13 Bartlett & 90 Gulf Road**

The request is to establish escrow in the form of Letter of Credit #1, drawn on Hampshire First Bank, in the amount of \$753,227.42 for the above noted project.

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

**Correspondence**

Mrs. Roach confirmed with Mr. Sioras that the Board should take up the correspondence related to the minutes prior to discussing the minutes of the November 19, 2008 meeting.

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

The Board has received two letters, from Griffith Associates and Keane & Macdonald, respectively, regarding the content of the November 19, 2008 minutes. The Board has also received a new edition of *Town and City*, which can be viewed in the Planning Office.

**Minutes**

The Board took a few minutes to review the letters from Griffith Associates and Keane & Macdonald. Mr. Sioras advised that Board action would depend upon whether the Board felt the minutes of the meeting accurately reflected the meeting and the motion made by the Board. If so, then they should be approved as written. The Board can't change the way the motion was worded if the Board felt it was incorrect, but the Board can clarify the intent.

Motion by Granese to approve the minutes of the November 19, 2008 meeting of the Planning Board as recorded, seconded by Chirichiello.

Chirichiello, Granese and Evans voted to approve. Picillo, Cooper, Choiniere and Roach abstained. The motion passed with a vote of 3-0-4.

**Other Business****Request for Extension – Martingate**

Mrs. Roach read aloud a letter from Bradley Benson requesting a six month extension on the Martingate LLC site plan, located at 1 West Broadway, to allow the applicant to secure the letter of credit for the project. Mr. Sioras noted this is the first extension request.

Motion by Granese to approve a six month extension for the building on 1 West Broadway as requested, seconded by Cooper.

Picillo, Granese, Cooper, Choiniere, and Roach voted to approve. Chirichiello and Evans abstained. The motion passed with a vote of 5-0-2.

Other – Community Profile Reminder

Mr. Sioras encouraged public attendance at the January 24, 2009 Community Profile event that will be held at the West Running Brook School between 8:00 a.m. and 4:00 p.m. This is part of the Master Plan update. Breakfast and lunch will be provided. He encouraged participation in the exercise. Citizens should call either him or Elizabeth in Planning to RSVP. It is worthwhile to give up a Saturday to plan for the future of the town.

**Public Hearing****Foxcroft Incorporated (The Goddard School)  
Parcel ID 08079-006, 12 Tsienneto Road  
Acceptance/Review, Final Site Plan Application**

Mr. Sioras advised that the Board has seen this application previously. There was litigation and the court remanded the application back to the Board for additional review. He introduced Todd Connors and Keith Coviello of Sublime Civil Consultants who are representing the applicants.

Mr. Connors advised he would like to give the Board a brief presentation as some of the Board members have changed since the last submission. Following the action of the Board last winter to deny the application, they were successful in an appeal to the Superior Court. They were directed to come back to the Board for further consideration. In this application, they have included the site plan, copies of the drainage report and traffic evaluation and parking analysis. There have been no modifications to the reports. The site plan does have a few changes and he will discuss those in more detail during his presentation.

The site is located at 12 Tsienneto Road, known as Parcel ID 08079-006. This is a 3.2 acre parcel, located in the GC-II district. A variance was granted on September 20, 2007 to allow the proposed use. The proposed use is The Goddard School, which is a daycare/school. Students will range in age between 6 weeks and 5 years old, with kindergarten being the last stage. They are proposing an 8000 square foot, one story building. It will hold 9 classrooms, accommodating up to 132 students and 20 staff members.

The site plans are fairly detailed. There are curb cuts to the east and west side of the property; these are common driveways. The west driveway is shared with CLM and the east side, which is a long driveway, will be shared with the property located to east when that vacant lot gets developed. The length of that driveway allows for stacking distance when the future traffic signal is installed.

