

The Planning Board for the Town of Derry held a public meeting on Wednesday, March 2, 2011, 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; John P. Anderson, Town Administrator (8:10 p.m.); Frank Bartkiewicz, Darrell Park, Members; and Anne Arsenault, Alternate

Absent: Brian Chirichiello, Randy Chase, Jim MacEachern

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk; 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, agendas and material for the evening.

### **Escrow**

None.

### **Minutes**

The Board reviewed the minutes of the February 9, 2011, meeting. Mrs. Arsenault was seated for Mr. MacEachern this evening.

Motion by O'Connor seconded by Bartkiewicz to accept the minutes of the February 16, 2011 meeting as written. The motion passed in the affirmative.
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### **Correspondence**

Mrs. Choiniere advised the Board is in receipt of two escrow renewal reminders (Covey Run and the Woods of Derry II). The Board has also received the new edition of *The Source* and information on an upcoming Turf and Grounds workshop. If members require more information, please see Mr. Sioras.

### **Other Business**

Mr. Sioras advised Walmart has submitted its formal Site Plan application. The public hearing is scheduled for March 16, 2011.

**Public Hearing**

**Bruce and Jackie Radford  
PID 03152, 19 Kilrea Road  
Review, 3 lot subdivision  
Continued from February 16, 2011**

Mr. Sioras advised this hearing was continued from the last meeting. The plan has been updated by Jim Lavelle. Mark L'Heureux is present and has comments regarding the plan; he would like to see additional information on the plan. The Board is in receipt of a follow up letter from Jones and Beach.

Jim Lavelle of James Lavelle Associates presented for the applicants. Jackie Radford was present in the audience. Since the last meeting, they have made plan changes to show each lot with its own driveway. Lot 03152-007 has a proposed driveway shown, as does Lot 03152-008. They meet sight distance. Lot 03152's driveway which has the road leading to the old Fleamarket, will meet the sight distance requirements after some slope work is performed in the shoulder. Sheet 2 shows the driveway locations. Sheet 4 shows the driveway location most easterly. It has sight distance and a driveway profile is shown. Sheet 5 shows the profile and sight distance profile for 03152. There is an easement across the abutting lot. The mouth of the driveway is on 03152. The third driveway profile and sight distance profile is for 03152-008. This sheet also shows the area of the culvert that DPW would like extended. They have shown a 20 foot extension onto the Radford property. The plan also shows a 30 foot square easement area for the town for future maintenance. The plan does not supply construction detail but it does show they will extend the existing culvert.

Mr. Lavelle advised he was provided by email a copy of the latest Jones and Beach review based on the revised plan set. Jones and Beach feels the profiles meet the regulations. Mr. Lavelle read the three remaining comments into the record. The question outstanding is will the existing driveway remain?

Mr. Granese opened the hearing to the public. There was no public comment.

Motion by O'Connor, seconded by Choiniere to close the public hearing. The motion passed with all in favor.
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Mr. Granese asked Mr. L'Heureux if he would like to provide comment to the Board. Mr. Sioras said Public Works is still looking for additional information regarding the culvert. Mr. Lavelle acknowledged the short turn around time and that DPW has not had a chance to provide comment.

Mr. L'Heureux advised the revised plans were provided on Monday. Profiles were included but more detail is required for the final approval for construction. The proposed slopes do not meet and are not in the limits for the first 40 feet of driveway apron. He thinks this was missed in the consultant review. The regulation says there is a maximum grade allowed of 5%. One of the driveways is at 10%. The Department has adhered to the regulations since adoption three years ago for safety purposes. He would want to see less slope approaching a roadway. If the applicant can't meet the slope requirement because of the expense of the earthwork required, the Board would need to determine if the slope requirement could be waived in that instance. With regard to the headwall, more information is required such as the elevations, type of pipe, and construction notes. He does not feel this plan is complete enough for final approval. Construction notes need to be included. Off site improvements are escrowed and required for items to be constructed. An Occupancy Permit cannot be issued until all construction is complete.

