

The Planning Board for the Town of Derry held a public meeting on Wednesday, December 15, 2010, 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, Chairman; John O'Connor, Vice Chair; Jan Choiniere, Secretary; Randy Chase, Administrative Representative; Brian Chirichiello, Town Council Representative; Jim MacEachern Maureen Heard, Darrell Park, Members; Frank Bartkiewicz, and Anne Arsenault, Alternates

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk; John Anderson, Town Administrator; Mark L'Heureux, Engineering Coordinator

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

#10-45

Project Name: Gennaro Estates

Developer: Gennaro Cella

Escrow Account: Gennaro Estates

Escrow Type: Letter of Credit

Parcel ID/Location: 04074/04075, Gulf and Bartlett Road

The request is to approve the renewal of Letter of Credit #550008944, Letter #3, drawn on Hampshire First Bank in the amount of \$574,591.97 for the above noted project. The new expiration date will be January 2, 2012.

Motion by O'Connor, seconded by Choiniere to approve as presented.
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Mr. Sioras noted the purpose of the renewal is that the project is under construction and they want to extend the Letter of Credit for one more year.

The motion passed with all in favor.

Minutes

The Board reviewed the minutes of the December 1, 2010, meeting.

Motion by O'Connor seconded by Choiniere to accept the minutes of the December 1, 2010, meeting as adjusted to correct the spelling of "LaClaire". The motion passed in the affirmative with Heard, Park, and MacEachern abstained.

Correspondence

Mrs. Choiniere advised the Board is in receipt of a memo from Finance that states the Coopers have an outstanding invoice from July, 2010. The Planning Board may need to draw on the Letter of Credit for the funds. The Board may direct any questions to Mr. Sioras. The Board has also received an updated Board member listing.

Other Business

Mr. O'Connor advised the Sign Ordinance Subcommittee will hold a meeting on January 13 at 4:30 p.m. A notice of the meeting will be posted 48 hours in advance. The intention is to final the draft and bring it to the Board the following month for a workshop.

Mr. Sioras advised Town Council approved the proposed zoning changes in the area of the Robert Frost Farm that will take effect 30 days after the vote.

James Lavelle, of James M. Lavelle Associates, LLC, asked for a few moments to address the Board with regard to a plan the Board approved a few weeks ago. At that meeting he presented a Lot Line Adjustment for Paul George. The attorney for an abutter stated Mr. Lavelle may be as much as 8' off on his survey work. Mr. Lavelle stated he appreciated the Board's consideration and approval of the plan that evening. The independent surveyor hired by the abutter stopped into his office last week and advised that the previous survey work was all right and true and he would so inform his client. Mr. Lavelle wanted to inform the Board of the findings.

Mr. Granese thanked the Town Council for approving the proposed zoning changes and the Board for its hard work and dedication. He wanted to especially thank Mrs. Roach and Mr. Chase for their work on the proposed amendments.

Mr. MacEachern stated he had forwarded correspondence to the Board requesting that the order of the applicants be switched on the agenda. Mr. Granese stated that as Chair, he decided to leave the agenda as is.

Public Hearing

**Wal-mart Real Estate Trust
PID 08279, 08276-001, 08276
Ashleigh Drive
Design Review, Site Plan
155,826 SF retail store with associated parking**

Mr. Sioras reported this is the second Design Review of the plan. Input from the Board and the public was obtained at the first hearing in July of 2010. Tonight, representatives from Wal-mart include Attorney Peter Imse, Jon Brodeur and Kevin O'Shea.

Attorney Peter Imse of Sulloway & Hollis advised they have updated the plan since the last meeting. They received comments and town input and are actively pursuing permits and the issues. Tonight, they would like to provide an update on the engineering issues, and ask questions to obtain Planning Board guidance. They have updated the traffic study; there had been questions with regard to the architectural elevations and they have updated the design. They would like to provide further information regarding activity with respect to the crossing of the conservation easement area. The goal is to circle back and obtain a good checklist of concerns and questions from the Board to see what needs to be addressed.

