

The Planning Board for the Town of Derry held a public hearing on Wednesday, February 4, 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; David Granese, Vice Chair; Jan Choiniere, Secretary; Randy Chase, Administrative Representative; Phil Picillo, Ann Evans, Mark Cooper

Alternates present: John O'Connor

Absent: Gary Stenhouse, Town Administrator; Brian Chirichiello, Council Representative, Richard Tripp, and Maureen Heard, Alternates

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

Mrs. Roach called the meeting to order at 7:00 p.m. The meeting began with a salute to the flag. She introduced the staff and Board members present, and noted the location of emergency exits and agendas.

## **Escrow**

### **#09-04**

#### **Tropic Star (future median)**

#### **Tropic Star Development**

#### **28004, 50 Birch Street**

The request is to approve the final release of the cash escrow held for the above noted project. The amount to be released is \$13,802.40 plus accumulated interest. The amount to be retained is zero.

Mr. Picillo noted the Board has received a memo supporting the release from Mike Fowler. How does it change if the rest of the property gets developed? Will new escrow be required for this item? Would it be part of a condition of approval? Mr. Sioras said it was within the confines of this project and the funds were retained to see if the median was needed. It has been about a year since the site has been developed; the median would have been placed on the Rockingham Road side of the intersection. It has been determined it is not needed after all.

Motion by Picillo, seconded by Granese to approve the release as presented. All voted in favor and the motion passed.

**#09-05****Tropic Star (Hess gas station)****Tropic Star Development****28004, 50 Birch Street**

The request is to approve the final release of the cash escrow held for the above noted project. The amount to be released is \$20,347.20 plus accumulated interest. The amount to be retained is zero.

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

**#09-06****Reed Asset Management****Reed Asset Management****04065, 04065-001, 04065-002, 04065-003**

The request is to approve the renewal of the letter of credit #100012 drawn on Haverhill Bank for the above noted project. The new expiration date will be March 13, 2010.

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

**#09-07****The Goddard School****Derry Realty Trust (Foxcroft)****08079-006, 12 Tsienneto Road**

The request is to establish cash escrow for the above noted project in the amount of \$112,389.12.

Motion by Granese, seconded by Choiniere to approve as presented. Discussion followed.

Mr. Picillo asked, as a matter of policy, does the town accept personal checks from developers, and do we verify funds? Mr. Sioras advised the Finance Department reviews to ensure there are funds available. If there were insufficient funds, it would come back to the Board. The Finance Department is very thorough.

The motion passed with all in favor.

Mr. Picillo added that the town should be cautious and Letters of Credit should be checked thoroughly, given the current state of banks and the economy. Mrs. Roach suggested that in the future, the Board may have to add wording such as

“upon verification of sufficient funds” to the motions. Mr. Sioras recalled one instance where a developer was securing its Letter of Credit through a bank in Nova Scotia. The bank had to secure the funds through a local branch. Mr. Picillo stressed he was not requesting that Finance change policy, but cautioned that it is a different world out there than what we have experienced in the past. Mrs. Roach stated if Finance finds it applicable, the Board will change how they approve the escrows with regard to the wording.

**#09-08****The Goddard School – Future Traffic Light****Derry Realty Trust (Foxcroft)****08079-006, 12 Tsienneto Road**

The request is to accept cash escrow in the amount of \$46,000.00 for the Fair Share Contribution to be used toward the installation of a future traffic signal at this location on Tsienneto Road. Pursuant to RSA 674:21,V (j), the funds shall be returned to the applicant, plus accumulated interest, if the contribution has not been utilized by the town by February 4, 2015.

Mr. Picillo inquired if this wording was a reflection of the motion for approval? Mrs. Roach advised that the wording comes from the state statute. Mr. Sioras indicated that the statute states the funds have to be returned within 6 years if not used, and that should be in the motion.

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

**Minutes**January 21, 2009, public

The Board reviewed the minutes of the January 21, 2009 public meeting. No corrections or changes were noted.

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

January 21, 2009, non-public

The Board reviewed the minutes of the January 21, 2009 non-public meeting. No corrections or changes were noted.

Motion by Picillo, seconded by Choiniere to approve the minutes as written, and to seal the minutes of that meeting. The motion passed with all in favor.

## **Correspondence**

There was no correspondence before the Board this evening.

## **Other Business**

### Community Profile Reminder

Mr. Sioras reminded the public of the Community Profile, which is to be held on Saturday, April 4, 2009. It will take place at West Running Brook School and will be held between the hours of 8:00 a.m. and 4:00 p.m. To RSVP, residents should call the Planning Office at 432-6110.

