

The Planning Board for the Town of Derry held a public hearing on Wednesday, February 18, 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; Brian Chirichiello, Council Representative; Phil Picillo; John O'Connor and Maureen Heard, Alternates

Absent: Richard Tripp, Ann Evans, Mark Cooper

Also present: Gary Stenhouse, Town Administrator; Frank Childs, Chief Financial Officer; George Sioras, Director of Community Development; Elizabeth Robidoux, Planning Clerk; Mark L'Heureux, Engineering Coordinator

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, agendas and additional materials.

Mrs. Heard was seated for Ms. Evans and Mr. O'Connor was seated for Mr. Cooper.

## **Escrow**

**#09-09**

**Samuel Kershaw**

**Same**

**03087 & 03089, 185 Rockingham Road**

The request is to accept cash escrow in the amount of \$777.60 for the above noted project.

Motion by Granese, seconded by O'Connor to approve as presented. All voted in favor and the motion passed.
--

## **Minutes**

The Board reviewed the minutes of the February 4, 2009 public meeting. No corrections or changes were noted and the Chair accepted the minutes as written with Mr. Chirichiello abstained.

**Correspondence**

Mrs. Choiniere noted the Board has received a copy of the most recent edition of *The Source*. Members can review the document in the Planning Office.

**Other Business**Request for Extension, Tessie's Too Trust Subdivision

Mrs. Roach read aloud the letter from Jim Lavelle requesting a further extension on the conditions of approval granted for the Tessie's Too subdivision on March 19, 2008. The applicant is requesting an additional 24 months as the applicant wishes to postpone any further action due to the economic climate.

Mr. Chirichiello inquired if the Board has ever seen a request for a 24 month extension? Mrs. Roach advised it has not and that this is the second extension request. Mr. Chirichiello wondered why the request was for 24 months rather than the normal 6 month extension. No one was present to represent the applicant. Mr. Chirichiello stated he would prefer to grant a 6 month extension. Mrs. Roach agreed, adding that normally the Board grants one 6 month extension and then one more if required for a full year total.

Motion by Chirichiello to grant a six month extension, which is the second extension request from this applicant. The motion was seconded by Granese. Discussion followed.

Mrs. Heard asked if the Board can shorten the length of the request? Mrs. Roach explained the applicant is making a formal request for extension. The Board can shorten the timeframe to six months, or it can elect not to grant the request. Mr. Sioras noted the Board has granted second requests, but he does not recall anyone ever asking for a 24 month extension.

Picillo, Chirichiello, Heard, Granese, Chase, O'Connor, Choiniere and Roach all voted to grant.

Mrs. Roach suggested that any abutters to the H&B Homes application could view the plan and have an opportunity to discuss it with the engineer prior to the public hearing.

## Public Meeting

### FY2010-2015 Preliminary Capital Improvement Plan Presentation

Gary Stenhouse, Town Administrator and Frank Childs, Chief Financial Officer, presented the Preliminary CIP for FY2010 through 2015. Under the Charter, the Preliminary CIP has to be presented to the Town Council by the end of February, beginning of March. The first step in that process is to present it to the Planning Board. He provided the following highlights.

FY2010 calls for approximately 6.2 million in expenditures, included in that amount are two big projects. Town Council has received a request for a new recreational facility which will cost 4 million. The other project is fire safety code improvements to firefighting buildings which include sprinkler systems in three buildings and energy improvements in another. There are four fire stations in town currently. They want to bring the stations up to code. That project will hopefully be funded by grants, but they need to show the entire amount in the CIP. If there are no grants awarded in FY2010, then the projects will not be done. Also included in FY2010 are the typical items such as equipment revolving funds and road improvements. They had hoped to receive money from the federal stimulus but only 130 million is being granted statewide for infrastructure. The state will use 90 million. This CIP has been scaled back from what it may have been 6 months ago.

Mr. Childs advised the FY2010 budget includes \$250,000.00 for Phase I engineering design for the water and sewer main extension on Rockingham Road, south to Berry Road, as well as construction of Phase I to 2012, and subsequent engineering in future years. Future phases will include construction of the mains from Berry Road to the Salem town line. This project is for the benefit of economic development along that corridor.

Mr. Stenhouse noted there might be some money in the economic stimulus funds for the water and sewer project. If so, then the project may move from 2010 to 2011 for construction. It is hard to speculate as the stimulus has just been approved and it is not as large as municipalities had hoped. To put funding in perspective, 130 million dollars would pay for the widening of one lane of I-93 for about 4 miles.

Mr. Chirichiello had a question regarding the 4 million dollar amount for the recreation complex. Are there any bonds coming due that will offset that cost? Mr. Childs said there are some coming due, but he is not sure if they will add up to that amount or not. He is not sure where they are with regard to budget requirements at this point. That is why this is preliminary. Mr. Chirichiello asked if this project can be completed in 2010 considering the upcoming budget? Mr. Stenhouse said no. Ideally, they would like to get some weatherization of

Veterans Hall. That might gain the town a few years, but that building is over 90 years old and on its last legs.