Mrs. Choiniere commented there is a note on the plan that indicates the culvert is to be extended by 20 feet. Who will perform that work? Mr. L'Heureux said the work will be done by a contractor, hired by the applicant.

Mr. O'Connor asked if the new driveway locations meet the wetland setbacks? When Conservation looked at the plan, there were no driveways in these locations. Mr. Sioras advised that currently, driveways are allowed up to the edge of wet.

Mr. Granese had a question with regard to the driveway that was at 10%. Mr. L'Heureux said one is at 10% another at 7.6%. Mr. Lavelle said the most westerly driveway can be changed to meet the regulations and it should be easy to meet that requirement. The only driveway that would cause a problem would be the existing paved driveway which is at 9%. They would ask for a waiver for that driveway. That driveway has been there for years and has been used without a problem. The other two driveways can be changed to meet the regulation. As mentioned, there is no intention to build on these lots. Hopefully, the Planning Board won't require driveways to be constructed. It could be stated on the plan that the applicant needs to construct the driveways as proposed before they can pull a building permit or obtain an Occupancy Permit. His clients have agreed to the culvert extension and he can get the headwall and construction detail for that.

Mr. Granese said if this plan is approved, the driveways are typically the first thing to go in. Mr. Lavelle said for a subdivision, normally the curb cuts are done first so as not to damage the road. This road is already here. He does not think it will make a difference if the curb cuts are put in now or later.

Mr. Granese asked if Mr. Lavelle would be willing to meet with Mr. L'Heureux to go over the items remaining so that the Department signature can be obtained. Mr. Lavelle said he would.

Mrs. Choiniere asked with regard to the easements. On the most westerly lot, will the driveway shown be the length of the driveway to be constructed? Mr. Lavelle said on Sheet 2, it is shown that the driveway is paved to the top of the hill. They are not required to show the driveway to its terminus on the plan.

Mr. O'Connor asked with regard to the driveway between 03152 and 03152-008; that is paved now. What will be done with that? Will the applicant come back and ask for a waiver? Mr. Lavelle said he hopes to be able to use it to service rear of the house. They will meet the sight distance with some shoulder work. They don't want to have to construct a new driveway as this has a paved road and is the old driveway. Mr. O'Connor recalled the applicant had already asked for waiver for this driveway. Mr. Lavelle said that had been to allow a common driveway. Now, the driveway is exclusive to the lot and there will be an easement on it.

With regard to frontage, Mr. Lavelle said the 200' of required frontage can be met at the 35 foot setback. If that is the case, then they can make the 200 feet at the setback and move the property line so that they don't need an easement. Mrs. Choiniere said she would be in favor of that. Mr. Lavelle felt that would make it cleaner. They would keep the same area, just move the line.

Mr. O'Connor advised Note 11 will need to be removed from the plan. It sounds like the plan is getting closer. Mr. L'Heureux said there was a need to discuss the driveways. This plan and all plans, should be as close as possible to meeting the requirements. This applicant does not intent to develop the lots now, but safeguards need to be put into place because once the subdivision plan is approved, there are vested rights. The Board needs to make sure that future construction will occur per the plan.

Mr. Lavelle said the applicant has agreed to extend the culvert and the headwall, but does not want to construct the driveways at this time. The driveways can be constructed when the building permits are to be issued. Mr. L'Heureux said the town does not want to be in a position where it is holding escrow for the work to be constructed if that work will not be done for long time. Mr. Lavelle said he would not want to escrow the driveways because the escrow might hang out there for 20 years.

Mr. Granese asked if the applicant is not looking to build, then why is there a plan? Mr. Lavelle said the driveways are required by regulation to be on the plan. Mr. Granese said this is a plan for a three lot subdivision; if it is approved two houses can be constructed. Mr. Lavelle said they would need to build the driveways per the plan. He is proposing the Board approve the plan with the driveways that meet the regulations, with the exception of the one that is at 9%, and he would be willing to work with DPW and show that they can meet the regulations. Mr. Granese confirmed the willingness to move the lot line so that there is no driveway easement. He felt the plan should be revised to reflect all the changes and requests.