Regarding the conservation easement, he does not have a plan to show the area, but it is a small "L" shaped easement on the corner of the property. It was created as part of wetland mitigation for development of land along Route 28. The easement is held by the town. The area won't have development, but the access to the site will cross it. The total conservation easement area is about 2 ½ acres. They will disturb ½ an acre and have about 4,000 to 5,000 SF of wetland impact for the access. They have been in discussion with the Conservation Commission. Parties to the easement include DES and the Attorney General. They have spoken with the parties and understand they need consent from all parties to change the easement. They would like to amend the existing easement and propose to subject 13 acres to the rear of the parcel to the terms of the conservation easement. That land includes wetland and uplands. They feel this is a good proposal. The State Attorney General's office (Charitable Trust) has indicated they would give a No Action letter. DES will also review the request with the Attorney General's office. Mr. Imse said he was not in a position to say what the outcome will be. Once he has the outcome in hand, they will meet for the third time with the Conservation Commission. They will be sensitive to the issues. This is a significant pre-condition of the application.

Jon Brodeur of Doucet & Associates provided a review of the proposal, beginning with an overview of the existing site which is a large, open field and a mix of wetland and upland. Revisions to the plan include a revised rear emergency access. The proposal is to now pave the emergency access and London Road will terminate in a cul de sac, rather than a hammerhead. DPW advised it wanted the access to be paved to ensure maintenance and access in all weather. A concern expressed during the last hearing was that headlights in the parking lot would disturb the residents on Linlew. They have added a significant hedgerow of large caliper trees at the beginning of the buffer to eliminate the headlight condition. Those trees will grow into a thick screen. They have eliminated five additional parking spaces at the end to facilitate safer access on the site. There have otherwise been no major changes. Most of the changes were to address staff comments. The plan meets all local and state standards for stormwater, has

reduced peak flow rates in all areas and discharge points, and they have met all applicable water quality standards.

With regard to the parking lot it has been determined that there is a typographical error in the LDCR and the foot candle requirement is half a foot candle, not 12 foot candles. They have confirmed that the lighting plan meets town standards on all levels with regard to brightness. The Board had asked for a comparison and they looked at the lighting in the cinema parking lot. The proposed parking lot is just slightly above that at the cinema so the lighting will be safe and adequate.

Giles Hamm of Vannasse & Associates advised the traffic study has been updated to reflect the redevelopment of the auto dealerships on Manchester Road. The new study has been filed with the town. The Ashleigh Drive road improvement design has also been submitted to the town. Ashleigh will have three lanes out, and two in from Route 28. The Walmart entrance will have a exclusive right in with a left pocket in.

Attorney Imse advised that current negotiations with staff indicate there will be a need for the improvement of the stub located at the termination of London Road. The proposal is to upgrade that to a cul de sac. Figures will be determined for the cost of the upgrade and Walmart will post a bond or escrow with the town to pay the cost, but the Town will perform the construction, independent of this project; the upgrade will be on the Town's time schedule.

The applicant has filed a waiver request for parking. They are requesting a reduction in the parking calculation from the required 5 spaces per 200 square feet to 4.7 spaces. Walmart is comfortable with that figure. Some members had indicated they thought that the number of spaces could be further reduced. They would like to obtain input from the Board with regard to how the Board feels about the waiver request so that they can adjust the proposed parking if necessary.

Gabe Massa, of MMA Architects advised that he provided elevations of the proposed store back in July. Comments from the Board were for the most part favorable. They went back and looked at the addition of crown molding, but it did not work with the contemporary style of the building. They were able to incorporate regional material into the design, and it worked very well. He presented a rendering showing the addition of granite to the white and tan integrated concrete block. Mr. Granese advised that after further consideration, he likes the look of the curve on the building.

Attorney Imse advised they would like to obtain public input tonight and answer any questions. They would like to leave this evening with a list of checklist items to complete.

Mr. Granese stated he liked the changes that had been made to the plan and thanked the applicant for considering the Board's concerns. He personally does not have an issue with the parking waiver request. He likes to see more green space and trees.

Mr. Granese asked for public input.

Kevin Clark, 9 London Road, advised the proposed emergency access is in his front yard. He purchased his home in 1987. Currently, he parks his vehicles where the access will be. He has had a lot of water problems there and works every year on it; he has pictures [not provided]. The cul de sac at the end of London, what will that look like? How will it change his property? What will happen to the drainage? He has children and is concerned with the potential for people hanging out in the cul de sac. Who maintains the cul de sac and what will it look like? How will it affect his yard?

Attorney Imse said he can't speak for the Derry DPW, but the proposal is to take the stub of London Road and bring it up to town standards, which would alleviate the drainage issues. Yes, there will be disturbance during construction, but Mr. Clark will end up with a driveway on a street that is maintained by the town. The emergency access will be gated at both ends and is for emergency access only. Walmart will maintain the access road and the town will maintain London Road.