Mr. Childs said that in his time with the town, all of the budgets have included major renovation requests for that building. The town will need to look at monies to do maintenance on that building or it will need to be closed and the town will lose a recreational facility. The money should have been spent 6 years ago for the major improvements.

Mr. Chirichiello inquired with regard to the fire station sprinklers. The grant is the funding mechanism? Mr. Childs advised the grants would be 90/10, with the town paying the 10%. The figure in the CIP reflects 100% cost, but the town budget would show the 10% cost to the town. The projects will not be done if the town does not receive the grants. Mr. Chirichiello inquired when will the town know if it has been awarded the grants or not? Mr. Childs advised not before the budget is approved. The town portion would be funded from the CIP funds. The project was also in the FY2009 budget, but Chief Klauber just received word this week the town did not receive 2009 grants.

Mrs. Roach inquired as to the status of the improvements at the intersection of Crystal and Broadway. Mr. Stenhouse said the project will begin this summer with utilities and improvements of the parking lot at the site of the former Dandi-Lyons. The project will then start again and be completed in late fall/early spring. This will greatly improve that intersection.

Mr. Childs noted the town has already funded its share of that project. Mr. L'Heureux added the town is awaiting ratification of the bids at the state level.

Mr. O'Connor inquired with regard to the 4 million dollars for the recreation complex. It has never been in the five or six year plan. What prompted including this in the CIP now? Mr. Childs said they have looked at this for years and it was discussed last year. It was put in the CIP this year because the town needs to decide if it is going to do the work on the building or build a new facility. The past six budgets have had some discussion on this issue. If the town does not do something quickly, it will lose the building to deterioration.

Mr. O'Connor asked how a bond for this would be different than other bonds? Mr. Childs said the rate would be around 5 ¼ %. Typically, the bonds are for 20 years. The bond for the TIF district was different. They are assuming 5 ¼ % for 20 years. Mrs. Choiniere inquired if the plan is to raze the building and re-erect on that lot? Mr. Stenhouse said that has been an ongoing discussion. Previous suggestions had been to build at Alexander Carr, raze the old building and create a parking lot for the Adams Memorial Building putting the building at Alexander Carr, or raze the building and rebuild on that site. He does not know what the final plan will be. A new building could fit on that lot if it were multi-storied. Mr. Childs added if a facility is constructed at Alexander Carr, it would be off

Rockingham Road and not near the lodge. Mr. Stenhouse noted during the downtown charrette, many business owners felt it would be better to keep the facility downtown as it would benefit local business.

Mr. Picillo had a question regarding the 1 million dollars slated for Rte 28 improvements in 2011. Is that a requirement the town kicks in, or is that state/private funds? Mr. Sioras advised there are two different projects in that area. One will be discussed later tonight as part of the subdivision application. The one on the CIP is road maintenance. Mr. Childs explained the one million dollars is made up of engineering fees and road work. Mr. Sioras stated that would be from Clam Haven, heading west to Rite Aid.

Mrs. Choiniere noted the Meadowbrook Well project is not reflected in this CIP. Mr. Childs explained the work for Phase I was funded in FY2009. Mr. Stenhouse added the intent is to double the yield of water from that well to alleviate the quantity issue. Mr. Childs said that FY2009 included 15,000.00 for the Meadowbrook work. \$25,000.00 will be required to augment the budget.

Mr. Chirichiello asked for an explanation of the replacement of the HVAC system at the Police Department. The cost for that is \$70,000.00. Mr. Stenhouse advised the HVAC is the original one; it is about 22 years old. There are issues with reliability and energy efficiency. They also intend to replace the roof. Mr. Childs noted the HVAC in the new section of the Police Department is two years old. The replacement of the older HVAC is a major issue and this needs to be in the budget.

Mr. Chase inquired as to the bridge projects on South Ave, Fordway and Florence. He noted the 80/20 funding for the Florence Road Bridge. Is that project a go? Mr. Childs said they are expecting state money for that bridge. The money has been set aside each year for these projects. They need to fully fund the project and then get reimbursed by the state. They take the state reimbursement funds and roll them into the next project. Mr. Stenhouse stated that as of this time, those projects are moving forward. Mr. Childs added that the town is expecting a potential 1.8 million dollar loss from the lack of rooms/meals tax contributions and revenue sharing per the Governor's new budget.

The Board had no further questions.

Mrs. Roach thanked Mr. Stenhouse and Mr. Childs for their presentation. They both departed the meeting.

### **CTAP Community Assessment Presentation**

Mr. Sioras explained that as part of the NH DOT funding for the widening of I-93, each community affected by the widening was required to do an assessment.

Rachel Kelly, Matt Caron and David Preese of Southern New Hampshire Planning Commission are in attendance this evening to present the assessment.

