

The Planning Board for the Town of Derry held a public meeting on Wednesday, April 20, 2011, 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 Chairman; Frank Bartkiewicz, Secretary; David Milz, Town Council Representative; John P. Anderson, Town Administrator (7:51 p.m.); Randy Chase, Administrative Representative; Darrell Park, and Jan Choiniere, Members

Absent: Jim MacEachern, Anne Arsenault

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 April 6, 2011 meeting.

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

Correspondence

Mr. Bartkiewicz advised the Board has received an email from resident Maureen Rose with information on a tree program she would like to see started. For more information, members can see Mr. Sioras or Mrs. Robidoux. The Board has received a new issue of *Town and City*. SNHPC has sent a CD containing a copy of the Regional Economic Development Plan that can be used at the Board's discretion. It covers such key initiatives as the Regional Certified Site Program, Best Planning Practices/Innovative Model Ordinances, Regional Incubator Development, Comprehensive Economic Development Strategy, Expanding the Regional Brownfields Program, Published Economic Assets profiles, Economic Revitalization Tax Credit Zones, and ranking of top projects within the region.

In addition, the Town of Dunbarton sent a notice of a public hearing regarding a telecommunications tower.

Other Business

Review of Amendments to the Policy and Procedures

Mr. Granese advised at the last meeting, the Board reviewed its Policy and Procedure document and made several changes, including the dates of the meetings. They will change from the first and third Wednesday to the second and fourth Wednesday of each month. There were several small changes that went along with those meeting date changes. The Board reviewed the changes. Mr. O'Connor noted a misspelling of the word "second" which will be corrected. Mr. O'Connor moved to vote on the amended document at the next meeting which is scheduled for May 4, 2011; Mrs. Choiniere seconded.

Request from Conservation Commission for Zoning Changes

Mr. Granese advised the Conservation Commission had requested several changes to the Zoning Ordinance; the Board reviewed the request at the last meeting. It is possible there will be changes in effect on July 1 from the state legislature that might affect the proposed changes. He would like to hold off scheduling the workshop to discuss these changes until the state has finalized its process. He did not think it would be efficient to hold workshops and make potential changes that could be nullified by state legislation.

Formalization of the Caras Rezoning Request

Mr. Sioras stated at the last meeting, the Board held a workshop to discuss with Mr. Caras his request to rezone three of his parcels from Office Research Development (ORD) to Low Medium Density Residential (LMDR). The Board felt it was a good idea to rezone the parcels as requested but the Board can't spot zone just the three parcels for the benefit of one. He looked at the whole zone to include the additional parcels in the ORD so as to eliminate the whole zone. From a planning and legal perspective, it makes sense to change the entire ORD in this area to LMDR. If the Board agrees this evening, it can place the item on its May 4 agenda to schedule for a public hearing on May 18. Mr. Granese asked that the item be placed on the next agenda. Mr. Sioras reported he received two emails and a phone call in support of the change. The Planning office sent out notices to the landowners in the ORD zone advising of the discussion this evening and potential change. Valerie and Mark Valliant sent an email and advised they could not attend the meeting this evening but were in support of the change. He read the email into the record. Dan Allen, another land owner, phoned and was in support of the change. He will be at the public hearing. Mr. Sioras advised he also received an email from Maureen Rose who supported the change and hoped some of Mr. Caras' land could be retained for open space. The Board had copies of the correspondence in their packet.

In addition to her support, Ms. Rose also asked the Board to consider rezoning the Industrial V zone near her home on Windham Road back to residential. Mr. Granese recalled the Board had heard this request before. Mr. Sioras confirmed the Board had discussed a previous request for the same change at a workshop on June 17, 2009, and decided at that time not to move forward with the suggested change. Mr. Granese said this should be taken up at a future workshop.

