

The Planning Board for the Town of Derry held a public meeting on Wednesday, April 6, 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 Chairman; David Milz, Town Council Representative; John P. Anderson, Town Administrator; Randy Chase, Administrative Representative; Frank Bartkiewicz, Darrell Park, Jim MacEachern (7:11 p.m.) Members; and Anne Arsenault, Alternate

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.

Mrs. Arsenault was seated for the vacant member position this evening.

## **Organizational Meeting**

### Election of Officers

Motion by Bartkiewicz to elect David Granese as Chairman, seconded by O'Connor. Discussion followed.

Mr. Bartkiewicz complimented Mr. Granese as the prior Chairman, he appreciated his hard work, open mindedness and that he ran a good meeting.

There were no other nominations.

Chase, Arsenault, Park, O'Connor, Milz, Bartkiewicz, Anderson and Granese voted in favor. The motion passed.

Motion by Granese to elect John O'Connor as Vice Chairman, seconded by Milz. Discussion followed.

Mr. Granese complimented Mr. O'Connor on his job as past Vice Chairman, noting he was an asset to the Board and for his work at the State.

There were no other nominations.

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

Motion by O'Connor to elect Frank Bartkiewicz as Secretary, seconded by Park.

There were no other nominations.

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

Mr. Granese noted Mr. Bartkiewicz is an asset to the Planning Board and thanked him for stepping up and volunteering.

### Review of Policy and Procedures

The Board reviewed the Policy and Procedures document that was amended in May of 2009, and last reviewed on April 7, 2010. Mr. Granese noted that any changes proposed this evening would be discussion only. There had been some previous Board discussion with regard to changing the meeting dates to the second and fourth Wednesday of the month.

Mr. O'Connor stated he concurred with changing the meeting dates and noted there would need to be slight modifications to the document. Workshops are currently to be scheduled for the second and fourth Wednesdays unless declared otherwise in advance. The workshops can be held on the same nights as the regular meetings, but the document would need to be modified to reflect that.

It was suggested the proposed deadlines be posted on the website. The Board would review any proposed changes again on April 20 and then vote upon them on May 4<sup>th</sup>. When asked when the first available meeting to be changed would be, Mrs. Robidoux advised the Board could begin the new dates in May. Mr. Anderson suggested beginning in June as the new May dates would be close to the holiday. Mr. Chase agreed. Mr. Park noted that Article II, Section 1 would need to be amended as well.

Changes proposed to the document are as follows: Article II, Meetings, Section 1, Annual Meeting: change to 'the second Wednesday in April.' Section 2, Regular Meetings, change to 'meetings will be held on the second and fourth Wednesday of each month.' Section 4, Workshops, change to 'held at the regular meeting on the second and fourth Wednesday of the month.' No other changes were noted.

### **Escrow**

#### **#11-09**

**Project Name: Boomer Wolf, LLC**

**Developer: Boomer Wolf, LLC**

**Escrow Account: Boomer Wolf, LLC**

**Escrow Type: Cash Escrow****Parcel ID/Location: 08276, 19 Manchester Road**

The request is to approve the establishment of cash escrow in the amount of \$394,746.05 for the above noted project.

Motion by O'Connor, seconded by Bartkiewicz to approve as presented. The motion passed with all in favor.

**Minutes**

The Board reviewed the minutes of the March 16, 2011, meeting. Mr. O'Connor noted the proposed change to page 7, paragraph 3, last sentence. The sentence should read, "They met the state and local storm water requirements for flow rate and have also met the requirements for mitigating the run off volume as well."

Motion by O'Connor seconded by Anderson to accept the minutes of the March 16, 2011 meeting as amended. The motion passed in the affirmative with Park and O'Connor abstained.

*Mr. MacEachern was now seated.*

**Correspondence**

Mr. Bartkiewicz advised the Board has received correspondence from the Conservation Commission suggesting changes to the Zoning Ordinance. Mr. O'Connor stated he had some concerns with the suggested changes. When the workshop is scheduled, he hopes members of the Commission can attend. He would like more explanation on the definition of vernal pool and types of wetlands. His other concern is that there are bills currently working their way through the House and Senate that address wetlands. Any changes the Board makes may be negated if the bills pass and are effective in July. Mr. Bartkiewicz advised that attached to the Zoning amendment request was an email from Mrs. Robidoux to Margie Ives stating she would forward the proposed amendment to the Board under correspondence, and then the Board would pick a date to hold a workshop on the matter so that representatives from the Commission could come before the Board to explain the proposed amendments.