Ms. Kelly advised that the CTAP assessment is a roadmap for the town. They began on January 26<sup>th</sup> and had a kick off meeting. At the meeting, they went through the community assessment, which had been done a year and a half ago. They took the recommendations and prioritized them, ranking them, and then broke them down into a 1-3 year or 3-5 year time frame for completion. The final plan has an introduction to CTAP and on page 5 of the packet she provided, members can find the roadmap.

CTAP provides member communities with \$10,000.00. It was decided to spend the funds on a downtown village study, traffic calming and traffic studies. This plan reviews that. She noted that on page 7, there is a chart of other priorities. This was ballparked and can be changed if the members would like to see something different.

The Executive Summary is located to the rear of the packet.

Mr. Caron went over his presentation which concerns linking land use and transportation. The main points of discussion were: What is CTAP, Overall Goals, New Planning Paradigms, Population Growth and Trends, Impacts of Sprawl, and Tools for linking Land Use and Transportation.

CTAP is committed to a five year program to support the region of 26 towns and cities that are in the area influenced by the reconstruction of I-93. The purpose is to provide technical assistance on sound land use practices and address growth management issues in the region.

Overall goals are to develop and implement land use and transportation strategies that will prevent sprawl, preserve the capacity and safety of our existing and future roadways, and promote smart growth. They will also improve integration of land use and transportation planning in an effort to reduce the need for highway expansion, auto dependency, improve effectiveness of alternative modes of travel, and help maintain the quality of our communities.

Key Planning Principals include utilization of low impact development techniques and green building design, preservation of historic buildings and other cultural and community assets, the construction of "complete streets" that can be efficiently served by pedestrians, bicyclists, transit and other alternative modes and discouraging auto dependency while encouraging a more balanced multimodal transportation system.

Mr. Caron took a few minutes to review population and demographic trends in the affected communities over the past 50 years. He discussed sprawl and its impacts on communities. Tools that communities can use to minimize sprawl

include low impact design (LID), complete streets, transit oriented development, access management, context sensitive solutions and traffic smart designs.

Traffic calming goals encourage safe vehicle speeds, reduce collision frequency and severity, reduce the need for police enforcement, increase access for all modes of transportation, and reduce cut-through motor vehicle traffic. They also incorporate the preferences and requirements of the people using the area, create safe and attractive streets, help to reduce negative effects of motor vehicles on the environment, and promote alternative modes of transportation.

Access Management Plans seek to limit and consolidate access along major roadways, while promoting a supporting street system and unified access and circulation systems for development. Mr. Caron advised that the Town of Derry, working with SNHPC has been awarded a grant to do an access management plan on Route 102 from the Londonderry town line, down Broadway. He provided local examples of access management plans that have been implemented.

Transit Oriented Design produces a mix of uses in close proximity to transit that facilitates access to the transit. It allows greater mobility with decreased traffic and congestion. Context Sensitive Solutions allow all stakeholders to have a say in the development of the traffic plan.

Mr. Caron summarized by recommending the promotion of redevelopment opportunities, concentrating development to conserve land, and to maximize use/efficiency of infrastructure, the utilization of low impact development techniques, discouraging auto dependency, the establishment of curb cut specifications to manage access, encouraging nodal development, implementation of traffic calming techniques, "Complete the Streets" design, and the promotion of mixed-use development around transit centers.

Mr. Picillo inquired as to the funding mentioned by Ms. Kelly. Where does it come from? Ms. Kelly explained it is basically free money. CTAP has a 5 year initiative and provides towns along the I-93 corridor an opportunity to make improvements. The town is being given \$10,000.00 from CTAP. They are target grant funds. Mr. Sioras advised he is a member of the CTAP Steering Committee. This is free money from the NHDOT which also gives technical expertise to those communities for the projects. The Town of Derry received funds for the downtown revitalization study and is also going to receive money for traffic calming from the Londonderry town line down Broadway. They were two separate grants. The state funds the projects and there is no financial impact on the town.

Mrs. Heard commented that most of these projects are obviously planned well in advance. Was the Crystal Ave/Broadway intersection improvement plan developed using the new techniques? Mr. Sioras thought probably not as that

project was listed on the DOT plan 10 years ago on an 80/20 grant. In the future, he hopes to see more of these techniques on town projects. Mrs. Heard thought these are great ideas and a way to make the town more livable.

Mrs. Roach requested a copy of Mr. Caron's presentation. He will make sure the town obtains a copy.

## **Public Hearing**

### **H&B Homes/Middleridge Subdivision Parcel ID 03011, 22 Windham Depot Road Acceptance/Determination of Regional Impact/Review, 4 lot subdivision**

Mr. Sioras provided the following staff report. This plan was originally approved by the Planning Board on March 7, 2007. It is a four lot subdivision in Derry located off Windham Depot Road. All departments have reviewed and signed the plan. A waiver is required from Section 170-25.A. (5) for the driveway access. NH DES state subdivision and NH Wetlands and Site Specific permits have been obtained and copies are in the file. The NH DOT approval for the Rte 28/Windham Depot Road intersection improvements has been obtained and the Board should see the attached letter from Nancy Mayville dated January 20, 2009.