John Mangan, 105 Frost Road, identified himself as an affected landowner. He is curious as to what the zoning change would involve. He also owns property that abuts the Town of Windham. He has a 17 acre segment that is mostly a swamp. He has been told the land is not good for anything but a buffer. What will rezoning do to his property and how will it impact him? Mr. Granese said if the land changed from ORD to LMDR, Mr. Mangan could build a residence on two acres. Mr. Mangan asked what does the change do to current use? Mr. Granese said the current use right now is ORD. If Mr. Mangan wanted to do something else with the property today [other than what is allowed in ORD], he would have to go to the Zoning Board. The Board received a request from Mr. Caras to rezone his three parcels to residential. The Board will need to now look at the whole area so as not to spot zone. Mr. Sioras said the land was originally rezoned to ORD in the 1990s. He agreed that the land was rather swampy; it is the bottom of the drainage basin for this part of town. Mr. Mangan confirmed there is no technical change proposed other than the zone if he wanted to build.

There was no further public comment.

Public Hearing

Imad Baggar

67 By Pass 28, PID 08102

Acceptance/Review, 2 lot subdivision

Mr. Sioras provided the following staff report. The purpose of this plan is to subdivide the parcel on By-Pass 28 into two lots, allowing the existing house and barn to be on its own, separate lot. This will create a new, five acre lot. There is no intent to build on the new parcel at this time; the house lot will be retained at 2 acres.

Imad Bagger presented the application. He advised the parent parcel has 7 acres. He wants to subdivide off the house and garage on a two acre lot and separate it from the remaining 5 acre lot to the left of the house. Mr. Granese asked if there was going to be a new driveway? Mr. Baggar explained the original lot is permitted for 3 driveways because of the size; currently there are two. Now, the 5 acre parcel will have two driveways. In order to accomplish that, he will need to eliminate one of the existing driveways at the residence. The five acre lot will have two driveways, the 2 acre lot will have one driveway.

Mr. Granese invited members of the public to speak.

Tony Travia, 1 London Road, asked what is the purpose of subdividing off the five acres and what are the future plans? Mr. Baggar explained he has no plans at this time. He wanted to subdivide off the parcel to make it more manageable for the future. He may want to sell the land or develop the 5 acre lot. Mr. Travia said there is only so much that can be done on the five acre lot because of the power line easement. He just does not understand why the land is being subdivided. Mr. Baggar said he wanted to keep the house and garage on one lot, but needed two acres to do that. What is left is 5 acres. He agrees that because of the easement, only about 3 acres would be buildable land.

Mr. Sioras advised that if the five acre parcel is ever developed, the abutters would receive notice.

There was no other public comment.

Motion by O'Connor, seconded by Bartkiewicz to close the public hearing. The motion passed with all in favor and the plan came back to the Board for review.

Motion by O'Connor to accept jurisdiction of the subdivision plan application before the Board for Imad Bagger, located on Parcel 08102, 67 By Pass 28, seconded by Choiniere.

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

Motion by O'Connor to approve, pursuant to RSA 676:4, I, Completed Application, subject to the following conditions: comply with the KNA report dated April 18, 2011; 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 disk is received and is operable; written confirmation from the Assessing Department and Fire Administration of the Parcel ID number and address for the newly created lot; correct the spelling of "Plane" in General Note #2; Subject to receipt of state permits relating to the project, which shall be noted on the plan under General Notes 4 and 5; HISS Map note #1 on Sheet 2 should be completed; that the above conditions are met within 6 months; improvements shall be completed by October 31, 2012; and, in addition to the applicable recording fees, a \$25.00 check, payable to the Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirement. Bartkiewicz seconded the motion.