The Board is also in receipt of information on the 2011 Local Officials Workshops offered by LGC that will take place between May 9 and June 11. Mr. Sioras explained the importance of the workshops. They are held annually and new members of Boards and Commissions are encouraged to attend to learn about the legal aspects of planning and zoning. It is a good experience and the workshops explain tools available to municipal officials. Mr. Bartkiewicz stated the workshops are very interesting and offer good information. If any members are interested in attending, they should see Mr. Sioras or Mrs. Robidoux.

The Board has been advised to "Save the Date" for Saturday, June 11 for the Spring Planning and Zoning Conference. There are many different sessions relating to planning.

The NH Preservation Alliance is also holding its 25<sup>th</sup> anniversary conference on April 8<sup>th</sup>.

## **Other Business**

### Request for Extension of Approval – Harvest Estates – Water Main Expansion

Mr. Sioras advised the applicant has requested a six month extension on the approval of the plan for the water main expansion in Harvest Estates. This is the first request. The expansion is being done through Pennichuck Water Works. As per the letter supplied by Timothy Peloquin, they need time to finalize a few remaining plan items. He recommends granting the request.

Motion by O'Connor, seconded by Bartkiewicz to approve the six month extension of the conditional approval granted on October 6, 2010 for Harvest Estates – Water Main Expansion Plan, to complete conditions 1 through 14 which are substantially met, but more time is required to review the items with staff to ensure completion.

Chase, Park, Arsenault, O'Connor, MacEachern, Milz, Bartkiewicz, Anderson and Granese all voted in favor and the motion passed.

### Planning Board Professional Services RFP

Mr. O'Connor noted there is an RFP for professional services for the Planning Board. Mr. Sioras said the deadline for submittal is April 15, 2011. Staff will review the submissions and select a vendor(s). The Charter states that this service needs to go out for RFP.

## **Public Hearing**

**Bruce Radford and Jackie Radford**  
**PID 03152, 19 Kilrea Road**  
**Review, 3 lot subdivision**  
**Continued from March 2, 2011**

Mr. Sioras advised Jim Lavelle asked for a continuance to the next hearing. Board members have a copy of the request. At the last meeting, the Board had stated if they needed extra time to work on the plan they could send a letter, but did not need to attend the meeting. His understanding is that the attorney needs to work on the deeds and they needed additional time.

Motion by Anderson, seconded by Bartkiewicz to continue the public hearing to April 20, 2011. The motion passed with all in favor.

**Wal-Mart Real Estate Business Trust**  
**11 Ashleigh Drive, PID 08279**  
**Review, Site Plan**  
**155,826 SF retail store with associated parking**  
**Continued from March 16, 2011**

Mr. Sioras provided the following staff report. The applicant has revised the plan since the March 16<sup>th</sup> meeting. In the interim, there have been staff meetings with Mark L'Heureux, Mr. Sioras, Jonathan Ring of Jones and Beach, Mr. Brodeur, Sean Kelly and other Walmart representatives. He has met with Walmart officials. Items have been reviewed, addressed and found to be satisfactory. The applicant will highlight the issues from the last meeting. There is a waiver request letter attached to the staff report; most of the items are technical in nature. He would support the waiver requests. The staff and Board changes have been incorporated into this plan revision. The applicant has done a good job of addressing the 204 comments and he would recommend approval of the plan and waivers.

Attorney Peter Imse, of Sulloway & Hollis representing Wal-mart, advised they are in receipt of the comments from the consulting engineer. Jon Brodeur and his firm have addressed the comments and have requested a series of waivers. He asks the Board this evening to review and approve the waivers. At the last meeting, one item was raised and not ruled on. There is a buffer between the store and the Linlew Drive apartments. He is asking the Board to approve maintenance of the existing vegetative buffer in lieu of new plantings pursuant to Section 165-23. They ask the Board for a ruling on this item that the existing buffer is sufficient. As a footnote, at the end of the last meeting, there had been a request to review other examples of pylon signs. Since that meeting, Mr. Anderson has withdrawn his request; therefore there are no new sign proposals.

This evening, he asks the Board to review the waiver requests and the buffer, and they would ask for final approval on the plan.

Motion by MacEachern to accept the revised plans for Wal-mart dated April 4, 2011, seconded by Bartkiewicz.

Chase, Park, Arsenault, O'Connor, MacEachern, Milz, Bartkiewicz, Anderson and Granese all voted in favor and the motion passed.

Motion by O'Connor to open the public hearing, seconded by Anderson. All voted in favor and the Board invited public comment.

There was no public comment.

Motion by O'Connor, seconded by MacEachern to close the public hearing. All voted in favor and the motion passed.

The public hearing was closed and review of the plan came back to the Board.

