

The Planning Board for the Town of Derry held a public meeting on Monday, October 18, 2010, 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: David Granese, Chairman; John O'Connor, Vice Chair; Jan Choiniere, Secretary; Randy Chase, Administrative Representative; Maureen Heard, Darrell Park, Members

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

Absent: Jim MacEachern, Brian Chirichiello, Frank Bartkiewicz

Mr. Granese called the meeting to order at 7:00 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.

### **Escrow**

None.

### **Minutes**

The Board reviewed the minutes of the October 6, 2010, meeting.

Motion by O'Connor seconded by Heard to accept the minutes of the October 6, 2010, meeting as written. The motion passed in the affirmative with Choiniere abstained.

### **Correspondence**

Mrs. Choiniere advised the Board is in receipt of two notices from the Department of Environmental Services that there have been two Shoreland permit applications, and the Board has received the latest edition of *The Source*. For more information on these items, please see Mr. Sioras.

### **Other Business**

Mr. Sioras provided the following update on the Walmart project. The project is moving forward and the applicant has been in touch. The current plan is to hold another Design Review meeting in either November or December. If all goes well and the applicant

receives the state permit, a formal site plan submission could be heard in February or March. They have incorporated the Board's suggested changes.

## Public Hearing

**Brian & Deborah Dumais  
Paul & Dianne George  
PID 08029 & 18030  
17 and 19 Taylor Brook Lane  
Acceptance/Review, Lot Line Adjustment**

Mr. Sioras provided the following staff report. A Lot Line Adjustment plan for these two lots was originally seen by the Board in January of 2009, but the application was withdrawn at the hearing. The parcels are located at 17 and 19 Taylor Brook Lane. This is a Lot Line Adjustment between two parcels. No department signatures are required, and there are three waiver requests. The Department would support the waiver requests. There are no state permits required and he would recommend approval of both the waivers and the application.

Mr. Sioras advised there are abutters who have brought forth some civil matters, and he advised this application is for a lot line adjustment only.

Jim Lavelle, James Lavelle Associates, advised the application is a lot line change between Parcels 18029 and 18030, owned by Brian and Deborah Dumais and Paul and Dianne George. Mr. George is present this evening. The intent of the application is to increase lot 18029 to 16,650 square feet and to decrease lot 18030 to 36,704, for an area of exchange of 8571 square feet. He identified the lots on a colored plan. The plan on the right shows the lots after the lot line adjustment. The adjustment will benefit Paul George so that he has the ability in the future to add a single car garage to the side of his home, or to install a replacement septic away from Island Pond. These are small, existing non-conforming lots.

Note number 4 on the plan is important. It states, "This is a lot line change only all existing access and utility easements remain." The previous plans referenced on this plan show the different rights of way across the lots. This plan shows the existing driveways. This plan does not change access through or onto the properties.

Motion by O'Connor to accept the revised plan presented by the Surveyor this evening, it is a plan dated March 23, 2010, as revised. Choiniere seconded the motion.

Mr. O'Connor explained this is motion is not accepting jurisdiction of the plan, it is to accept a revised plan.

Park, Heard, O'Connor, Chase, Choiniere and Granese voted in favor and the motion passed.

Mr. Granese opened the floor to the public.

Brian O'Riordan, advised he is an abutter at 5 Taylor Brook Lane. He has lived at this lot all of his life, and objects to this plan. This area is zoned for three acre lots. Many trees have been removed in the area and he is opposed to the change.

Sean O'Leary advised he represents the Catherine Holmes Revocable Trust. The Holmes own a quarter interest in Parcel 18041. Other owners are present this evening. The attorney for the Biery Trust, Mary Howie, was unable to attend this evening, but was present in 2009 and presented objections at that time. She authorized Attorney O'Leary to speak on her behalf objecting to the Lot Line Adjustment and would like to request this application be tabled so that she can appear for her clients. Mr. Granese asked why does she want this tabled? Attorney O'Leary explained she would like to voice objections of her client, as done in 2009, regarding the subject lot in person. Mr. Granese noted she could have sent a letter to be read into the record this evening. Attorney O'Leary said this was without much notice and there were four owners to pool views. He did try to reach the attorneys of the other interest holders but without success. The objection is raised by his client Richard and Sue-Ellen Holmes. They have hired Emanuel Engineering to review the lot line plans and surrounding lots for accuracy. The parent parcel has had previous subdivisions, and over the last 100 years been in the Holmes, Biery and Gallagher family. They have a concern with the plans of the previous subdivision, not this one. Emanuel has not done the field survey yet. Based on their review so far, Emanuel reports there appears to be a discrepancy between the 1999 and 2004 plan, with an error of about 8 feet. Without having a field survey, that is important.