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

**Wal-Mart Real Estate Business Trust
3 Ashleigh Drive, PID 08276-001
19 Manchester Road, PID 08276 (08275)
Acceptance/Review, Lot Line Adjustment Amendment**

Mr. Sioras provided the following staff report. The proposal is for a lot line change between Walmart and Boomer Wolf, LLC. Sanmina still owns 3 Ashleigh Drive. This lot line plan will amend the previous lot line adjustment plan. The new lot line adjustment allows for the proposed Walmart to have a sign easement on the Boomer Wolf property. The easement location is noted on this plan. There are no department head signatures required for a lot line adjustment plan. There are two waiver requests as noted on the letter from Doucet Associates dated April 5, 2011. Topography and HISS mapping do not need to be noted on a lot line adjustment plan; therefore he would support the waivers. There are no state permits required and he would recommend approval of both the waivers and the lot line adjustment plan.

Kevin O'Shea of Sulloway and Hollis represented the applicant. Also present this evening were Peter Imse of Sulloway and Hollis; Jack Merchant of Barry S. Porter Associates; and Jon Brodeur of Doucet Associates. He was sure the Board wondered why they were back here, so he provided a procedural history. The site plan for Walmart was approved on April 6. The lot line adjustment between Walmart and Boomer Wolf was approved on March 16. There is a sliver of land that runs from the proposed Walmart driveway to Manchester Road. The site plan and original lot line adjustment were consistent with the purchase and sales as negotiated between Walmart, Sanmina and Topsy Piper (which is now owned by Boomer Wolf). Boomer Wolf, LLC received a site plan approval on February 9, 2011. The site plan approval did not account for the sliver of land. Walmart received approvals and would like to work out the issue with Boomer Wolf. Because Walmart is still working with Boomer Wolf, Walmart is reserving the right to revert back to the originally approved lot line adjustment plan (March 16).

The creation of the sliver leaves a large portion of land for Boomer Wolf so there will be minimal disruption of their site. Another portion of the sliver will now be granted to the town as fee simple for the right of way. This area will accommodate the pylon sign at the intersection of Ashleigh and Manchester Road. The sign will be located on the Boomer Wolf property by easement. Staff concluded the Boomer Wolf property is more of a shopping mall and therefore not subject to the aggregate sign sizing requirement [Section 165-103.B]. Boomer Wolf is still allowed to have three signs under the ordinance. Walmart can have its own sign located off of its own property. Walmart was to give the town a right of way easement but will now do that fee simple for the road improvements. This has also been discussed with staff.

Jon Brodeur presented the two views of the lot line adjustment plan: the one previously approved on March 16 and the one proposed this evening. The previously approved plan was slightly wider. The new area will be deeded to the town as a right of way

rather than granting an easement. They looked at the Boomer Wolf plan and saw that the lot line adjustment (March 16) would affect 23 parking spaces. They want to be good neighbors, so modified the property line and will now have an easement for their sign. Attorney O'Shea added that as part of any approval tonight, they would like to request that the Board confirm the Planning Director can approve modification of any applicable site plan sheets.

Mr. Park asked, what is the new width the Board is reviewing? Mr. Brodeur stated the original width was 18.3 feet; the proposed width is 10.55 feet. They have offset the line by one foot.

Mr. O'Connor asked if there will be any impact to the conservation easement area as a result of this plan? Mr. Brodeur advised there would not be and showed the conservation easement area lies outside of this proposed change.

Mark L'Heureux, Department of Public Works added that he has discussed the markings with the applicant and would like the Board to make sure that markers for changes in direction and bounds are set. This should be shown on the final plan as the information is not on the plan set currently under review.

Mr. Sioras advised he has spoken with Attorney Peter Imse. On sheet 3 of 13 the applicant will need to update the legal description of the easement. Mr. Brodeur stated there was a slight change to the legal description but the plan detail was also modified, so two plan sheets will be updated.

Mr. Granese opened the floor to the public.

Randall LaClaire, RKL Construction Consultants, advised that Boomer Wolf has been working with Walmart. There was an item missed during the development of the site plan, but they have come to an understanding and are working through the details. They are in 100% support of the change.

There was no further public comment and the plan came back to the Board.