Mr. Granese reported he received a phone call from Councilor Fairbanks regarding the access and improvements on London. He went out to the site and looked at it. He understands that the Walmart design team will respond to the technical concerns such as drainage, road design and the end of London Road. DPW is essentially in agreement with details previously presented for the end of London Road. The town will be responsible up to the gate. Mr. Sioras advised he spoke with Mike Fowler who indicated he would be available to speak with Mr. Clark again with regard to the proposed improvements and answer questions. Mr. Fowler had sent an email to Mr. Granese and Mr. Sioras indicating same.

Scott Lavoie, 6 Thames, said it has been discussed before, why is this access required? He asked at the last meeting if any other Walmart had a second access and they don't. It will be about 1000 feet long. Bad things can happen and it can hurt property values in this neighborhood. This will become a new teen cut through and will be an issue for family life. He knows the Fire Chief wants it, but it is not necessary. Why can't the road cut through the apartments? The gate is just a bar so it does not stop activity; it will only stop cars from going through. If something happened he would be tied to his property. Is this 100% necessary? He thought it was going to look natural and would not be paved, and now he hears it will be paved. That is upsetting.

Mr. Granese stated there had been concerns with regard to the end of London Road such as drainage and the need for driveways. To correct that, the road needs to be paved. The NH Fire Marshall ruled that a second egress was required from the high occupancy site. Discussion regarding the location of the access is not a closed door item. However, the state says the second access is required. Mr. Lavoie said length is an issue. If the access was moved elsewhere, the length might be shorter which will result in a cost savings and can be a win/win for everyone. It will be less unsightly. Everyone in this neighborhood is concerned with regard to lighting and noise.

The other issue of concern is the 24 hour operation. Mr. Lavoie stated he did not feel that a 24 hour store was required. His property is his investment and that is his largest concern. He wants a win/win for all parties with regard to the emergency access.

There was no further public comment.

Motion by MacEachern to close the public hearing, seconded by O'Connor. The motion passed with all in favor and the discussion went back to the Board.

Mr. MacEachern asked if the access road would be paved all the way to the gate? Does it have to be paved all the way to the cul de sac? Mr. Brodeur stated it will be fully paved. DPW requests that the access be plowed in the winter so that it remains clear, and it has to be maintained. If the access way was left as gravel, there is the potential it could rut up and interfere with safe passage of vehicles during an emergency.

Mr. MacEachern asked that Mr. Fowler attend when the Board discusses the access again. If the area was not paved between the gate and the existing street, what would that distance be? Could it be left so that it looks more natural and is therefore screened? Mr. Granese said pavement is an issue, and the residents would like to see the area in front of their homes cleaned up and the drainage issues resolved. Mr. Lavoie said the residents need the pavement from the street to the driveways. His concern is that the access road will now be paved. Mr. MacEachern said he was not against not paving from the street to the access to give the impression there is no access. It may be worth a little more due diligence on the part of the town to avoid potential activities. That was assuming the street stayed the same but the drainage issues change that. Mr. Brodeur said they did modify the plan from gravel to pavement and that was a change since the last meeting to address staff comments. Mr. MacEachern agreed it made sense to pave the access road if it was about 1000 feet long.

With regard to the parking waiver, Mr. MacEachern felt that a reduction from 5.0 to 4.7 was still too high. He knows the regulations require the 5.0, but he feels the Board can request less parking. Mr. Brodeur said the 4.7 figure seemed to be typical especially for the northeast when you lose spaces during the winter due to snow piles. The existing Walmart parking lot is at a 5.0. Mr. MacEachern said the existing lot had so much parking that a gas station was allowed to take up part of it and a portion is used for outside sales. Clearly, it could be argued the existing parking lot is way too big. Mr. Brodeur stated the existing parking lot is at 5.0 after all is said and done. The .3 reduction is a significant number. The Board estimated this would reduce the parking lot by about 3-4 stalls of parking.

Mrs. Choiniere asked what came of the request to look at another location for the emergency access? Mr. MacEachern said with regard to Linlew Drive, the potential access would be where the apartments are close together. There is nowhere to put it. Is there any way to make it go to the left into the other lots without crossing the

wetland? Mr. Sioras noted there is an existing pathway that leads toward Treasure Lane that might be able to be considered. Mrs. Choiniere asked if there is any other possible location for the egress?