There are 42 proposed parking spaces located in front of the building. There is a large, 14,000 square foot, fenced playground area. The lot is serviced by public

water and sewer, and underground cable, telephones, electricity and natural gas. Drainage is a combination of both open and closed drainage. Stormwater is collected in various catch basins, which drain to a treatment swale. The stormwater is treated and then released to the rear of the property. This meets state standards and there will be no additional runoff. With regard to landscaping, there will be shrubs and trees to the front and lighting. They are proposing 6 building mounted light fixtures and 2 pole light fixtures. They are all full cut off, with directional reflectors. The lot has 78% green space, which includes the wetland to the rear of the lot.

During the original review, they met with the TRC. Recently (this fall) they met with Mr. Sioras and Mr. L'Heureux. They discussed the minor changes and the traffic light. The last time this plan was presented to the Board, they presented traffic generations and a potential traffic light and discussed the payment for the installation of the light. Initially, there were 6 parcels that were proposed to pay for the light: The Goddard School, CLM, and vacant parcel on the north side of Tsienneto, and three on the south side, one of which is not very developable.

Mr. Connors stated he looked at the proposed trips generated for the vacant parcels, trip generations for Tsienneto Road and travel speeds. They found the travel speeds are faster than 40 MPH, so there is an earlier trip for the light. He concluded the development of The Goddard School by itself does not warrant a traffic light, but when considered with the potential trip generations on the south side of Tsienneto Road, it does. They are in agreement that The Goddard School should pay its fair share contribution toward the traffic light.

They met with the developer across the street, thanks to coordination through Mr. Sioras. They came up with a more simple way to do the fair share contribution. The property owners on the south side of the road will pay 50% and those on the north side will pay 50%. On the north side, The Goddard School will split the fair share contribution with Smith & Jackson. The Goddard School has a 25% requirement; this removes CLM from the equation. Mr. Connors noted that Steve Pernaw, the traffic engineer is present this evening to answer any questions the Board may have with regard to the traffic study.

The architectural style of the building itself was discussed previously in detail. It is a traditional New England style building with a hip roof and traditional features. The balance of the building, other than the brick in the front, will be traditional siding (cement fiber clapboard) in tan, there will also be white trim; the building will utilize earthy colors.

With regard to other changes to the plan, they listened to the concerns of the Board specifically with regard to pedestrian traffic and vehicular traffic. There are driveways on either side of the building and CLM traffic will likely cut through when the light goes in. They have placed 14 spaces on the south side of the lot (closest to CLM), and added signage for staff parking only. This will eliminate the

need for a parent to cross the parking lot with a child. It is the school policy to have the children escorted into the building by the parent; the child is signed in and out. The placement of the staff parking in this area eliminates the need for the parents to cross the parking lot. The parking on the north of the lot has access to sidewalks.

Per the LDCR, they calculated the use required 40 parking spaces. The Board had been concerned this was not enough parking. They had looked at the Nashua facility. The franchise has over 250 locations throughout the US and has a good handle on the needs of the locations. Nashua has 36 to 38 spaces. They looked at the sign in logs for that facility and determined there is a 15 minute window to drop off or pick up a child. Using this information, they determined that in the morning, they would need to have 36 spaces; for the mid-day peak, 32 spaces would be required and for the evening peak, 34 spaces. The original plan had 40 spaces. Mr. Connors pointed out that on the right hand side of the plan, near the CLM property, they added 2 more spaces near the landscaped island. The spaces are located in front of the maintenance access to the playground. Maintenance will not occur during peak traffic pick up and drop off. The spaces are signed for 15 minute drop off only. This brings the total of available spaces to 42 during the three peak periods of traffic on site and allows access to the rear of the property for lawn maintenance.

The Board had no questions for Mr. Connors at this time.

Mrs. Roach opened the hearing to comments from the public. There were none and the plan went back to the Board.

Mr. Sioras noted there is a memo from Mike Fowler attached to his staff report regarding the fair share contribution. Meetings were held with the applicant, DPW, Mr. Nickerson and representatives of Smith & Jackson to discuss the fair share contributions. Mr. Fowler is satisfied with the fair share analysis. Mr. Picillo commended Mr. Connors for working out an arrangement for the fair share contribution that everyone can work with. He had a question with regard to the discrepancy in the figures for the fair share contribution, specifically between the September 29<sup>th</sup> memo and the November memo. One figure is \$277,000 and one is \$184,000.00.