Motion by Bartkiewicz to close the public hearing, seconded by Milz. The motion passed with all in favor and the plan came back to the Board for review.

Motion by O'Connor to accept jurisdiction of the lot line adjustment plan before the Board for Wal-Mart Real Estate Trust (property owned by Sanmina-SCI Corporation), seconded by Bartkiewicz.

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

Motion by O'Connor to grant a waiver from LCDR 170-24.A (11), two foot contours and a waiver from LDCR 170-24.A (12), HISS Mapping, seconded by Bartkiewicz.

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

Motion by O'Connor to approve the lot line adjustment between Parcel 08276-001 and Parcel 08276 (now 08275), which is owned by Boomer Wolf, LLC, pursuant to RSA 676:4, III – Expedited Review, subject to the following conditions: subject to owners' signature, subject to on site inspection by the town's engineering staff, establish escrow for the setting of bounds, or certify the bounds have been set and that the bounds are recorded on the plan; obtain written approval from the IT Director that the GIS disk is received and is operable; note approved waivers on the plan; correct the legal description of the easement area and right of way dedications on sheets 3 and 4 of 13 of the plan set dated 23rd of February 2001; the above conditions are to be met within 6 months; improvements shall be completed by October 31, 2013; and, in addition to the applicable recording fees, a \$25.00 check, payable to Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirement. Bartkiewicz seconded the motion. Discussion followed.

Mr. Milz suggested a friendly amendment that the plan date be changed to "2011". Mr. O'Connor accepted the amendment. Mr. Sioras suggested a friendly amendment that revision of the site plan to reflect the easement revisions to the approved site plan sheets to reflect the changes to the easement areas and lot lines that have been approved tonight are allowed without further review by this Board is allowed pursuant to the discussion with Attorney Kevin O'Shea this evening. Mr. O'Connor accepted that as well. Bartkiewicz seconded the amendments.

Chase, Park, O'Connor, Milz, Choiniere, Bartkiewicz and Granese all voted in favor of the motion as amended and the motion passed.

Bruce Radford and Jackie Radford
PID 03152, 19 Kilrea Road
Review, 3 lot subdivision
Continued from April 6, 2011

Mr. Sioras advised the Board has seen this plan a few times and it was continued from the last meeting. The proposal is for a three lot subdivision on Kilrea Road. The Board went on a site walk of the property on February 11, 2011. Additional changes have been made to the driveway profiles and the plan has been updated per the original engineering review. The applicant is requesting another waiver to allow the existing driveway to Lot 03152 (the old flea market road) to remain at a 9% grade. He advised Jim Lavelle, surveyor for the project would review the changes to the plan

Jim Lavelle of James M. Lavelle Associates, reported he has met with Mark L'Heureux two times. Initially, he met with Mr. L'Heureux to see what Mr. L'Heureux wanted on the

driveways, and then he met again with Mr. L'Heureux and Mrs. Robidoux relative to the changes that he had made.

Sheet 2 shows that he moved the proposed lot line to allow the driveway to the flea market to stay on one lot (03152). Sheet 4 shows the driveway (03152-007) meets the regulations with regard to sight distance and slope. The sheet also has a note that shows the 30 foot drainage easement over one of the culverts. Sheet 6 shows the driveway for the most easterly lot (03152-008) that does not contain a dwelling or barn. The profile meets the regulations for slope and sight distance. There are also notes with regard to the most eastern culvert and the 30 foot easement for that culvert. He discussed the grading with Mr. L'Heureux. The new sheet 7 shows the culvert positioning, coupling and headwall detail. This was reviewed by DPW. The top of the sheet shows the metes and bounds for the easements. Attorney Parks will draw up the easement deeds. Sheet 5 shows the profile to the existing driveway that lead to the flea market. It is essentially a paved road. It exists at a 9% grade. He previously discussed with the Board using that driveway to satisfy the driveway requirement for the house. He had also polled the Board to keep the driveway between the house and barn.

