

The Planning Board for the Town of Derry held a public meeting on Wednesday, September 16, 2009 at 7:00 p.m. at the Derry Municipal Center (3rd Floor) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chair; Jan Choiniere, Secretary, John O'Connor, Paul Hopfgarten, Maureen Heard, Members, and Darrell Park, Alternate

Absent: Virginia Roach, Brian Chirichiello, Randy Chase, Gary Stenhouse, and Jessica Hodgeman

Also present: George Sioras, Director of Community Development; Elizabeth Robidoux, Planning Clerk, Mark L'Heureux, Engineering Coordinator, Janice Mobsby, Controller

Mr. Granese called the meeting to order at 7:02 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 and agendas and other materials.

Mr. Park was seated for Mrs. Roach for the evening.

Escrow

09-29

Harvest Estates

Ron Meade

PID 10015, 10024, 10025, Hampstead Road

The request is to renew Letter of Credit #85 (formerly #89) in the amount of \$1,423,972.87 for the above noted project. The new expiration date will be September 22, 2010.

Mr. Sioras advised Mark L'Heureux from Public Works was present, as well as Janice Mobsby, from the Finance Department who a few minutes ago requested to speak regarding some legal issues with the Letter of Credit.

Mrs. Mobsby advised she understood that the Board has been requested to take action this evening on the Letter of Credit held by Butler Bank. Butler Bank, in April of this year, was issued a Cease and Desist by the FDIC requiring the bank to become compliant with a number of items as outlined by the FDIC. Because of the risk associated with the integrity of the bank at this time, the Finance Department supports the recommendation of the Town Treasurer that the Planning Board not approve renewal of this Letter of Credit and recommends that it be called and the funds put into

a cash escrow to continue the project. She does have a copy of the Cease and Desist that was issued. The bank is operating, but is actively being supervised by the FDIC.

Mrs. Choiniere asked if the Board did not renew the Letter of Credit, is it not automatically called? Mrs. Mobsby said that is the recommendation and the town would receive a check from Butler Bank. There is a risk that something could happen to the bank, which is the inherent risk for all Letters of Credit. In April, there were 24 notices of Cease and Desist issued by the FDIC; in 2008, there were more than 20 bank failures. This is a different banking market than three to four years ago. They are beginning to see bank failures, similar to what happened in the early 1990s. The Finance Department recommends cash escrow in this banking environment going forward because it is more secure.

Mr. O'Connor expressed his appreciation to former member Mr. Picillo for bringing this to the attention of the Board. Mr. O'Connor concurs with what Mrs. Mobsby has said.

Mr. Hopfgarten questioned if the Town does not receive a check from the bank by September 22nd, does the Board instruct the developer to stop the project?

Mr. Sioras said the Board could do that if there is no security in place. With the lots recorded, a Cease and Desist for further building could be issued and the Board could revoke the subdivision approval if it does not receive sufficient funds. This has happened one other time in the past where the Board had to file a Notice of Inadequate Security at the Registry.

Mr. Granese asked for input from Mr. L'Heureux as he had presented the Board with a few options if the Letter of Credit was called. Mr. L'Heureux advised he had no comment; he had not been aware of these recent discussions.

Mr. Granese asked for confirmation - if the Board does not accept the Letter of Credit, does it expire on the 22nd?

Mr. Sioras said the developer's ability to do work on the site expires on the 22nd. He may need to check further with legal as this is a recorded plan. He will need to verify the next step. Mr. Granese asked what will the town lose if this expired? Mr. Sioras explained no one is moving into any buildings and the road is less than half built. If it was further along, the town might be placed in the position of completing the road for health and safety reasons. There are some other builders interested in purchasing this property.

Mr. O'Connor asked Mr. L'Heureux, what has been completed to date on the project? Mr. L'Heureux stated the common drive is to base course, the Hampstead Road portion of the road has been reconstructed, the road is roughed in for about the first 2000 feet of the 4000 foot road, and storm drainage has been installed along that 2000 feet. The

developer has also logged the property recently and removed topsoil and trucked it offsite.