Mr. Connors explained that originally, DPW came up with a rough figure using DOT figures and weighted averages, and then added an escalator, which brought the figure up to \$277,000.00. When Sublime worked with DPW this fall, Sublime was allowed to do an actual estimate of what it would cost to install a traffic signal at this location. DPW reviewed the estimate and accepted the amount. Mr. Picillo inquired if it was correct that there needs to be an agreement in place? Mr. Sioras stated that can be a condition of approval. Mr. Picillo had questions with regard to the escrow account and interest. Mr. Connors stated

the funds would be placed in an interest bearing account. Mr. Sioras advised the town has an escrow account with a local bank.

Ms. Evans wanted to clarify that this daycare would be built without a traffic light at the entrance. After 6 years, all the contributions would disappear, and the funds would go back to the developers and any future installation of a traffic signal would be at Derry's cost. If a second business goes in, there will not be a light unless all the businesses go in within 6 years. There will cars crossing a busy thoroughfare to drop off cargo far more precious than a piece of mail, with no prospect of a light at the end of six years. There are intense drop off and pick up times and she wants to be sure she has a clear picture of what will happen. She asked Mr. Connors to confirm her statements.

Mr. Connors said Ms. Evans has not stated anything that is incorrect. The proposal will have three peak periods, but the site does not warrant a light by itself. This exaction or impact fee, after 6 years, has to be returned to the contributors because that is state law. They would prefer to see the light built within 6 years. The neighbors are in agreement it should and will be built.

Ms. Evans felt that given the current state of the economy, the town won't see a lot of development. She has a hard time liking the project because of the danger to people on the road because of the intense pick up and drop off times. She feels this school will be the chief contributor to the peak build up of traffic. She does not feel the other developments will generate 132 trips within an hour. She operates a business within 100 feet of a main thoroughfare with no light. It can be dangerous at times. A light is needed as soon as the daycare goes in, based on her experience and what she has seen trying to exit onto a major thoroughfare. She has read and studied the traffic report, but has personal knowledge that affects her feelings toward this plan.

Mr. O'Connor had a question regarding Mr. Fowler's memo and the conditional agreement between the developers. Who is responsible for ensuring the agreement is put in place? Would that be Mr. Fowler or Mr. Sioras, or is it the applicants who ensure that is in place? Mrs. Roach felt that could be a condition of approval. Mr. Sioras advised that staff would make sure that condition of approval was met. Mr. O'Connor felt the September 29, 2008 memo from Mr. Fowler should be noted on the conditions of approval.

Mr. Cooper wanted confirmation that all 132 students would not arrive and depart at the same time. Ms. Evans noted there would be 152 people on the site, including the employees. Mr. Connors noted his memorandum dated February 15, 2008, and its accompanying graph. The graph shows the staff arrivals and departures on top, with the student drop off and pick up underneath. The student drop off occurs between 7:00 a.m. and 11:00 a.m. and the times are staggered; not all 132 students will arrive within an hour. The vast majority will likely arrive between 7:00 and 9:00 a.m. There will also be some siblings, so that would



involve carpooling. In Nashua, the sibling rate is 14%; they accounted for 10% in Derry. There will also be some absences which spreads it out a bit. There are half day students who leave between noon and 1:00 p.m. Evening pick up is between 3:30 and 6:00 p.m. and this is staggered as well. There will be a peak point. Their research shows they don't need more than 36 spaces. With 14 staff on site, that will allow for 20 cars with kids during peak hours. He understands what Ms. Evans has said with regard to traffic, but it does not jive with engineering standards. The warrant for a traffic light is not tripped. They need to follow the standards and can't put a light in because it is thought one should go there. Mr. Cooper stated he was not really bothered by the parking situation; he has experienced pick up and drops offs at daycare for his own children.