Mr. Lavelle said he would like to have the Board consider approval of the waiver and plan subject to acceptance of the easement deeds, adding a note to the plan that no building permits can be issued on any lots until the driveways are either constructed or bonded, the culvert extension is complete and the escrow for bounds is established or the bounds are set.

Mr. Granese invited the public to speak. There was no public comment.

Motion by O'Connor, seconded by Choiniere to close the public hearing. The motion passed with all in favor.

Mr. Granese asked Mr. L'Heureux if DPW was satisfied with this plan. Mr. L'Heureux stated he has reviewed the details on the plan and made sure they comply with the regulations. The Department of Public Works takes the position regarding the waiver that there is not a perceived hardship based on the work involved with the other driveway to make the existing driveway (03152) meet the regulation. He did not have an exception to anything else. With regard to the escrowing of the project, the Board is aware of the escrow protocol. The Board will need to decide if it wants to do something different in this case and not escrow the driveways. He does not want to compromise the regulations by setting precedent, but he also does not want to see construction performed that is not required for some time. He does not want to hold escrow indefinitely for the project. Normally, the town likes to see the escrow held and work completed within a year.

Mrs. Choiniere asked with regard to the grade. Mr. L'Heureux explained the regulations require the first 10 feet of driveway to have a minimum/maximum of 3±% grade, that can pitch up or down. The next thirty feet is 5±% grade. After the first 40 feet, the town does not have a requirement. Normally, the grade should not exceed 10% on

driveways because that is pretty steep. The existing driveway is between 8-9%, pitched up. Mr. Lavelle said that driveway has existed for a long time. With regard to the escrow, is it possible that nothing will be done on this property for twenty years. To construct the driveways now is not in the best interest as twenty years from now, they may have trees growing in them. The intent of this plan is to settle the estate between the three children.

Mr. O'Connor asked if there will be any further reviews by Jones and Beach? Mr. Sioras explained that typically, once the Board is satisfied and the applicant feels all the necessary changes have been made, there is one more review to ensure all the comments have been addressed. That is the normal procedure. Mr. Milz asked Mr. Sioras why he did not support the waiver request to allow the 9% driveway to remain at that grade? Mr. Sioras advised that he is not an engineer and deferred to Public Works which would prefer to see a grade between 3-4%. Mr. L'Heureux noted when looking at the terrain along the frontage of this property, it is similar.

Mr. Milz asked for confirmation with regard to the two new driveways. Will they conform? Mr. L'Heureux advised they will and that the existing driveway (03152) goes to the back of the lot and would eventually need to be reconstructed to go to the house as it is intended to be used. DPW feels that since the driveway will need to be reconstructed to go to the house, it is not unwarranted to request that the applicant stay in line with the regulations. Mr. Lavelle said there is a second driveway on the lot between the house and the barn that has existed since the 1700s that does not have good sight distance. The Board had said it would not require the applicant to remove that driveway. The driveway with the 9% grade is a second driveway and may not ever be used for the house.

Mr. Anderson was now present and seated.

Mr. O'Connor asked if the Fire Department had any comments during TRC? Did they have an issue with the driveway? Mrs. Robidoux said she did not believe the Fire Department attended the TRC meeting for this plan. [February 26, 2010]. Mr. Lavelle said their only concern was to make sure the house was sprinkled. Mr. O'Connor asked if the house is not sprinkled, will the applicant use a cistern per the current state legislative changes? Mr. Lavelle said yes.

Mr. Chase spoke regarding the driveway on which the Board was polled. It starts on one parcel, goes to another and then comes back to the original parcel. What is in place in the event one of the parcels is sold? How are the two parties prevented from coming back to this Board to rectify the fact that the driveway goes across two parcels? Mr. Lavelle suggested Attorney Parks write a cross easement deed for that particular driveway.