Attorney Imse explained there have been various discussions. There are a significant number of wetlands to the left of the parcel. They would need a third party easement to cross the wetlands and it was not felt they could obtain DES approval for the crossing. Crossing into Linlew takes away from the property associated with the apartments for the yard, driveway and parking lots and would also require an easement. The proposed access does not require third party rights and ties into a town road system.

Mr. Chase spoke with regard to the emergency access road. Utilizing an access to Linlew Drive would not have enough room and the grade is not good in that location. If the access was utilized there would also be the issue of residents in the parking lot trying to get to their cars and that creates a traffic issue. The grades and wetlands going into Oxford are also not good. If the access was moved to the north, it would increase the length of the emergency access road to about 1500 feet and goes through wetland. The only feasible location appears to be through London Road.

Mr. O'Connor stated that at the last meeting, he had asked for information on the type of refrigeration used in the delivery trucks, will it be Freon or ammonia? With regard to the loading docks and the drain, if a spill occurs, how will that be handled? If liquid spilled, those drains lead to the wetland. He does not want to see product entering the storm water. Will that be addressed during site plan review?

Mr. Brodeur said products should not fall into the drain because the trucks back right into the dock. The drain does have a hydrodynamic separator that would separate out oil, gas and solids. In a spill event, that is the first line of defense. Mr. O'Connor said he had a concern that if something let go, it might not get handled by the separator. He is concerned that oxygen depriving materials might make it to the wetland. Mr. Brodeur advised Walmart has an Emergency Spill Response Plan and it would be activated in the event of a spill. There is no mechanism to remove a material such as milk from the stormwater that he is aware of.

Motion by MacEachern to re-open the public hearing, seconded by O'Connor. All voted in favor and the floor was opened back up to the public.

Kevin Clark said he did not feel that emergency egress to Linlew would have to deal with traffic because it would only be used in an emergency. There might be room there as they removed the tennis court. Will this be a 24 hour store with nightly deliveries?

Motion by Choiniere to close the public hearing, seconded by MacEachern. The motion passed with all in favor and the discussion went back to the Board.

Mr. Granese asked what are the intended hours of operation? Mr. Brodeur stated that Walmart typically requests a 24 hour approval. He unsure of the existing store's current

hours. Walmart tries to work with communities and may have restricted truck delivery hours to accommodate noise concerns. He asked the Board to remember that the lighting will be new, state of the art lighting and will not spill off the site. They can work with the town with regard to noise restrictions.

Mr. Granese inquired as to what will happen with the old Walmart? Attorney Imse stated he is not aware of any specific plans. He does know that Walmart is not in the business of owning empty stores, so they will either fill it with a tenant, or sell it. They have no desire to leave it empty. The current store is 114,000 SF. Mr. Sioras noted that when Walmart comes back to the Board, the abutters will receive another notification.

Attorney Imse advised they are aware they will need to file a conditional use application with the Board for the wetland crossing, they need to resolve the conservation easement issue, and the parking waiver is pending. Is there anything else they should address? They would look to the Board for guidance.

Mr. Granese stated that with regard to the parking it did not appear to be an issue for the Board. He asked the applicant to look into alternative locations for the access road. Mr. Sioras suggested following up with Fire Chief George Klauber with regard to the access. Attorney Imse commented what they present, reflects what has been asked of them. They are awaiting the response from the two state agencies. The Charitable Trust and AGs office should respond within the next week or so, and DES should be able to provide a response within the next 30 days. They anticipate going back to Conservation in January or February.

Mr. Chase asked if there was a "Plan B" if the easement issue cannot be resolved? Attorney Imse said there is not. There is no other feasible way to bring commercial access to this site.

Mr. O'Connor advised he concurs with Mr. MacEachern with regard to the reduction in parking and would be in favor of granting the waiver. He congratulated the architect on the façade in front; it looks good.

Mr. Granese asked Margaret Ives [in the audience] if the Conservation Commission would hold another site walk; if so, perhaps the Planning Board could attend. Mrs. Ives reported they already held a site walk and will only hold another if the emergency access location changes.

Mr. Granese thanked the Walmart representatives for answering the questions of the public and the Board.