Mr. Lavelle agreed and said he is not looking for approval this evening. He knew this was a short turnaround and was surprised to receive the Jones and Beach review. He

feels they are working with the Board. He would like to continue the hearing to allow him to work with Public Works and resolve the profile and detail issues.

Mr. Granese said he had no problem with continuing the hearing, but would like to see all of the issues addressed by the next meeting so that they can move forward rather than keep continuing the hearings. He would like Mr. Lavelle to meet with DPW, revise the plan, and go from there. Mr. Lavelle said he would like to do that. Frankly, he was taken aback at the last meeting. After the site walk he felt the Board was in agreement with the common driveway. He would like to resolve the issues before he comes back to the Board. He would like an answer as to the existing driveway so that he can move forward with Public Works. Would the Board allow that driveway to stay in its present location? This is the driveway that has the mirror across the street.

Mr. O'Connor asked Mr. L'Heureux if there are any grandfather clauses that would be in effect for this application? Mr. L'Heureux said there is an existing home. The town can't say make it compliant when the town changes the regulation, but does try to remove noncompliance when there is a change on the lot. When a subdivision is created, that is the time to make it compliant. A new project takes away any grandfathering.

Mr. O'Connor indicated the new driveway will come up and around and could be discussed with DPW. Mr. Lavelle said the driveway will come into the rear but the existing driveway is used for both the house and the barn and has been since the 1700's. There has never been an issue or an accident. They are providing a new driveway but don't want to have to remove the old one. Mr. O'Connor said he was leaning towards allowing the existing driveway to remain because there is no issue with the access and this has been a working farm for years.

Mrs. Arsenault asked when Mr. Lavelle was thinking of moving the lot line, did he consider moving the driveway as well? Mr. Lavelle said he would move the lot line so that the driveway would remain and be unencumbered. For the driveway that is between two lot lines, he would need easements for that since it crosses property lines. The parking area is bisected by the property lines. Mrs. Choiniere felt in essence, it was a common driveway. Mr. Lavelle agreed it was, in essence. Easements would run with the sale of the property.

Jackie Radford stated that there are different spots to access the property and they were approved last summer. There are easements for each lot. If they build on the lots, they will be accessible. Mr. Park said sometimes regulations overpower common sense. He would be in favor of leaving the driveway where it is, with the appropriate easements. Ms. Radford said there are places for each on every lot. Mr. O'Connor and Mr. Bartkiewicz concurred with Mr. Park. Ms. Arsenault felt the driveway could remain as long as plans were in place to move the other driveway over so there are no common driveways at all. Ms. Radford said if they (family) built anything, the lots would have their own driveway. This is farm land where all 49 acres are hayed at once. Mrs. Choiniere said she did not want to see the driveway taken out. She is concerned

however, that it will be used in a manner that it was not intended if the land gets developed. Mr. Granese thought the driveway could remain if the lot line was moved so that there is no easement.

Mr. Lavelle said in order to get the driveway between the house and barn and meet the setbacks, they had to go in that location. He could jog it in front of the barn but it will be shared between the house and the barn. Ms. Radford said they use all three driveways to facilitate making hay. Mr. Lavelle clarified she was speaking of breaks in the stonewall that they take the tractor through.

The board reviewed a larger plan set and Mr. Lavelle noted the location of the driveways.

Mr. Granese asked Mr. Lavelle how much time would he need to resolve all of the issues? Mr. Lavelle said he would like a month. He would like time to work with DPW and straighten this out. Ms. Radford said she had issues with DPW. Extensive damage was done to the Flea Market road when DPW parked vehicles there during the power outage and when they were working on Kilrea Road last summer. Mr. Granese explained she would need to contact DPW directly to address that issue as the Planning Board did not have purview for that. He said the next hearing within that time frame would be April 6. Mr. Lavelle said he would get a revised profile and detail for the culvert and headwall prepared.