Attorney Parks advised he is representing the Radfords for the probate matter. He is here to observe this evening and answer any questions. He is not sure if the Board realizes the Radfords have no plans to develop these lots. The plan is being drawn to

accommodate each sibling to own a lot. Normal conditions [of approval] don't make sense for this plan as they are not developing the land. If the driveways are put in today, they might need to be torn up again in another 15-20 years. This division of land is per probate.

Mr. Chase said he understood that. However, the Board needs to plan for the future. He does not want to leave a mess for a future Board. People move and sell property all the time. In 15 years, someone may want to build on one of the lots and a driveway that crosses lot lines is trouble. The Board wants to plan to avoid that.

Attorney Parks said that cross easements could address that issue as the easements would run with the land. He understands the Board's concerns. He is hearing that the town wants the lots brought into conformity when construction occurs. A note on the plan would be fine. They want to avoid construction and a financial outlay today.

Mr. Granese said there may be no need to do anything with the driveway if they are not planning to do anything with the lots. Attorney Parks said they have used the old driveway for a long time. If the land is developed in the future, the arrangement is not ideal and they would then use the driveway in the field for access to the house. Mr. Granese wondered if the driveway issue could wait to be addressed in the future. Mr. Milz said it should be addressed now. Any future development would need to come back to the Board. Attorney Parks said if they build on the lots, they will need a building permit. A note can be added to the plan that speaks to the driveways. Mr. Milz said he would be amenable to another easement in the event a parcel is sold.

Mr. L'Heureux said the reason DPW was so emphatic that there are no loose ends on this plan is because only a building permit is needed to construct a new home on one of these lots. The recorded plan will dictate what they can or cannot do on the lots. The owner would not need to come back to the Planning Board. He can't see supporting the waiver because there is no hardship.

Mrs. Choiniere asked if the waiver is not approved, what are the options? Mr. Lavelle said he would need to amend the profile to meet the regulations when something was built. This has been used for years for the family and there have been no drainage issues that he is aware of.

Attorney Parks said they are eliminating a dangerous driveway between the house and barn if the Board grants the waiver. He feels the Board has an incentive to grant the waiver. When the driveway is constructed, they will eliminate the driveway between the house and barn. He feels this is a good trade off. They have no intention of building the driveway now.

Mr. Granese wanted to confirm if the waiver was granted, the applicant would then eliminate the driveway between the house and barn. Attorney Parks said there is no intent to build the driveway now. They would do it at a point in the future when they did other work on the property. Mr. Granese asked if the 9% driveway was needed today

for the current use of the property? Mr. Lavelle said the only current use of the driveway is for access to mow the field. They would not change the use unless a building permit is applied for. They use the driveway between the house and barn and use the 9% grade driveway for field access. Mr. Granese confirmed if the Board grants the waiver, the driveway would be used at a 9% grade.

When asked, Mr. L'Heureux thought Ryan's Hill is approximately 8% grade. 9% is not unusual for a driveway, but the town likes to keep people out of the road in icy conditions. The existing driveway is at a 9% grade to the street.

Mr. Chase asked if it was acceptable or possible if the Board does not grant the waiver, to add a note to the plan that the driveway could remain until it is upgraded to tie to the house, at which time it would have to conform. Mr. L'Heureux was not sure how that would be worded because it would not be tied to a building permit. This is a unique situation. The applicant can put a note on the plan but there should be something tangible that triggers the requirement. Mr. Chase noted Mr. L'Heureux did not feel it was a hardship for them to construct it, so when they did upgrade the driveway, they could make it conform. Mr. L'Heureux said it would be tricky to write the language. Once the lots are split they don't come back to the Planning Board. The Board needs to be able to look at hardship versus the totality of the project. This third lot is unique but they will need to construct the other driveways. When do the requirements trigger reconstruction? Mr. Sioras agreed with Mr. L'Heureux. This is a tough one for staff. Staff is torn between settling the estate which is a 200 year old family farm with a field; however, the town has rules and staff does not want to set a bad precedent and waive things that will bite us in the future. He wants to allow them on paper to move forward. There is new permitting software that allows other departments to comment and sign off on new construction. Utilizing the capability of the software, the town may be able to flag these lots and that might be a tool the town can use.