Mrs. Heard asked if the Letter of Credit expires, what would another developer need to do to develop the project? Mr. L'Heureux said if the Letter of Credit is called/drafted, then the funds will be forwarded to an account and the town will either need to finish the road, or restore the lot, and then give any remaining funds back to the bank. Or a private entity can purchase the property and the Letter of Credit. He is not sure how that would work in this particular case if the Town drafts the Letter of Credit. Mrs. Heard said if the Letter of Credit expired, there will be no work done on the property; but none has been done recently anyway. Mr. L'Heureux said the Board still needs to draft the Letter of Credit or file a Notice of Inadequate Security. Mrs. Choiniere did not think the Board had an option; it needed to call the Letter of Credit or renew it. Expiration of the Letter of Credit is not an option. Mr. Hopfgarten assumes if the Board does not accept the Letter of Credit, that the town will notify the developer it is about to expire and the developer will need to make the move. Mr. L'Heureux advised the Board needs to vote on the renewal or the draft of the Letter of Credit. If it is drafted, then the town will go to the bank and pick up the check. Mr. Hopfgarten asked what happens if the bank does not do that? Mr. L'Heureux stated the bank has to honor the Letter of Credit. Mr. Granese commented Finance recommends the Board call the Letter of Credit given the current financial issues with the bank and that the town obtain the cash.

Mrs. Heard wished there had been better coordination between Finance and DPW so that the Board could get a learned opinion. She does not feel the Board has all the pieces. Does anyone else need to weigh in? Mr. Granese indicated Finance has reviewed this and feels it is in the best interest of the Town to get cash rather than a piece of paper. This will expire on September 22, 2009, so the Board needs to renew it, or call it for cash.

Mr. Hopfgarten wanted to know if the Board needs to take any subsequent action of direction if the Board does not accept the Letter of Credit? Does the Board need to make another vote that the town shall execute the Letter of Credit for receipt of funds?

Mr. Sioras explained that normally, if there is no Letter of Credit by the renewal dates, the Board votes to call the Letter of Credit in the event it does expire. Can the town go to the bank tomorrow, or does there need to be a vote? Mr. Hopfgarten asked if the Board is authorized to do that? Mrs. Mosby said it is.

Mr. L'Heureux indicated that typically, the Board only drafts on the Letter of Credit on the day of expiration. But the Board still needs to vote to draft.

Mrs. Choiniere read from the Letter of Credit where it explained if the work has not been completed by the expiration date, the Letter is automatically called. Mr. Granese asked what happens if the Letter is renewed and then in November, the FDIC closes the bank? It was confirmed for Mr. Hopfgarten that the current Letter of Credit contains the

same language as the renewal. Mr. Sioras said these are typically renewed each year until the project is complete. Mrs. Choiniere felt if the Board denied the request to renew, the Letter of Credit will automatically be called because the work is not complete. Mr. Sioras said for the record, there needs to be a vote.

Motion by Choiniere to renew Letter of Credit #85 (formerly 89) in the amount of \$1,423,972.87 for the Harvest Estates Subdivision. The new expiration date will be September 22, 2010, and this relates to parcels 10015, 10024 and 10025. O'Connor seconded the motion.

Heard, Park, Hopfgarten, O'Connor, Choiniere and Granese all voted to deny. Granese added that he was voting no because he is not comfortable taking the Letter of Credit given the notification of the status of the bank; he would rather see cash.

The motion failed by a vote of 6-0.

Motion by O'Connor to authorize the Finance Department to call the Letter of Credit #85 on September 22, 2009, in the amount of \$1,423,972.87. The motion was amended to reference **Letter of Credit #89**.

Heard, Park, Hopfgarten, O'Connor, Choiniere and Granese all voted to approve and the motion passed unanimously.

Mr. Hopfgarten expressed concern with the process relating to Letters of Credit. Mr. Picillo brought this to the attention of the Board. Is there a set process in place to check the status of banks that issue Letters of Credit for the projects? Should Town Council look at this? Mr. Sioras explained that Mrs. Mobsby does check the status of the banks, and had in fact checked the status of Butler Bank when it first presented the Letter of Credit for this project a year ago. Mr. Picillo works in the banking industry and when he expressed concern that was relayed to Mrs. Mobsby.