There has been extensive review of this plan. The last decision was appealed to the Court and it was remanded back. This is considered a new application. The applicant has been working with Public Works and the town attorney to come up with solutions to this project. The Board members have an attorney/client privileged memo from Attorney Clark regarding the conditions of approval. Attorney Clark has been working with Attorney Bronstein, the applicant's attorney. There is an extensive list of conditions attached to the staff report which has been reviewed by counsel; the majority of the conditions are the same as in 2007. Mr. Sioras introduced Joe Maynard of Benchmark Engineering who represents the applicants. The owners of H&B Homes were present in the audience, along with Attorney Bronstein.

Mr. Maynard stated this subdivision, which was before the Board in 2007, is part of a master plan for a subdivision located in the Town of Windham. Windham wanted a third point of access as part of their approval, so his client determined a viable access point was located in the Town of Derry and they went through the approval process. The first approval proposed a large, off site improvement at the intersection of Rte 28, Kilrea Road and Windham Depot Road. In 2007, the intent of the developer was to create a left turn lane. The plans for the improvements at that intersection have recently changed. The State of New Hampshire, Department of Transportation (NHDOT) will now do the improvements at this intersection as part of a Highway Safety Improvement



Program (HSIP) utilizing Federal funds. The developer will make a financial contribution to the improvements. The NHDOT is planning a larger improvement than what was originally proposed by H&B Homes. The intent of NH DOT is to complete the improvements in 2010 or 2011, depending upon right of way acquisitions that will need to be done by the State to straighten out the intersection. Mr. Maynard reiterated the developer will make a contribution to the State and the State will be using Federal funds for this project.

Mr. Maynard described the proposed subdivision in Derry. The parcel of land, located at 22 Windham Depot Road is also known as parcel 03011. It is made up of approximately 9 acres. They will bring the road in from Windham Depot Road to the town line, with a distance of approximately 900 feet. They will have a crossing on the DRED trail where Windham Depot Road and the trail are in the same corridor. DRED has approved the at-grade crossing.

The subdivision will have turnaround access at a roundabout that will be located in Windham. That roundabout will be the culmination of two roads in Windham, and will allow Derry emergency personnel a turnaround area at the town line. The proposal is for 4 lots. There are two existing lots that currently access Windham Depot Road across the DRED corridor. They have worked with the abutters and the properties will use the new road and forgo access on Windham Depot Road. Parcel 03014-002 has a small 25 foot strip of land leading to Windham Depot Road. That lot will access Middleridge Road through an easement on the neighboring lot, not on its own frontage. The Board has a waiver request for that. The Board also has a Conditional Use permit request to allow construction of the road and driveway for one of the house lots.

Other improvements are proposed along Windham Depot Road. The development is located approximately one mile from Route 28. In the James Street area, there are drainage issues. The developer will improve the drainage along Windham Depot Road. The Department of Public Works has reviewed that off site plan.

This four lot subdivision is the third point of access for the Windham subdivision which encompasses 300± acres and is an extension of Northland Road which comes in off Rte 28 near the animal hospital. As part of the Windham approval they did a phasing plan, and they have received all of the necessary approvals for the 95 house lots. The Windham subdivision is proposed in 8 phases. Phase I has two house lots located off Northland Road. Phase II is the extension of Northland Road to Middleridge Road in Derry with 34 homes. The Windham subdivision approval stipulates that all access points are to be built prior to construction of any of the smaller cul de sacs. The access points are Northland Road, Northland Road to Middleridge Road, and then Northland Road to Mitchell Pond Road. The remainder of the phases are made up of small cul de sacs which can be built in any order once the major infrastructure is complete. The total build out for the plan is 10 years for Spruce Pond Phase II. One of the

approvals granted for the Windham subdivision requires that the Mitchell Pond Road connection be built within 5 years in order for the subdivision to be vested. The first phase is the Derry section and the roundabout, which should take one construction season. It will take one year to build the extension of Northland Road to the Derry line. It will be 2010 before homes begin to be sold in Windham.

When this subdivision was originally approved in 2007, there were a number of conditions from the Derry Planning Board. Many of the conditions dealt with the Rte 28 improvements and time frames for completion. At this time, NHDOT will do the improvements. Therefore, the 2007 condition #2 that comments be addressed as indicated in the memo dated 1/30/07 from Mike Fowler no longer applies. That memo referred to work the developer was to do. Condition #7, that the applicant, "provide a written agreement between the applicant, the Town of Derry and the NH-DOT to execute the NH Route 28 improvements as documented on the sheets entitled "Off-Site Improvements" and add those sheets to the plan set, with the understanding that we will obtain assurance from the NH-DOT that we do not accept maintenance responsibility for this intersection by means of those improvement and that the applicant will establish escrow with the State for those improvements" is not applicable as the State is doing the work. Condition #9 stated the approval was "Subject to the construction of the connection of Middleridge Road through to the Town of Windham". Because of the magnitude of the development in Windham, construction on the Derry portion will take a year and they would need an extension. They would like to build the 4 lots and the roundabout, but don't want hindrance with regard to obtaining Occupancy Permits if there is no connection between the towns. There will be a permanent roundabout allowing emergency personnel a means to turnaround. It had been agreed with Public Works that they would post a bond in Derry and they will also post a bond in the Town of Windham for the construction of the roundabout.