## **Public Hearing**

### **1380 Realty LLC & Christopher Mastriano Parcel ID 18032 and 18033, Taylor Brook Lane Acceptance/Review, Lot Line Adjustment**

Mr. Sioras provided the following staff report. The purpose of this plan is for a lot line adjustment between the two properties located on Taylor Brook Lane which is located in the Low-Density Residential District. A variance was granted by the ZBA on January 15, 2009 to allow a lot line change on two pre-existing, non-conforming lots. No Department signatures, state permits or waivers are required for this application. He would recommend approval of this plan. He introduced Jim Lavelle of James Lavelle Associates who is representing the applicant. Mr. Lavelle handed out copies of the plan to the Board members.

He advised this is a lot line adjustment between two small undeveloped lots. The intent is to change a triangular lot (18033) to a larger lot and decrease the size of lot 18032. The lot line adjustment changes are made to affect improvements on the lake lots. This will create room for septs and potential future garages which would be located across the street. Both lots are owned by Mr. Mastriano. He is doing this to improve the property on the lake. The ZBA felt this would improve the area around the lake. The septic system would be able to be placed further away from the lake and the lot line adjustment gives the ability to upgrade two lots in the area.

Mr. Picillo inquired if this application is related to the two lots the Board saw at the last meeting? Mr. Lavelle explained these properties about the other properties to the south. This is a different situation than what the Board saw at the last meeting. Taylor Brook Lane is a well traveled, paved road; although he

believes it to be a private road. There is no right of way through the lots on this application. Mr. Picillo inquired if during construction of the septic systems, would the road have to be dug up and then repaved? Mr. Lavelle agreed that would have to happen. North of these properties, there are lots that also have septic systems and garages across the street.

Mr. Cooper said it is hard to build on the smaller lots. This may improve the situation and allow the construction of a home on one of the lots. Mr. Sioras noted that during the ZBA hearings, Mr. Mackey had stated he felt these lots would be unbuildable, given the lot setback requirements in this zone, especially with regard to the septic systems. Mr. Lavelle agreed Mr. Mackey had made those comments. He had met with Mr. Mackey to discuss the ability to construct on these lots. It would be a stretch to put the dwellings on the other side of the road. This area has three acre zoning. The lots lose the protection of pre-existing, non-conforming with the approval of the lot line adjustment.

Mr. Cooper stated he was not against this application, but feels that one of the lots could be built on. These areas are not subject to the same setbacks as other lots in this zone, because there is a provision to take the averages of the setbacks of the properties surrounding the lots. Mrs. Roach noted any construction would also have to comply with the shoreland protection regulations. Mr. Lavelle agreed the applicant would have to go to the shoreland bureau for permits. The upper lot will be .38 acres and the lower lot will be .24 acres. Mr. Mackey had felt that these lots were not buildable for single family homes.

Mr. Picillo inquired if two lots can share the same septic? Mr. Lavelle said it is possible with state approval. Mr. Picillo inquired as to the plan for these lots. Is the septic intended to handle the single family across the street? Mr. Lavelle said they have prepared a plan and it will use a pumped system that goes across the street for the lake house.

Mrs. Roach opened the hearing for questions from the public. There were none and the plan came back to the Board for review.

Mrs. Choiniere inquired if there would be houses built or not? Mrs. Roach stated Mr. Mackey says no. Mr. Cooper disagreed. Mr. Chase agreed with Mr. Mackey. If left alone, the larger lot is a pre-existing, non-conforming lot and as such could support a home. Now that the lot lines are changing, the grandfathering is removed. The angles are changed and he does not feel there is adequate room for a building footprint. He feels this change will save a lot from being constructed on and he agrees with the change. Mr. Sioras and Mrs. Roach both said that when a lot line changes it is a subdivision and so creates new lots. Mr. Cooper thought at the very least, a garage could be constructed.

Motion by Granese to accept jurisdiction of the plan, seconded by Choiniere. The motion passed with all in favor.
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Motion by Granese to approve the plan pursuant to RSA 676:4, III, Expedited Review, subject to the following conditions: Establish escrow for the setting of bounds or certify the bounds have been set; obtain written approval from Doug Rathburn that the GIS disk has been received and is operable; update the abutter list on the plan; that the above conditions are met within 6 months, and a check in the amount of \$25.00, payable to RCRD, be submitted with the mylar in accordance with the LCHIP requirement. Mr. Picillo seconded the motion.

Picillo, Granese, Chase, Evans, Cooper, Choiniere, and Roach all voted to grant and the motion passed in the affirmative.

Motion by Choiniere, seconded by Granese to adjourn. The motion passed and the meeting stood adjourned at 7:24 p.m.

Minutes prepared by Elizabeth Robidoux, Planning Clerk