Mr. O'Connor advised he was absent from the last meeting and had a few questions. Regarding Sheet C4, there is an area marked on the plan. He would like to confirm this is where the store intends to store bundles of cardboard and pallets? Mr. Brodeur confirmed this is the bale and pallet storage area. Mr. O'Connor expressed a concern with the operations at the current Walmart. They are storing considerable quantities of salt. In response to Item #27 in the Jones and Beach review #1, Mr. Brodeur responded that no response was required. The review item stated that the downstream watershed of the Beaver Brook is listed by NH DES as an impaired waterway, due to chlorides. Regarding the chloride, will there be an intent to continue to store one and a half to two tons of salt near the wetland? Mr. Brodeur said he is not aware of that intent. It was not placed on the plan. The site has an area for storage. Mr. O'Connor said the practice at the current site is to dump the salt on the ground to be used to treat the parking lot. Mr. Anderson felt that was more of an issue to be discussed with the winter contractor as part of the operations and maintenance of the site. Mr. Granese believed many sites had a similar practice. Mr. O'Connor felt it should be addressed because this is a major watershed. Mr. Brodeur stated it is not their intent to store salt openly on the site. He noted the state approved what they submitted.

Mr. O'Connor said that on July 21, 2010, he asked with regard to the proposed hours of operation. Will they be similar to the other stores in a fifty mile radius? Attorney Imse said Walmart has asked for their stores to be operated 24/7 without limitations. They don't necessarily operate 24 hours a day depending upon the local market conditions. Mr. O'Connor asked with regard to receiving hours for the truck fleet. Attorney Imse recalled that had been brought up as one of the comments in the plan review. Walmart classifies deliveries in three ways: General 4 p.m., 6 p.m., and 8 p.m.; Full truck 5 p.m., 7 p.m., and 9 p.m.; and Partial truck load between 7 p.m. and 2 a.m. He would remind the Board that the loading areas are tucked to the rear of the building and there is a depressed loading area with a screening wall. There is also 300 to 500 vegetated feet between this area and the subdivision. The screening and the vegetation mitigate any noise. Once the trucks are parked, they are turned off and do not idle.

Mr. MacEachern asked as to the end result of the parking question. The Board advised they granted a waiver to reduce the parking at the last meeting.

Motion by Anderson, seconded by MacEachern to grant to following waivers pursuant to the letter from Thomas Hogan of Doucet Associates, dated April 1, 2011:

LDCR, Section 170-61.A.4, bearings  
LDCR, Section 170-61.B, drawing format  
LDCR, Section 170-62.B.4, lane width  
LDCR, Section 170-88.A.2, 170-88.A.6, 170-88.A.9, photographs of neighborhood

Table of Geometric Standards, centerline radius for collector roads  
LDCR, Section 170-62.A.4, regarding slope requirements in 170-26.A.17  
LDCR, Section 170-61.A.10, two foot contours  
LDCR, Section 170-61.A.30.a, profile scale  
LDCR, Section 170-65, I, depth of cover for storm drains  
Table of Geometric Standards, street grade and cross slope  
Typical Cross Section, side slope  
Typical Cross Section, guardrail

Discussion followed. Mr. O'Connor wanted to add a friendly amendment that the Board allow a waiver to Section 165-23, Buffer Zones. Mr. Sioras advised that the language in the Zoning Ordinance allows the Board to discuss the buffers and determine if the existing vegetation can remain, but they don't need to grant a waiver. Mr. Granese confirmed with Mark L'Heureux that DPW was satisfied with the waivers.

Chase, Park, Arsenault, O'Connor, MacEachern, Milz, Bartkiewicz, Anderson and Granese all voted in favor and the motion passed.

Motion by Anderson, seconded by MacEachern to approve pursuant to RSA 676:4,I, Completed Application, the site plan for Walmart, subject to the following conditions: comply with forthcoming Jones and Beach review #2, subject to owner's signature; subject to on site inspection by the Town's engineering staff, establish escrow for the setting of bounds or certify that the bounds are set; establish appropriate escrow as required to complete the project; obtain written approval from the IT Director that the GIS disc is received and is operable; acceptance of the fair share contribution of \$424,000.00 shall be received prior to the sign of the mylar plan; note approved waivers on the plan; subject to receipt of state or federal permits relating to the project; third party engineering review (Jones and Beach) shall provide final approval on the box culvert design; that the above conditions shall be met within 6 months; site improvements shall be completed by October 1, 2013; Ashleigh Drive off site improvements shall be completed prior to the issuance of an occupancy permit; no on site rock crushing before 7:00 a.m., during construction. Discussion followed.

Mr. Sioras asked for a friendly amendment. Page 4 of his staff report contains a copy of correspondence received from Gary Campbell of Gilbert Campbell Real Estate with regard to blasting. Mr. Campbell would like to ensure notification and indemnification before the blasting occurs. Mr. Sioras would ask for notification of the abutters per regulation for the blasting; this would be all abutters but specifically for the Gilbert Campbell apartments on Linlew Drive. With regard to the residential buffer along the Linlew side of the property, a friendly amendment was made to accommodate the old and new growth for the residential buffers zone.