The other issue discussed was the connection between the two towns. The intent is to connect, but it will take a year to construct the road in Windham. They want to build this stretch of road if possible, bonding as necessary.

Mr. Chirichiello asked if the state is doing the work at the intersection, is it in the 10 year plan? Will the funds for that project evaporate? Mr. Sioras noted the letter from Nancy Mayville advised the State has received HSIP funds for the project to expedite the improvements. This is separate from the intersection plan the State will do. Short term, the State will use HSIP funds for this project. Mr. Chirichiello asked where is the guarantee that the work will be done? Mr. Sioras read the first paragraph of the letter from Nancy Mayville which stated that the State consulted with FHWA and received their concurrence on the project as well. Mr. Chirichiello inquired if Mr. Sioras felt confident this project will move forward and that money has been set aside for this? Mr. Sioras said he trusts what Ms. Mayville stated. He has attended many meetings where he has told the

State the town needs these improvements at this intersection. They have also submitted for the 10 year plan a major intersection improvement including lights, etc., which is separate from this. Mr. Chirichiello asked if the developer's portion of the funds has been established? Mr. Maynard indicated they are currently working with the state on when they want the check from H&B Homes. It all stems from when the project was on the 10 year plan. The State was originally to move the poles which cost between \$160,000 and 180,000.00. When the project came off the ten year plan, the developer would have been responsible for the full cost of the road improvements including the poles. He spent over a year speaking with people at NH DOT until he met with Ms. Mayville. The Federal Highway Agency asked for traffic and accident data, which Derry DPW promptly forwarded. Everyone is in agreement of the dire need to improve this intersection. The State wants to expand on H&B's original plans. This is a Federally funded project. The funds are available for 2010. Ms. Mayville said 2010 to 2011 because they need to finalize the right of way acquisitions. Mr. Chirichiello said he wants to make sure the funds are there, especially given the State deficit. Mr. Maynard reiterated this is a Federally funded project.

Mr. O'Connor noted it has been stated that the state needs to acquire land. How long did it take for the state to acquire the land at Crystal Avenue? Mr. Sioras said that is a bit different than this project because these improvements won't take a property or house. The work will be in the right of way. The intersection will be widened, and there have already been discussions with the landowners.

Mr. Maynard said the State is looking at the option of taking land and increasing the improvements at the intersection. The original plan did not take any land. The State wanted to take H&B's plan one step further. Acquisitions would possibly take land from the motorcycle shop and on the other side of the road from the day care because the legs of the intersection need to be aligned.

The floor was opened to the public for comment or questions. There were none and the plan went back to the Board.

Mr. Picillo noted there is a tremendous amount of interdependency for this project. Is there one place where everyone can see the project step by step with dates and timelines? Mr. Maynard said they have all of that for the Windham side. The Derry subdivision is simple because it is 4 lots. His concern is to build it and not ask for extensions. They need to build the Derry portion with the roundabout and make the connections later. He can produce a document that outlines it, but can also explain it to the Board. The Town of Windham approved 8 phases. Phase I is a two lot subdivision, and a set of plans that shows the whole subdivision. Phase II will begin construction within 12 months of signing of the plan and includes the construction of the road system to Derry. The intent is to get the Windham subdivision plan signed before April 3 so they don't have to ask Windham for an extension. They are waiting on the easement language which is currently being worked on by the lawyers. They hope to have that

finalized by March. Within 18 months, they will need to build the road out to Derry (that is a total of 2 ½ years from this March). Then it will take one and half years to build the connection to Mitchell Pond, and then the remaining 5 years to build the remaining phases. By 2013, they will need to have made the connection to Mitchell Pond so that they don't need to reapply for the Dredge and Fill permits.

Mr. Picillo inquired if there is a chance they could build the second road first? Mr. Maynard said they cannot obtain building permits in Windham until the road connects to Derry; the road is 4300 feet long.

Mrs. Roach inquired why is the conservation easement in Derry granted to Windham? Mr. Maynard explained that originally, the plan did not require mitigation. When the Dredge and Fill impacts went over the 10,000 square feet as a result of the Rte 28 improvements, the Derry Conservation Commission asked for mitigation but did not want to be the easement holder. Windham holds easements on its side as well as a 6 acre parcel that abuts the land in Derry. The Windham Conservation Commission was willing to be the holder of the easement. Mrs. Choiniere inquired if it is normal for one town to hold easements in another? Mr. Maynard said it is not uncommon. Mr. Sioras commented Attorney Clark will be discussing the easement with Attorney Bronstein.