Minutes

The Board reviewed the minutes of September 9, 2009 meeting.

Motion by Choiniere, seconded by O'Connor to accept as written. The motion passed in the affirmative with Hopfgarten abstained.

Correspondence

Mrs. Choiniere reported on the following correspondence: The Board has received a copy of the reply to NH DOT regarding their questions on the intersection of Windham Depot Road/Route 28/Kilrea Road.

The Board has also received notice from NH DOT regarding the public hearing on the Draft Supplemental Environmental Impact Statement for the I-93 Improvement Project. The hearing will be held on September 22, 2009, at 7:00 p.m., in the Derry Municipal Center. For more information, members should contact Mr. Sioras.

Other Business

Mr. Granese reported that at the Town Council meeting last evening, one of the Council members inquired with regard to sign issues. About one year ago, a subcommittee was formed to address the issue of signs. He asked Mr. O'Connor for a brief summary as to the status of that subcommittee.

Mr. O'Connor said there are issues throughout the town regarding signage and the longevity of their placement and the process of enforcing the sign ordinance. The subcommittee has reviewed some of the items, for example LED/flashing signs. He can foresee the subcommittee moving forward on this to a public hearing to obtain input from the public on the ordinance and who to notify for enforcement. Mr. Granese noted the Board will follow the workshop process prior to a public hearing.

Beaver Lake Watershed Management Plan

Mr. Sioras advised this is similar to the Open Space Plan. NH DES provided a grant which resulted in this plan. The Plan was put together to protect the Beaver Lake Watershed. As part of the Master Plan update, he would look to the Board to adopt this Plan and to incorporate it into the Master Plan. The Plan was put together through the efforts of naturesource communications, Gomez and Sullivan Engineers, the Towns of Derry, Auburn, Chester, the Beaver Lake Improvement Association, the Harantis Lake Homeowner's Association, the NH DES, SNHPC, Pinkerton Academy and several staff members. He worked on this with Alan Côté, along with some people from DES.

He also thanked Rob Tompkins and Tim Pellegrino who also did a lot of work on this plan. Mr. Granese thanked those involved with the creation of the plan. He had an opportunity to read it and they did very good work.

Mr. O'Connor commented there was a recent article in the Wall Street Journal regarding the reduction of drinkable water, worldwide. There is a very large aquifer in Derry that connects to other towns. This plan is an important part of protecting those areas. What the group has done is very impressive.

Motion by Choiniere to accept the Beaver Lake Watershed Management Plan, as presented this evening, seconded by Park. The motion passed unanimously.

Mr. Sioras took a moment to say he appreciated the support and also wanted to thank Michele Tremblay, the consultant and Steve Landry of DES, who were also instrumental in the drafting of this Plan.

Schedule Public Hearing – Zoning District and Boundary Changes, Section 165-30 and Section 165-31 and Set Date of Workshop

Mr. Sioras advised the zoning amendments have to do with the renumbering of lots to correct the old numbers that are used in the current zoning ordinance and the old tax maps. There is also a continuation of the workshop discussion of the rezoning in the area of the Robert Frost Farm. He suggested scheduling both to October 7, 2009.

Motion by Choiniere to schedule a public hearing to discuss Zoning Ordinance amendments to Sections 165-30 and 165-31, for October 7, 2009. Park seconded the motion. The motion passed unanimously.

MASTER PLAN

Natural Resources

Mr. Sioras advised that Jillian Harris of Southern New Hampshire Planning Commission, and Elizabeth Robidoux in the Planning Office worked on this chapter and will present it this evening.

Mrs. Harris discussed the information at the beginning of Chapter 8. In the fall of 2008, the town conducted a Community Survey and asked the residents how important it was to preserve open space, how preservation should be funded and asked them to rank natural resource and open space preservation methods. The majority of the respondents felt that it was very important to preserve additional open space in Derry and they felt that this should be funded through donations, grants and easements.