Motion by O'Connor to table this application to April 6, 2011, to allow the applicant time to meet with DPW staff to go over the information continuously requested by DPW, that would allow the department to review the culvert and driveway location and other items such as the driveway incline, relocation of the lot line and any other revisions discussed this evening. Choiniere seconded the motion. Discussion followed.

Mr. Granese said he hoped everything was settled by April 6<sup>th</sup>. Mr. Lavelle thanked the Board for its time and he felt they have made progress.

Park, O'Connor, Arsenault, Bartkiewicz, Choiniere and Granese all voted in favor and the motion passed.

Mrs. Choiniere confirmed if April 6<sup>th</sup> is not long enough, Mr. Lavelle could request an extension in writing to be voted upon at the April 6<sup>th</sup> meeting but would not have to be present.

### **Workshop – Planning Board Goal #1 – Review of Impact Fees and the GMO**

#### **This portion of the meeting was not televised**

Mr. Sioras advised the intent this evening was to provide background on the current Growth Management Ordinance (GMO) and Impact Fees. In Derry, there was a lot of residential development in the 1980-1990's. At that time, the schools were

overcrowded. The school district asked repeatedly for a new school and it was turned down until the vote that allowed the Barka School to be constructed. In the 1990's, there was pressure to control growth. The Planning Board was asked to develop a plan to pace development so the town could get a handle on the services and schools. In the mid 1990's, the Planning Board put together a Growth Management Ordinance. Ramapo, New York was used as a model.

In 1960, Ramapo, which is located north of New York City, had an increase in growth as people looked for housing outside of the city. The town implemented a growth management ordinance that was upheld at the Federal Supreme Court level. The GMO was rescinded in 1982 when the town reached build-out. The Town of Derry worked with a consultant to craft a GMO. The GMO was implemented and building permits were capped. The town finally built the Barka School and the addition to Grinnell. The GMO says there are mandatory points for each type of town service. Fourteen years later, the zoning has changed, building has slowed down and there is sufficient school capacity. Do we need the GMO any longer since the town has capacity and building has slowed? It might be that Derry does not need the GMO any longer. The town won't see the same level of development. Most of the good land is gone. What is left is marginal with steep slopes, ledge and wetland. The town now has two and three acre zoning where before it had been one acre. In the boom days, a developer would have gotten 90 homes in the Harvest Estates subdivision; that plan is currently approved for 32. The town will want to decide if it wants to continue the GMO or have an impact fee for road improvements. He would like the Board to think about whether the GMO is needed any longer. Derry will be one of the slowest growing towns now; two decades ago, it was the fastest growing town.

Town Council has asked the Board to look at impact fees. There is language in the Zoning Ordinance to allow it, but the Board would need to come up with a formula to decide on the amount of impact. The legal aspect also needs to be reviewed and he will work with Town Counsel on that. The intent tonight was to start the discussion.

Mr. Granese said he was in favor of an impact fee over a GMO. The town is experiencing commercial growth and an impact fee will help there. Mr. Sioras suggested looking at the long term goals of the Master Plan and CIP. The plan is to bring municipal water and sewer from Shute's Corner down Route 28. There is a lot of commercial land available along that stretch. The thinking is to let development pay for some of the infrastructure improvements. The town won't see 850 apartment units being built like what happened at the Fairways.

Mr. O'Connor said the potential rezoning of the Caras property might bring in some more residential development. Mr. Sioras said even if there is more residential development, in the boom days, building permits were between 700-800; today the annual total is less than 50 permits.

Mr. O'Connor said the GMO limits permits. Mr. Sioras agreed stating they could be capped at 50. The town has not met that number in recent years. There was the

building boom and then the banks failed in the late 1980's. The most permits pulled since that time was between 60 and 70 permits.

Mr. O'Connor said he would lean more toward an impact fee. Mrs. Choiniere and Mr. Bartkiewicz agreed. Mr. O'Connor noted the town currently exceeds its fair share portion of affordable housing and will probably retain that until around 2035. Mrs. Arsenault asked if the impact fee affects new development? Mr. Sioras said it did. A one hundred unit multi-family development would have an impact fee as would commercial development that might pay for the installation of utilities. The town wants to be proactive. If water and sewer get to Ryan's Hill, then the developers should pay some portion of the installation of the infrastructure. The town would assess a fair share impact fee toward the improvement. Mike Fowler will look at some formulas for the Board.