Mr. Granese inquired if the four lots in Derry will be constructed first? Why can't the developer put a hammerhead in Derry rather than the cul de sac in Windham? Mr. Maynard stated he was before the Board this spring asking for another extension and the discussion involved a turnaround easement in Derry that they already hold. Public Works is adamant they will not allow the hammerhead easement. They went back to Windham for approval of the cul de sac to satisfy Derry's requirements. The road is under the maximum town length with that cul de sac. Mr. Granese asked if the roundabout could be constructed in Derry? Mr. Maynard said there would be a large wetland impact and it would necessitate construction of another roundabout in Windham. Mr. Granese asked if a temporary cul de sac could be constructed in Derry and then extend the road to the roundabout in Windham when the connection is made? Mr. Maynard stated the wetland impact would be great. Mr. O'Connor inquired if the Board has a letter from the Conservation Commission with regard to the easements? It was confirmed the applicant was before the Conservation Commission. Mr. Sioras noted the Conservation Commission Chairman signed off on the plans. The proposed conditions of approval include Attorney Clark reviewing the documents, as well as a letter from the Windham Conservation Commission.

Mrs. Choiniere asked if the driveway for Parcel 03014-001 is paved? Mr. Maynard said it is gravel. Currently there is a shared driveway that services two homes. The Board has a waiver request for the abutter. The original parent lot received a variance in the 1980's which created 2 frontage areas of 25 feet. One lot will access Middleridge Road across an abutting lot.

Mr. Picillo inquired if another easement would be required for the last lot? Mr. Maynard said the last lot does not need it because it has 900 feet of frontage. The middle lot has to cross the 25 foot strip of land. The Belinsky lot has access to Windham Depot Road in another location.

Mr. Chirichiello asked about the turnaround in Windham. Will it be constructed at the same time as the road in Derry? Who will maintain it? Mr. L'Heureux said the developer will maintain it until Middleridge Road is complete. The roundabout will be maintained by the developer until the Town of Windham accepts that road.

Al Dimmock, resident, inquired with regard to the State funding of the intersection improvements. There is a cul de sac proposed. If the developer is allowed to build now and the money disappears for the intersection, what happens? The through road will be in and Derry won't have improvements at the Kilrea intersection which is already bad. He thinks it is a great thing to add 4 pieces of property, but if it is a detriment to the intersection, he is not sure about it. All those houses in Windham will be dumped onto Kilrea Road. He feels that is unsafe unless the State does the intersection work first. He has followed this project for several years. He would like to see that if this approval is granted, that the state does the work first before the road is opened from Windham to Derry. He is not trying to stop the project. The developer should be able to do the four houses.

There was no further comment from the Board or the public.

Motion by Granese to accept jurisdiction, seconded by Choiniere. All voted in favor and the motion passed.

Motion by Granese to determine there is Regional Impact based on the submitted plans, discussions with Windham and the extent of off site improvements. Chirichiello seconded the motion.

Picillo, Chirichiello, Heard, Granese, Chase, O'Connor, Choiniere, and Roach all voted in favor.

Motion by Granese to grant a waiver from Section 170-25.A.5 of the LDCR to allow an easement on parcel 03014 for parcel 03014-002 to access Middleridge Road. The motion was seconded by Picillo. Discussion ensued.

Mr. Chirichiello inquired if the Board has a copy of that easement in writing? Mr. Sioras stated Attorney Clark will review it. Mr. Chirichiello noted the easement could change. Mr. Sioras said if it did, the applicant would have to come back to the Board.

Picillo, Chirichiello, Heard, Granese, Chase, O'Connor, Choiniere, and Roach all voted in favor.

Motion by Granese to approve the application pursuant to RSA 676:4 1, *Completed Application* with the following conditions:

This approval supersedes all previous approvals.

Conditional Use Permit – Zoning Ordinance, Article XIV, Section 165-80.B.2, and Section 165-80.B.3.

Comply with the KNA report dated February 17, 2009.

Address items as indicated in Attorney Clark's forthcoming letter with regard to the Conservation Easement deed.

Obtain written acceptance from the Windham Conservation Commission with regard to the Conservation Easement deed.

Subject to the agreement between the applicant and the State of New Hampshire as noted in the letter dated January 20, 2009 by Nancy Mayville for the intersection improvements at NH 28/Kilrea Road/Windham Depot Road. In addition, the applicant shall provide written documentation to the Planning Board of the approval once the HSIP funds for this project have been approved. Obtain assurance from NH DOT that the Town of Derry does not accept maintenance responsibility for this intersection by means of those improvements and the applicant is responsible for establishing escrow with the State of NH for those improvements.

Subject to owner's signature.

Subject to on site inspection by the Town's engineer.

Establish escrow for the setting of bounds or certify that the bounds are set.

Establish appropriate escrow as required to complete the project.

Obtain written approval from Doug Rathburn that the GIS disk is received and operable.

Note approved waiver/s on the plan as well as the approval of the Conditional Use permit.