Mr. Chirichiello asked how many spaces are there at Derry Medical Center (Overlook)? Mr. Connors thought about 200 spaces. Mr. Chirichiello noted that CLM is also busy and he does not feel this use is as intense as either of the other two. Mr. Connors stated the traffic light will help alleviate some of the traffic concerns at those two locations. Mr. Chirichiello also noted Pinkerton Academy is around the corner and Mr. Connors agreed there was more traffic at that location.

Mr. Granese had a question with regard to the number of spaces. He confirmed that during peak hours, 22 cars will be dropping off children, and 14 staff cars will be parked for a total of 36 cars in the lot. There are 42 spaces. He questioned how the parking space calculation was performed in accordance with § 170.63.B.4.N of the LDCR which required 2 spaces for each employee. He felt that more spaces were needed to allow for the 2 spaces per employee and the 22 drop offs. Mrs. Roach felt the wording in the LDCR may be incorrect and that could be looked at. This calculation is used to determine the total number of parking spaces for the site.

Mr. Connors stated that their intent in creating the staff only parking spaces was not for regulatory compliance but to help out with the safety concern. Mr. Picillo confirmed there will be signage that indicates those spaces are for staff only. Mr. Connors added there will be three locations identified as staff parking.

Mrs. Roach commented on the architectural rendering. Will all the rear doors have alarms or just the one indicated on the plan? Mr. Coviello indicated that only the door that did not lead to the fenced play area would have an alarm. Mrs. Roach confirmed that the sign will not be a scrolling sign and that it will have manually removable letters. She asked that a note be added to the plan that the colors used in the architectural rendering be incorporated in this plan. She added this is a gorgeous building.

Mr. Connors stated for the record that the original presentation of the colors of the building indicated the roof is barkwood, the siding is tan, and the trim is white. That will be identified on the plan.

Ms. Evans noted that on the south corner of the building, a piece of sidewalk extends to the driveway area. This is not a parking spot? Mr. Connors said it is not. She asked as to the purpose of the sidewalk in that location? Mr. Connors said he thought it was to make a connection of the sidewalk to the pavement. Ms. Evans felt it was there to allow parents to pull up and let their children out so the children could enter the school. Mr. Connors was emphatic that would be completely unacceptable to the proprietors and they would not tolerate parents doing that. They will remove the sidewalk from the plan in that location if the Board requests it. Mr. Cooper did not have an issue with the sidewalk in that location. Mrs. Roach inquired what happens if the walkways are not clear of snow? Mr. Connors replied they will keep the sidewalks clear because they want the children safe. They do not want the children walking behind cars. The plows will back-drag the snow and the walkways will be shoveled manually.

Mr. Picillo had a question with regard to the trees that will be planted along Tsienneto Road. When they grow, will they be in the line of sight of the cars waiting to exit the lot? Mr. Connors noted the plan shows the trees inside the property line. When measuring sight distance, they measure back 10 feet from the edge of the street, so the trees won't cause an issue. He feels comfortable they will be outside the line of sight. Mr. L'Heureux noted if the trees are too close, they will be moved back.

Motion by Granese to accept jurisdiction of the plan, seconded by Chirichiello. The motion passed in the affirmative.

Mr. Picillo had a question regarding the 6 year window. If the town decided within two years to install a traffic light, would the town have access to the \$46,000.00 to help defray the cost? Should that be part of the motion? For example, if the town pays \$70,000 and Goddard has put in funds, can the town recoup funds from the next developers if the town advanced the funds because the town felt it was a safety concern? He wanted the town to be able to recoup the funds if the town advanced them because the town felt a light was needed at that location, before the other lots got developed. Mr. Granese noted that the November 6, 2008 letter from Mr. Fowler states, "Each developer would be required to submit their share at the time of approval." Mr. Picillo agreed each developer would have to contractually agree to the share of 25/25/50. In advance of that, if the town wants to put in a light in two years, and no other lots have been constructed but the town has the \$46,000 from Goddard, he does not want Goddard to say that they don't have the other two buildings built yet, so the town can't have the funds. Mrs. Roach felt that if the agreement is signed all the money would need to be in the escrow account. Mr. Connors disagreed.