Anderson affirmed the two friendly amendments and was seconded by MacEachern.

Chase, Park, Arsenault, O'Connor, MacEachern, Milz, Bartkiewicz, Anderson and Granese all voted in favor and the motion passed.

Mr. Anderson thanked the Walmart representatives for working with staff to resolve the issues. Mr. Granese wished the applicant luck moving forward and thanked them for working with the Board and meeting its requests. Mr. O'Connor suggested when they have the grand opening, that Walmart include the community and make it a community wide event.

Attorney Imse appreciated the patience of the Board and staff as they worked through the application process. He stated the staff was very helpful and it is easier to reach goals when there is good communication. Mr. Granese said he hoped to see someone back before the Board with a plan for the old Walmart.

Mr. Anderson asked if there was an estimated time line for completion of the project? Mr. Brodeur advised the intent is to go out to bid this year. If all goes well, the store should open for the 2013 holiday season.

### **Workshop**

The Board reviewed a request from Arthur Caras to rezone the following properties from Office Research Development (ORD) to a residential zone:

Parcel 02082, 20.5 Berry Road (36.9 acres)  
Parcel 02082-001, 25 South Range Road (62.8 acres)  
Parcel 02070, 7.5 Willow Street (63.2 acres)

Mr. Sioras advised this request has been discussed previously. Maps of the area have been provided. There are three parcels involved. Mr. Caras would look for the Board's support of his recommended changes.

Mr. Caras said that the parcels were originally zoned residential. The area along Windham Road is zoned Industrial. The zoning on these parcels was changed to provide opportunities for development. He had been promised by a previous Planning Board that if water and sewer were not brought to the area, his parcels could be rezoned to residential. He noted the industrial parcel is now owned by the State and will not ever be developed.

Mr. Sioras pointed out the parcels on the map. The original plan had been to bring water and sewer down Windham Road to Willow. That will not take place now. The new proposal is to bring water and sewer down Route 28 toward the Windham town line. Mr. Caras said his properties are now surrounded on all sides by residential uses. The parcels are five to seven miles from Exit 3, so are not an easy sell to keep it zoned as they are now. The land is good for residential use, but not marketable as another use.

Mr. Caras said he is asking for the land to be zoned back to residential. He understands there will not be a lot of residential development in the near future as there

is no market for it. Perhaps an overlay of ORD could be placed across the properties so that if in fact in five years, water and sewer are in the area and a college is looking for property then there would be a potential for development other than residential on the property. He has no problem with that.

Mr. Granese asked if the land would be zoned Low Density or Medium Density Residential? Mr. Sioras suggested the Low Medium Density Residential which has a 2 acre zoning requirement. MDR predates zoning. The state would not allow those lots today. The two acre zone is more suited to this area. Mr. Anderson thought the Board could revisit the zoning when water and sewer became available. Mr. Caras said that originally, he had been approved for 188 homes with sewer and water. The old Master Plan did not allow for sewer and water in this area unless it was for industrial use; the new, updated Master Plan does.

Mr. Anderson advised the water and sewer feasibility study is part of the proposed CIP for Fiscal 2012 to look at the infrastructure proposed on Ryan's Hill. They will see if that makes sense. This would be a three to five year plan. The town has begun discussion and will see where it goes. Mr. Caras said he could see water and sewer being installed down Windham Road by his property. Mr. Anderson said the proposal is to extend water and sewer south on Route 28 from the middle school to Ryan's Hill. Currently, there is no proposal to go down Windham Road. But if water and sewer become available on Route 28, that changes the dynamic of those subdivisions off of Route 28 to the east and west.

Mr. MacEachern did not believe there should be an overlay zone. The zoning needs to be one or the other. If the zoning is changed, it needs to be kept that way. If the land is zoned residential, he can see having two acre zoning. He does not want to see the density increase because of water and sewer from a housing perspective. This is a nice area.

Mr. Sioras noted that is the trouble the town got into twenty to thirty years ago [density]. Two acre zoning fits the character of the existing neighborhood. Mr. Caras said he did not anticipate an increased density; two acre zoning would be acceptable. Mr. Sioras advised there are old carriage roads on these properties; he would like to see some of it left as open space. Mr. Caras said the town owns the discontinued South Range Road and it is very beautiful in that area.

The Board asked that the rezoning request be placed on the next agenda for discussion during the meeting so that the proposed change can move forward toward public hearing.

There was no further business before the Board.

A motion was made and seconded to adjourn. The motion passed and the meeting stood adjourned at 7:54 p.m.