Attorney O'Leary stated the historical problem is that Mr. George's driveway backs up to the right of way which is a problem as voiced in the 2009 hearing. At times, the right of way is blocked to Parcel 18041 and to the Biery lot below. He now understands from the owners that in the past, the right of way has also been blocked with snow that turned to ice and it required machinery to remove it and restore access. The Dumais' have been responsible for the right of way which travels through the property. By changing the lot line, Mr. George will now be responsible for the right of way. The right of way is shown on the plan as a gravel driveway. That should be shown on the plan as a right of way. The plan that he saw prior to this evening had an easement along the property line of 18031 and 18041. This plan does now show that. He is not sure which plan was submitted for approval. Mr. Granese explained the Board just accepted the revised plan for submission.

Attorney O'Leary stated the Biery parcel is now occupied by renters, one of whom has health issues. If the right of way easement is compromised that will cause a concern for ingress and egress. The lot line adjustment compromises the ability for 18041 to be sold, especially if Mr. George compromises the accessibility of the lot. Mr. George had previously expressed interest in purchasing it, but not at the asking price. Attorney

O'Leary stated it was possible Mr. George was putting forth this application to increase his ability to acquire parcel 18041 at a reduced selling price.

There is concern over the location of the right of way and who will be responsible for the right of way if this plan is approved. The surveyor (Emanuel) would like additional time to perform a survey and compare it with the prior plans to ensure accuracy.

Mr. O'Connor inquired if Attorney O'Leary was present at the hearing in January of 2009? He was. Mr. Granese asked who maintains the existing gravel driveway? Attorney O'Leary said he was not certain who maintains it at the moment. Mr. Granese reminded him that at the 2009 hearing, Attorney O'Leary had stated that the right of way was maintained by all of the neighbors. Has that changed? Not to Attorney O'Leary's knowledge. Mr. Granese asked Jim Lavelle who was responsible for the right of way? Mr. Lavelle stated that the responsibility for maintenance of the right of way is with the neighbors. It is his understanding that Mr. George has been assuming the majority of the responsibility through the two properties. The right of way goes through the parcels. Whether the ownership of the lots changes does not matter; the parcels are subject to the right of way. This plan does not change the rights across the parcels whatsoever.

Attorney O'Leary acknowledged it has been represented that the ownership of the parcels can be transferred. They are only transferring a part of the area. In January 2009, at the public hearing Attorney Howie read the following from the deed of Brian Dumais. He read the following into the record, "The Grantees, their heirs, successors and assigns shall have the right to relocate the easement across Lot 1830 provided (i) the entire cost of a new survey and plan, drafting and recording a new grant of easement and relocating roads, driveways and utility lines therein is born by the Grantees, (ii) the Grantees indemnify and hold harmless the Grantors, their successors and assigns harmless from and against any loss, damage or liability arising out of such relocation, (iii) such relocation does not unreasonably interfere or interrupt existing access or utility services to Lots 1831 and/or 1841, and (iv) such relocation provides reasonably equivalent access between Taylor Brook Lane and lots 1831 and 1841 to what presently exists." Attorney O'Leary felt that suggests that by allowing the lot line adjustment, the Board is giving license to the applicant (Dumais) to not comply with that provision in the deed, in the event the right of way is later moved.

Mr. Granese explained that deeds are not under the purview of the Planning Board. That is a civil matter. The Planning Board has purview over the lot line adjustment.

Mr. Lavelle stated that when he drafted the prior plan, they thought there was going to be a change in the easement location. That is no longer the case. Any new deed for this parcel would say that the parcel is subject to all rights of way.

Attorney O'Leary said that Emanuel has stated the plan as it exists shows a driveway, not a right of way. It should be a right of way and the plan misrepresents facts, nor does it represent who the driveway is for. There is some concern regarding the old well servicing an adjacent lot. The Dumais family installed a septic system and the septic

system may be in the well radius for another lot. There is a concern because Dumais has room for a septic now, but the ability to move the septic in the future could be an issue if the lot line is changed. He is asking the Board to give the current owners an opportunity for Emanuel to perform their own survey to verify the plan.