Mrs. Arsenault commented the town is lacking development in the downtown; if something were to be built in the downtown, how would it affect new business? Mr. Sioras explained a major development could pay for the water and sewer fee for the increased capacity. When Walmart was approved in North Salem they paid to extend sewer up the road. Mrs. Arsenault asked if impact fees would deter people from building in Derry?

Mr. Sioras thought that a fair question. There have been people who feel impact fees are not business friendly. The department receives calls from developers who want to know our fair share formula. It would be beneficial for the developers to know what that formula is ahead of time.

Mr. Granese said this is what the Board did on Tsienneto for the traffic light. Mr. Sioras said the town also used a fair share formula when it installed the light at Applebee's. Mr. Granese thought most developers expect impact fees. They pay for the infrastructure improvement rather than the funds coming out of tax money. He feels Derry will be seeing more commercial development in the future. Mrs. Choiniere asked if it is known what other communities have impact fees? It was thought that SNHPC may have that information.

Mr. Sioras thought Salem and Londonderry have impact fees. The state of Florida ties it into the building permits. Mrs. Choiniere was curious to know what the difference would be between a GMO and the impact fee. Mr. Sioras explained there is no fee tied to the GMO. The GMO caps the number of building permits allowed each year and is focused more on the school issue.

Mrs. Arsenault asked if the Board had an agenda in mind for developing impact fees and what would be considered an action date? Mr. Granese thought there would be many more workshops on this and the Board will need to work with legal counsel as well. Once the Board puts something together, DPW should look at it; legal will look at it and then there will possibly be more workshops. After that, the Board would hold a



public hearing and then it would be moved to Town Council. This is not something that will be easily done.

Mr. O'Connor commented the Board would also be looking at a revised sign ordinance this year.

Mr. Sioras said the key for Derry is that once water and sewer work its way down Route 28, development will happen. That happened on Tsienneto. Once the water and sewer were put in, quality development occurred. Mr. Granese felt the impact fee would affect what happens in the future. The Board needs to look years into the future to see what will happen. Mr. Sioras recalled that there had once been a proposal to put a supermarket on the Grandview Fleamarket site. That is an ideal location for a shopping center.

Mr. L'Heureux felt the town should have impact fees, but the development of them should be with good thought behind it. There will be many different circumstances. The town does not want to discourage development or small businesses, but there needs to be the right appropriation for the impact for each development. Most developers know they will have to pay something in order to develop. Many do off site improvements rather than pay an impact fee. It is important to have impact fees when the town has tax increment financing districts.

*Mr. Anderson was now seated.*

Mrs. Choiniere said if there was an attractive property, paying the impact fee would be worth it. Mr. L'Heureux said the town needs to make sure the fees are not arbitrary, and able to be used townwide. They need to cover residential development as well as commercial development.

Mr. Granese suggested Hidden Valley might eventually have residential development. Mr. Sioras noted some of the older back roads will have future residential development. But those roads and intersections will need to be improved to accommodate the development and that is where the fair share formula applies. Mr. Granese said this is why the Board needs to take its time working on this and get input from DPW.

Mr. Bartkiewicz asked how are permits governed if the town gets rid of the GMO? Mr. Sioras said that is where the Board balances between growth and school capacity. The Board could cap permits at a certain number per year, for example, 150; that is a third option. Mr. Bartkiewicz said he did not want to have a single developer come in and eat them all up. There was some discussion that residential development would add to the tax base. Mr. Anderson advised residential development is only tax positive for 65 and older developments. Otherwise, there is a cost of \$12,000.00 per year for each student. That is an average potential loss per new household of \$4,000.00 per year.

There was no further business before the Board.

Motion by Choiniere, seconded by Bartkiewicz to adjourn. The motion passed and the meeting stood adjourned at 8:19 p.m.