Construction of the connection of Middleridge Road through to the Town of Windham shall not be allowed until all off-site improvements have been constructed, including the Rte 28/Windham Depot Road/Kilrea Road intersection.

Mr. Sioras noted the next suggested condition should be amended to read per Mike Fowler's suggestions that: "No building permits will be issued until the cul de sac or the road infrastructure connecting to the Town of Windham is completed within the Spruce Pond Estates-Phase II in the Town of Windham." Mrs. Roach felt that condition and the condition above, conflicted. Mr. Sioras explained the road improvements should be done prior to the developer obtaining OPs. Mr. Picillo suggested combining the two so that the construction of the connection was tied to the building permits. Mrs. Roach thought something was missing.

Mr. Maynard stated that the first time the plan was approved, a compliance hearing was required at the time 34 homes were constructed in Windham. That dealt with the intersection improvements had to be done before the connection. This condition says the state is going to do the improvements in 2010 or 2011. If they have built the road in Windham, they will need to sit and wait for permits. The original approval understood that up to 34 homes could be constructed before the connection was made. Mrs. Roach read the applicable condition from the 2007 approval which stated, "That a Condition Compliance Hearing be required if the developer deviates from the phasing plan as represented to us tonight; i.e., no more than 34 units to be constructed in Windham without the completion of the through access from Derry into Windham. We then have the ability to decide that the conditions that allowed us to grant the connection are not being met and at that point we could install the gate/bollards and basically close the road if they failed to do the right thing."

Mr. Sioras noted the Board has a similar suggested condition that has been reworded from the 2007 approval. The applicant would still need to come back to the Board if they change their phasing in Windham. He would need to defer to Mrs. Robidoux with regard the amended wording regarding the building permits as he did not speak to Mr. Fowler himself. If there are any changes in phasing, they will need to come back for a condition compliance hearing. This is the same issue as last time.

Mrs. Robidoux said it speaks to protection for the town. Mr. L'Heureux actually spoke with Mr. Fowler who had suggested the wording regarding the cul de sac be added back into the motion. The building permit language has not changed. Mr. L'Heureux said the applicant can get a building permit if he builds the cul de sac. They have established they will build it all along, but DPW wanted it as part of the conditions. As far as the conditions regarding the timing of the intersection and access to the other part of the subdivision in Windham that is something the Board can discuss.

Mr. Chirichiello thought this spoke to his point of confirming Mr. Sioras was comfortable with the state's assertion the intersection improvements will get done. Mr. Sioras noted one of the conditions of approval is that the applicant provide assurance from the state regarding the funding for that portion of the project. He admitted to being confused over the wording of the condition regarding no building permits can be issued until the cul de sac is completed or a connection is made through to Windham. Mrs. Robidoux said there are no building permits until the cul de sac is built OR a connection is made to Windham. Mr. Sioras said that is one issue, the other is that per the condition above, the intersection improvements have to be complete before the connection is made to Windham. Mr. L'Heureux noted the applicant may decide to build it all at once.

Mr. Chase can see what is being said and agreed with Mrs. Roach. One condition says that the connection to Windham cannot be made until the intersection improvements are complete. The next condition says the applicant needs to make the connection prior to obtaining building permits. Mr. Granese noted that Mr. Sioras is saying add the wording regarding the construction of the cul de sac. If they build a road with a cul de sac, they are able to get building permits for those four houses. But, the condition that precedes this says they cannot make the connection until the intersection is done, so that protects the town both ways. Mrs. Roach said the applicant can build the 4 homes, but the condition regarding the connection says they can't connect until all the roadwork is complete. She feels something is missing.

Mr. Maynard said he understood when they first came before the Board that they could have up to 34 lots finished in Windham before the intersection improvements had to be done. At full build out in Windham, the affect on this intersection is 2%. H&B typically constructs about 10 homes a year in a good year, so it will be about 3 1/2 years before they build out the lots. To build Northland Road to the Derry line will take about a year. The state is saying their project will take place in 2010 or 2011. They need to build the road in order to recoup the lots. Mr. Sioras thought the Board could eliminate the condition regarding the connection because they have wording above regarding the funding of the intersection improvements. The town is also protected by the condition regarding the condition compliance hearing.

Mr. Picillo recalled at the last approval, the Board was in a position to grant 38 homes whether the state did the improvements or not. In the worst case scenario, the road will remain private. Mr. Chirichiello noted the road is not public until the town accepts it as a public road which it won't do until the other side is done. Mr. Picillo felt the worst that could happen is there will be 38 homes with access to Windham Depot Road. He assumes the developer will not build from the inside out. Mr. Maynard said the 34 homes will be in 2 phases. They have to build the entire road infrastructure in Windham. Mr. Picillo noted they will be building toward Derry and the homes will have access to Rte 28, so it will be



3-4 years before those homes are built out. Mr. Picillo felt the amended condition was saying the road had to be built before permits could be issued for the four lots. Mr. L'Heureux reiterated DPW would like the wording regarding the cul de sac in the motion.