The majority of respondents felt it was very important to protect drinking water supply and the aquifers and to protect lakes and other surface waters. About half to more than half of the respondents felt it was very important to protect wildlife corridors and habitats, preserve and protect forested areas, preserve agricultural lands, preserve open fields and to protect prime wetlands. The respondents did not feel it was as important to maintain outdoor recreational areas, promote fish and wildlife management,

discourage hillside and steep slope development, or preserve open space through conservation easements or outright purchase of land. It should be noted that the respondents felt it was important to preserve these items, just not as important as those listed as very important.

According to the United States Census Bureau, the Town of Derry has a total area of 36.7 square miles, of which 35.8 square miles is land and 0.9 square miles is water, comprising 2.45% of the town. Derry is drained by Beaver Brook. Elevations in the town range from 282 feet above sea level to 605 feet above sea level at the top of Warner Hill. Derry lies almost fully within the Merrimack River Watershed, with a small section along the northern border of town lying in the Piscataqua River Watershed. The urban part of the town, defined as a census-designated plan (CDP), covers an area of 15.7 square miles, which is about 42.8% of the town. 15.4 square miles of the CDP is land, and 0.2 square miles of it is water. Derry is crossed by Interstate 93, New Hampshire Route 28 and New Hampshire Route 102.

Figure 8.2 shows the areas of steep slopes in the Town of Derry. As seen in this figure there are very few areas with slopes over 25% which are noted in red. The Land Development Control Regulations in Derry define slopes as “the average steepness of the land surface under consideration. For the purpose of determining lot size categories, slope shall be determined by slope factors used by the National Cooperative Soil Survey soil classification.

Figure 8.3 shows the wetlands in Derry, as designated by the National Wetland Inventory and those designated as prime wetlands by the Town. RSA 482 allows municipalities to designate “prime wetlands” within their community because of their fragility, size, uniqueness, or unspoiled character. All projects that are in or within 100 feet of a prime wetland are classified as major projects. All major projects require a field inspection by DES and all prime wetland projects require a public hearing to be conducted by DES. Other protections provided under RSA 482 require a permit from the Wetlands Bureau for all construction, dredging, excavation, filling or removal of soil in or from wetlands. In addition to state and federal regulations, the Town of Derry has adopted a Wetlands Conservation Overlay District, a Floodplain Development District, a Groundwater Resource Conservation District, and a Conservation Corridor Overlay District.

The properties and characteristics of soils play an important role in land use decisions. They also play an important role in determining how a town will develop. Soils form through the interaction of five major factors: time, climate, relief, parent material, and biological forces. The relative influence of each of these factors determines the kind of soil that can be found throughout Derry.

In 1987, the Rockingham County Conservation District, working with local, regional and state officials developed soil potential ratings indicating the relative ranking of soil for development. The overall potential is based on the suitability rating for three uses:

septic system absorption fields; dwellings with basements; and local roads and streets. This soil potential rating information is shown on Figure 8.4. Many communities use these ratings as a guide in the review of development proposals to regulate the placement of septic systems, dwellings and roads on slopes generally exceeding 15 percent. The Town of Derry determines minimum lot sizes in un-sewered areas of town by soil type.

Derry's prime agricultural land is an important part of the town's character and heritage, providing a scenic element as well as a local source of fresh food production. There are approximately 279 acres of Town Easement Protected Property that are made up of mostly prime agricultural land and forests.

In Rockingham County there have been 91 soil types identified. Thirteen of those are considered Prime agricultural soils, 10 are considered agricultural soils of statewide importance, and 13 are considered agricultural soils of local importance. These designations are based on soil characteristics and refer to their suitability for agriculture. Prime, statewide importance, and locally important soils are defined respectively by the Farmland Protection Policy Act of 1981, a state commission, and County Conservation District Boards. Figure 8.5 shows Derry's important Agricultural soils.