Paul George stated that if he blocked the easement near his home, he would block access to the Dumais parcel. They are relatives. He can not see himself doing that. If Dumais had to move or replace the septic there is room. That has already been taken into account. That is not why they are here.

Mr. Lavelle advised he is surprised by the statements made this evening regarding his plan. He stands by his stamped plans. He has prepared plans for the abutters as well. Previous plans which are referred to on this one, show the rights of way which have not changed.

Mr. Granese asked to be shown the location of the wells on the properties. Mr. George pointed them out. He advised the proximity of the wells to the septic systems were taken into consideration by the state and the town when the septic was being constructed on the Dumais lot. He is not sure how this changes things in 2 ½ years. If the abutters needed time, they have had a year and a half.

Mr. Sioras advised Mrs. Robidoux had checked the files when the application came in and there is a septic plan on file for the Dumais lot. Regarding the time frame, there has been ample time for abutters to review the plan and the town met all of its procedural requirements for notification. Abutters were notified in a timely manner and in fact several abutters came in and spoke with Mrs. Robidoux. Attorney O'Leary said that he meant Emanuel has not had ample time to verify the 1999 and 2004 plans, not that the notices had not gone out properly. In January of 2009, Attorney Howie offered two pictures that were not retained for the record that showed a van parked in the right of way. A foundation was clearly shown in the photo. He feels there has been a lack of communication. Mr. George had indicated to him this evening prior to the hearing, that the easement issue had been worked out, otherwise he would not have presented this plan to the Board. Attorney O'Leary requested the Board to consider tabling this application until Emanuel can perform their survey.

Mrs. Choiniere asked that someone point out the existing driveway for the two properties. Where do the residents park? Mr. George showed the Dumais garage, and advised there is additional parking to the side, and they do not block anyone. There have been no calls in 21 months to move vehicles and that is not why he is before the Board tonight anyway. Mrs. Choiniere said she was confirming where people park. Mr. George advised the Dumais septic is already installed, and has an H2O loading so that it can be driven upon. They can park between the septic and the house.

Brian O'Riordan stated he has concerns. He travels in and out of his lot every day and he has been blocked 3-5 times. He has had people direct his vehicle around other cars. Sometimes, there are as many as 8 to 9 cars there. If Dumais gives up part of his

property, future owners won't have a place to park if the lot line changes; that will be a problem.

Attorney O'Leary wanted to clarify the area in front of the Dumais home. Blockage occurs on the south side, and access is compromised when people are parked in the driveway.

There was no further public comment.

Motion by Choiniere to close the public hearing, seconded by O'Connor.

Park, Heard, O'Connor, Chase, Choiniere, and Granese all voted in favor.

Motion by O'Connor to accept jurisdiction of the lot line adjustment plan for Paul and Dianne George & Brian and Deborah Dumais, for parcels 18029 and 18030, 17 & 19 Taylor Brook Lane, seconded by Heard.

Park, Heard, O'Connor, Chase, Choiniere and Granese all voted in favor.

Motion by O'Connor to grant waivers to the LDCR, Sections 170-24.A.11, Topography, 170-24.A.12, HISS mapping and 170-24.A.13, Wetland mapping, seconded by Heard.

Park, Heard, O'Connor, Chase, Choiniere and Granese all voted in favor.

Motion by O'Connor to approve the lot line adjustment plan pursuant to RSA 676:4,III, Expedited Review, subject to the following conditions: add a note to the plan indicating the total number of sheets in the plan set, which sheets will be recorded upon approval, and that the full set of project plans is on file at the Derry Planning Department; correct the zip code in the title block; correct the spelling of "Taylor Brook" throughout; correct abutters listed on the plan; subject to owners' signatures; subject to on site inspection by the Town's Engineer; establish escrow for the setting of bounds, or certify the bounds have been set; obtain written approval from Doug Rathburn that the GIS disk is received and is operable; note approved waivers on the plan; that the above conditions are met within 6 months; and a \$25.00 check, payable to RCRD should be submitted with the mylar in accordance with the LCHIP requirement. Heard seconded the motion.

Park, Heard, O'Connor, Chase, Choiniere and Granese all voted in favor.

There was no other business before the Board this evening.

Motion by Heard, seconded by Choiniere to adjourn. The motion passed and the meeting stood adjourned at 8:40 p.m.