Mr. L'Heureux explained that in order for a light to be installed, the warrants would have to be met. The town can't put in a light just because it is thought one

is needed. It needs to be done scientifically. Mrs. Roach said the Board wants to make sure that if the warrants are met in 2 years that all of the funds will be there. Mr. Connors stated that if the traffic reaches a certain volume and meets the warrant, then a light will be installed. The traffic analysis for this plan looked at the proposed uses on the vacant lots. The Goddard School does not need a light by and of itself. It is on a minor leg of the intersection that also services CLM.

Mr. Picillo posed a hypothetical that if the Post Office was turned into a Walmart, and there is now more traffic on Tsienneto Road, and the other parcels are not developed, yet the warrant has now been met for a light at this new intersection, does the town had the authority to install a light and use the funds escrowed by Goddard. Mr. Connors said there is an agreement with the other landowners with regard to how to share the cost. When each project is approved by the Board, they will put in their portion of the funds into the escrow account. The funds are in the escrow account for the town to spend. Once the money is in the account the town can use it. So at year 5 1/2, the town can tap into the money to put in the base for the light, purchase the arms and controllers for the light and store them. The payment of the amounts is based on plan approval. The town does not need all three contributors before it puts in a light. Using any of the three contributions is not conditional upon having all three contributions in place.

Mr. Picillo asked in 5 ½ years, the town can take the \$46,000.00 from The Goddard School and purchase what is needed for equipment for the light? Mr. Connors said it could be done so long as the \$46,000 was not being used for a road improvement elsewhere in town. So long as it is being used for an improvement at that intersection, the town can tap those funds. Ms. Evans stated she felt a light needed to be installed at the same time the school is constructed. Mr. L'Heureux advised there are still items that need to be put together for the contract agreement as part of the approval. Mr. Picillo wanted the town to be able to use the money if the warrants are tripped regardless of site plans being approved or not.

Motion by Picillo to approve the plan for The Goddard School, owned by Bardaph, LLC, pursuant to RSA 676:4.I, *Completed Application*, subject to the following conditions:

Comply with the KNA report dated 2/18/08;

Address comments as indicated in the memo from Mike Fowler dated September 29, 2008;

Subject to onsite inspection by the Town's Engineer;

Establish appropriate escrow as required to complete the project;

Obtain written approval from Doug Rathburn that the GPS disk is received and operable;

Fair Share Contribution for the traffic signal per Mike Fowler's memo (MM08-206) dated 11/6/08;

Per Fire Department's request, a 4" Storr connector should be installed rather than the Siamese connection noted on the plans. This should be noted on the site and building plans.

Add a notation on the plan of color and materials used;

A contract between the landowners, is agreeable relative to the fair share contribution. There are no conditions on the town using Goddard's fair share contribution to construct a light, and then recover any additional contributions made back to the town from future landowners as per the contract,

And the above conditions are to be met within 6 months.

Chirichiello seconded the motion.

Discussion on the motion was as follows: Mr. Granese inquired as to the status of the February 18, 2008 letter from Keach Nordstrom as the plans have a different date. The most recent changes were made in November of 2008 and included signage and striping. Mr. Connors said if necessary, they would send the plan to Mr. Keach for a final review. He can send him a letter advising of the changes they have made to the site plan. Mr. Sioras advised that the town has received a letter from Mr. Keach stating he felt the engineer had addressed all of his comments.

Picillo, Chirichiello, Cooper, Choiniere and Roach voted in the affirmative. Granese abstained. Evans abstained stating she has serious misgivings and feels there will be an immediate impact as a result of the school on an arterial road. The motion passed 5-0-2.

Mrs. Roach thanked the applicant for the hard work addressing the Board's concerns. Mr. Connors thanked Mr. Sioras again for facilitating the meeting between the landowners.

Motion by Chirichiello to adjourn, seconded by Granese. The motion passed and the meeting stood adjourned at 8:21 p.m.

Minutes prepared by Elizabeth Robidoux, Planning Clerk