Ways of protecting agricultural lands and keeping them viable include: Agricultural Conservation Easements, Transfer of Development Rights Programs, Mitigation Programs, Tax Relief Programs, Tax Incentives for Conservation Easement Donations, Agricultural Economic Development, and Farmland Assistance Programs.

Groundwater is the water stored within the soil and bedrock. Groundwater resources are also known as aquifers. An aquifer consists of underground soil or rock that groundwater is able to easily move through. Aquifers typically consist of gravel, sand, sandstone, or fractured rock. They are water bearing rock or soils that are capable of yielding enough water for human consumption. Typically, they are located in bedrock or in surficial deposits. There are generally three types of aquifers, the till aquifer, stratified drift aquifer, and fractured bedrock aquifers. Stratified drift and bedrock in the saturated zone below the water table are the most capable of yielding useable quantities of water. Most of the drinking water supply in southern New Hampshire is served by a series of stratified drift aquifers. Although these aquifers are more effective in water transmission than are bedrock aquifers, they are much more susceptible to contamination.

The purpose of wellhead protection is to prevent the contamination of groundwater used for drinking water. A wellhead protection area is the area surrounding a public water supply well from which water and contaminants are likely to reach the well. DES recognizes those protection areas for community water systems and for non-transient, non-community water systems, but not for transient systems. Figure 8.8 is a map of Derry's aquifers and well head protection areas.

Mrs. Robidoux presented the remainder of the chapter. She reported that forest systems constitute the natural vegetation for most of New Hampshire's landscape. They play a critical role in water and nutrient recycling, microclimate regulation, watershed protection, flood control, soil conservation, carbon sequestration and air purification. They also provide important wildlife habitat and contribute to recreation and tourism, and the overall quality of life. The Assessor's history shows that Derry's forests have been cut over at least 3 times in the last 80 years. He has also reported that there have been very few Intents to Cut over the last few years.

There are two large tracts of land in Derry that contain contiguous forest area. The most notable forests are the Ballard State Park which consists of 128.3 acres, and the Weber Memorial Forest which is 203.1 acres. The Ballard State Forest is home to one of only two surviving American Chestnut trees in New Hampshire. There are six other rare species of trees or plants of very high or extremely high importance found within the Town of Derry.

In Derry, natural wildlife habitats act as a large part of the town's rural character as well as providing a place for various species to thrive. A habitat is generally defined as the area needed to provide sufficient water, food and shelter in order to survive and reproduce. Within these habitats, it is primarily vegetation that grows naturally in the region that provides food and shelter. Increasing residential development can negatively affect wildlife habitats and activities. But, with careful planning by local governments, the negative impacts humans have on wildlife can be significantly reduced.

Every species requires adequate habitat. The NH Fish and Game has evaluated the major habitat areas in New Hampshire and ranked them for quality based on size, distance and various other factors. The Town of Derry currently protects wildlife habitat through existing regulations such as the Groundwater Resource Conservation District, the Conservation Corridor Overlay District, the Wetlands Conservation Overlay District, the newly adopted Open Space Plan and the existing Stormwater Ordinance.

At a previous meeting, the Board was able to review the Open Space Plan, which is a resource the town can use to provide connectivity of green space throughout the town. The Conservation Commission continues in its efforts to obtain land that can be conserved for future generations. In addition to the purchasing of land for conservation, the town can also work with developers to create conservation subdivisions, also known as open space or cluster developments.

In 1989, the state revised RSA 674:2, Master Plan Purpose and Description, to require that each municipal Master Plan identify known sources of gravel and sand to meet future needs. Currently, the Town of Derry has only one active excavation site. The entire parcel contains 159 acres, of which only three acres is approved for excavation. The material is being used for fill at a residential construction site located elsewhere in New Hampshire.