Bruce Radford and Jackie Radford
PID 03152, 19 Kilrea Road
Acceptance/Review, 3 lot subdivision

Mr. Sioras provided the following staff report. The property is located at 19 Kilrea Road. The purpose of the application is for a three lot subdivision. There is already an existing farmhouse which is the Radford home. The property is being subdivided off to create two new frontage lots. They intend to subdivide off 2 lots, holding the third lot for the existing farm. The property is in the Low Density Residential District. All town departments have reviewed and signed the plan, with the exception of the Public Works Department. Mike Fowler provided a memo which is in the member packets. The applicant has submitted a request to waive the requirement of the DPW signature. He would recommend that the Board hear the plan to give an overview, but given the number of comments from the review engineer and the drainage/site issues, he recommends the hearing be continued to the January 19, 2011 meeting which would give the applicant an opportunity to respond to the comments and allow the Board to hold a site walk to review the driveway and culvert issue.

James Lavelle, of James M. Lavelle Associates presented for the applicants. The purpose of the plan is to subdivide parcel 03152. This is a 47.4 acre parcel. He had been asked to prepare a two lot subdivision plan to settle the estate and a TRC was held for the two lots. The heirs subsequently decided on a three lot subdivision. He met with TRC again. They are dividing the property into three, fairly equal areas with each lot totaling close to 15 acres. His understanding is that Jackie Radford occupies the existing home which was constructed in or around 1720. Her brother, Bruce Radford utilizes the barn for his horses when he is in town. The third lot is for the remaining heir. The property consists of open fields and an existing driveway or road between the lower lots. The access is paved to a certain spot where flea markets used to be held. There are no plans for an alteration of the property. The farm will be retained for its current use and the fields will continue to be hayed. The new lots meet the zoning and frontage requirements for the zone. The lots meet the building setbacks. The request to waive the DPW signature is because the applicants do not wish to change the site at this point. They have used the existing driveway for a number of years and want to keep it. DPW has suggested the owners extend a culvert across the road and perhaps it might be beneficial to extend it. The applicant would grant an easement for the town to extend the culvert. He would ask the Board to consider the application. He will address the review comments between now and the next meeting.

Mr. MacEachern asked if Mr. Lavelle had a chance to look at the 45 comments yet? Mr. Lavelle said he had not but will come back to the Board. Mr. Granese asked if he would have enough time to address them between now and January 19? He would.

Mr. Granese asked if anyone from the public would like to speak?

Sheldon Wolfe advised he is an abutter to the project. He wanted to predicate his comments to say that he had no issue with the proposal; he understands highest and best use of a property. He concern is that the lots abut a commercial zone and he would like to suggest the homes be situated so that any future homeowner is not disturbed by the commercial uses and can enjoy their property.

Motion by MacEachern to close public input, seconded by Choiniere. The motion passed in the affirmative.

Motion by MacEachern to table this application until January 19, 2011 to allow the applicant to address the comments submitted by DPW, and the engineering review comments. Discussion followed.

Mr. Chase asked about the existing driveway. Where does the lot line fall? Does it split the driveway? Mr. Lavelle explained there is a proposed driveway for the top lot. The existing driveway is for the lower two lots and it would be a shared driveway. The applicants currently use it for the existing home. Mr. Chase felt each lot should have its own driveway. He understands this is an estate settlement, but he can not advocate leaving a shared driveway with a lot line in the middle of it. Mr. Lavelle said it would be unfortunate to discontinue that access to the home. He knows there is a sight distance issue for the driveway between the home and the barn. This access has been used for centuries. There could be an easement for additional access. Mr. Chase felt each lot should have its own access/driveway. The applicants are asking for something new, so this needs to be addressed to prevent problems later. Mr. Lavelle felt a site walk by the Board was important; he was not certain if it was appropriate to walk between now and the next meeting. Mr. Granese asked that the items in the engineering comment letter be addressed first, and then the Board could expedite a site walk after that if required.

Mr. MacEachern stated they are dividing up the lot to make the heirs equal and whole. Is there any way to move the lot line with the existing shared driveway up and still make the lots equal? Then the existing driveway becomes the driveway for the existing lot. Mr. Lavelle said the sight distance on this section of Kilrea Road is problematic because of the curve and grade. The existing driveway is in the best location. If they try to move it, they would lose significant sight distance because of the grade. A higher driveway would require road cuts. This driveway location is the best spot until you get up the road to the other proposed driveway location.

Mr. Granese advised this matter can be placed on the January 19, 2011 agenda. He suggests the applicant address the comments in the engineering review letter as well as the outstanding TRC comments.

Motion by MacEachern to continue this matter to the January 19, 2011 meeting of the Planning Board, seconded by Choiniere.

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

There was no further business before the Board.

Motion by Choiniere, seconded by Chase to adjourn. The motion passed in favor and the meeting stood adjourned at 8:29 p.m.