The wording was left as amended, all previous conditions stay the same, and Mr. Granese continued with the following conditions of approval:

No building permits will be issued until the cul de sac or the road infrastructure connecting to the Town of Windham is completed within the Spruce Pond Estates-Phase II in the Town of Windham.

This approval is subject to the approval from the Windham Planning Board for the Spruce Pond-Phase II subdivision as represented to this Board which includes three points of connectivity into the subdivision.

That a conditional compliance hearing be required if the developer deviates from the phasing plan in the Town of Windham as presented to the Board.

Subject to approval and recording of the Spruce Pond Estates –Phase II subdivision as approved by the Windham Planning Board.

Review of the cul de sac easement as shown on the plan in the Town of Windham to be reviewed by Attorney Clark.

Note 21 on the plan shall be changed to read: “The applicant shall construct off-site improvements to Windham Depot Road and the intersection of NH Rte 28/Windham Depot Road/Kilrea Road as a condition of the granting of the full access connection to Phase II of the Spruce Pond Estates in Windham, New Hampshire (see design plans referenced in #23 below).

Note 24 shall be updated to note the correct plan date of April 12, 2006.

Note 25 shall be amended to read, “Houses shall have residential fire sprinklers installed per NFPA13D and the developer is required to include this restriction in all the deeds.”

That the above conditions be met within 6 months.

A \$25.00 check payable to Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirement. Mr. O'Connor seconded the motion. Discussion followed.

Mr. Maynard stated with regard to Note 21 on the current plan set, the state will be doing the improvements. The applicant will be making a donation to the state

for a portion of the improvements. He did not have an issue with that being changed to read "the applicant will make a financial contribution for the state to make the improvements to the intersection of..."

Mr. Maynard stated he had issue with regard to the wording regarding the building permits. He can't tie into the Windham Road system in time based on that wording and would lose his approvals in Windham. He also questioned the condition that states, "Subject to the agreement between the applicant and state of NH." The last sentence of that condition states the applicant is responsible for establishing escrow with the state of NH for those improvements. Once again, the applicant is not constructing the improvements; the state is, so they don't need to post escrow for that.

The Board discussed his request. The Board amended the last sentence of the condition to read, "Obtain assurance from NH DOT that the Town of Derry does not accept maintenance responsibility for this intersection by means of those improvements and the applicant is responsible for making a financial contribution as agreed to by the State of NH for this improvement."

Mr. Maynard also asked that the Board make a separate motion with regard to the conditional use permit.

Mrs. Roach felt the Board should eliminate the condition regarding the construction of the connection to Middleridge Road. Mr. Maynard thought that condition could be combined with the condition regarding the condition compliance hearing, or say if the improvements at Rte 28 are not completed prior to the developer obtaining 34 building permits in the Town of Windham, a conditional compliance hearing is required. Mr. Sioras said that same condition of approval was part of the motion in 2007, but this time, the wording regarding the 34 houses had been removed as this is technically a new application. The Board elected to remove this condition.

Other changes were Note 21 shall be amended to read, "The applicant shall construct off site improvements to Windham Depot Road, as a condition of the granting of the full access connection to Phase II of the Spruce Pond Estates in Windham, New Hampshire (see design plans referenced in #23 below)."

Mr. Granese said if the intersection at Rte 28/Kilrea Road/Windham Depot Road never gets done, this whole project can be done and the town is not protected. It will all hinge on the state. Mr. Sioras said this has been a bone of contention for this project since the beginning. There has always been a concern with that amount of houses in Windham accessing Rte 28 at a very dangerous intersection. He is pleased to see the letter from NH DOT. He also noted this HSIP project was approved before the Federal stimulus package.

Mrs. Roach inquired with regard to the Condition Compliance hearing. Mr. Sioras explained if the funding for the state project is not approved, the applicant will need to come back to the Board. Mr. Granese said his concern is that all the homes in Windham will get constructed and be able to come through Derry to that intersection. He would like it improved for safety. Mrs. Roach said if there is no DOT assurance, the applicant has to come back to the Board.

Motion by Granese to grant a conditional use permit pursuant to Article XIV, Section 165-80.B.2 and 3 of the Derry Zoning Ordinance, seconded by Heard.

Picillo, Chirichiello, Heard, Granese, Chase, O'Connor, Choiniere, and Roach all voted in favor.

The vote on the motion to approve the application with conditions is as follows:

Picillo: yes

Chirichiello: yes

Heard: yes

Granese - confirmed if the Board receives nothing in writing from the state guaranteeing funds for the intersection project the applicant cannot move forward on this application, and the town is protected. His vote was yes.

Chase: yes

Choiniere: yes

O'Connor: yes

Roach: yes

The motion passed with all in favor.

Motion by Chase to adjourn, seconded by Choiniere. The motion passed and the meeting stood adjourned at 9:16 p.m.

Minutes prepared by Elizabeth Robidoux, Planning Clerk