Mrs. Harris noted the following recommendations for this chapter:

- Adopt and implement the Beaver Lake Watershed Management Plan;
- Implement the recommendations of the Derry Open Space Plan;
- Adopt LEED regulations and green infrastructure;
- Continue to review and update the Land Advisory Report;
- Work with Federal, State, county, and non-profit land trust organizations, as well as private landowners to purchase, obtain through donations, easements or transfer of development rights, properties for protection from development;
- Encourage an agricultural subcommittee on the Conservation Commission to develop priorities and work towards agricultural preservation and sustainable agricultural practices;
- Continue to participate in the New Hampshire current use program to support the preservation of open space, farmland and forest land;
- Continue to direct all of the current use change tax penalty to conservation funds in order to mitigate the loss of these lands and to continue the preservation of agricultural, forest and open space lands in town.
- Participate in the USDA Farm and Ranch Lands Program as a sponsoring entity;
- Consider the use of open space/conservation subdivisions to conserve open space in Derry and to work towards implementing smart growth development and planning;
- Develop a working group that will create and introduce environmentally-based educational programming in the school district; and
- Continue long term protection efforts such as public education and outreach, IDDE and stormwater ordinance enforcement, and stormwater pollution prevention efforts.

Mrs. Harris advised the chapters to be discussed at the next meeting include Existing and Future Land Use and Implementation Strategies.

Regional Concerns

Mr. Sioras said he will draft something and forward it to the Board for review. The Board needs to look at Regional Concerns. RSA 674:2-II,i states that Master Plans should have “a regional concern section, which describes the specific areas in the municipality of significant regional interest. These areas may include resources wholly contained within the municipality or bordering, or shared, or both, with neighboring municipalities. Items to be considered may include but are not limited to public facilities, natural resources, economic and housing potential, transportation, agriculture and open space. The intent of this section is to promote regional awareness in managing growth while fulfilling the vision statements.”

With regard to transportation and public transportation, the town does participate in CART which is tied to regional transportation. NH DOT has funds for this program in the ten year program. This is regional because CART services 9 communities. In addition, there is the I-93 widening; the regional bike trail on which the town is working with the Derry Bike Trail Alliance, Windham and Salem; the Route 102 management access plan that the town is working on with SNHPC, Public Works and the Police Department. The Economic Development section will include information on the discussions with the Rockingham Economic Development Commission, the Metro Center, the Chamber of Commerce and SNHPC. Conservation open space plans have been discussed tonight, with the two plans that have been adopted. Regarding Housing, this has been discussed and the Housing Chapter explains how Derry has met the criteria for workforce housing. The Natural Resources section has been discussed. The town has shared responsibilities with other communities for solid waste, the water systems and the treatment plan. He will have more information for the next meeting.

Visions and Goals

Mr. Sioras asked for help from the Board with regard to visions and goals. A list has been compiled from the results of the Community Survey, the Community Profile, and the various completed chapters. He asked the Board to review each category and decide which items will remain and which will be removed and begin to prioritize them. They should be ranked in the top 3 to 4 and begin to create a vision. This is the Board's Master Plan and this information should come from the Board rather than staff. This plan is the vision of the Board. He would like to see comments back by October 1, 2009, so that they can be compiled for the October 7, 2009 meeting. He is also hoping for feedback from some of the Community Profile subcommittees.

Mr. Granese noted there is a lot of information and the Board should not make decisions tonight. Mr. Sioras agreed, and requested the Board look it over and get back to the Planning Department by October 1st. The chapters are fairly on schedule to be completed. Mr. O'Connor asked if this information is available to the public for their

comment? The information and draft chapters are available on the town website, under the Planning Department page, under the Master Plan update link.

Mr. Granese reiterated there will be a workshop on October 7, 2009. He asks the Board to digest all the information that has been presented and to come up with comments and suggestions so that the Board can tread lightly with the Rockingham Road area changes from Office Research Development to General Commercial.

Mr. Sioras reviewed the October schedule. The Planning Board will hold its regular meeting on October 7. The Law Lecture Series will be held in the 3rd Floor Meeting Room on October 14, 21, and 28. The Board will hold its second regular meeting off schedule to accommodate the Law Lecture Series, as is its past practice. That second meeting will be held on Monday, October 19. In November, the Board will go back to its regular schedule on the first and third Wednesday in November.

Motion by Choiniere, seconded by Heard to adjourn. The motion passed in favor and the meeting stood adjourned at 8: 02p.m.
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