Mr. Anderson said that there is potential to prepare a legal document that requires the shared driveway provision now, but is written such that the driveway will need to comply in the future. The Board is struggling with what happens when a future owner purchases the property and wants to use the access as a road for a larger subdivision. Mr. Lavelle said the driveway is not a road, and if someone wanted to create more lots, they would have to come back to the Board. The driveway is on two lots that comply on paper. Is the Board okay with having the driveways comply on paper, but not build or bond them until such time as a building permit is pulled? He would like to withdraw his waiver and create a profile for that driveway that meets the regulations, to be reviewed by Mr. L'Heureux for compliance. If the Board will allow the driveways to be built or escrowed when a building permit is obtained, they will withdraw the waiver. Attorney Parks said the lots should be in compliance with the ordinance. If and when something is done, then the driveways can be brought into compliance with today's regulation; for example, when the building permit is applied for. Mr. Anderson asked Mr. L'Heureux for his opinion. Mr. L'Heureux said the Board could entertain an agreement. Mr. Lavelle said he would like to propose the Board consider approving the plan subject to Mr. L'Heureux's review of the driveway for 03152 that is in compliance with the town's

regulations. With that being done, that the Board consider adding a note to the plan that no building permit will be issued to any parcel unless the driveways are escrowed or constructed, the culvert length and construction is performed, cross easement deeds are recorded, and the culvert deeds are recorded. The old driveway could be considered temporary until such time as the other driveways are constructed. Mr. L'Heureux suggested Town Counsel review any deed language. Mr. Sioras said there have been situations in the past where Counsel has reviewed the documents to make sure they comply. The applicant can pay for the legal counsel review in this instance.

Mr. Lavelle proposed withdrawing the waiver request and preparing a proper profile for the driveway, subject to review by Mr. L'Heureux.

Mr. Chase spoke with regard to the other two driveways. He understands Mr. L'Heureux's concern with regard to escrow. He does not feel it is unreasonable that a note state the building permit trigger the construction of the driveways. He does not feel there is a need to hold escrow indefinitely. Mr. L'Heureux thought it would be easy to enforce with the permit on one lot, but the middle lot will be tricky because there will be no building permit involved.

Motion by O'Connor to approve, pursuant to RSA 676:4, I, Completed Application the three lot subdivision plan for Radford, subject to the following conditions: comply with any forthcoming Jones and Beach review; 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 the bounds have been set; establish appropriate escrow as required to complete the project; obtain written approval from the IT Director that the GIS disk is received and is operable; TRC signatures are required from all departments on the final plan; add a note to the plan that the existing driveway (9%) grade noted on sheet 6 of 7 is for access to a dwelling on parcel 03152-008; subject to receipt of state, federal or local permits relating to the project; easements for the culverts shall be reviewed by Town Counsel and recorded, the above conditions are to be met within 6 months; improvements shall be completed by October 31, 2012; a note shall be placed on the plan that any future development for lot 03152 will require submission of a plan to the engineering department for approval at a compliance hearing; cross driveway easements presented by the applicant to be reviewed by Town Legal Counsel and recorded; in addition to the applicable recording fees, a \$25.00 check, payable to RCRD shall be submitted with the mylar in accordance with the LCHIP requirement. Milz seconded the motion and discussion followed.

Mr. Granese asked with regard to the motion regarding the existing driveway. Wasn't that the one for which the waiver was withdrawn? That condition was removed. Mr. Lavelle stated they will not establish escrow for the driveways. Mr. Anderson said with regard to condition number 5 (escrow for the project), it should be revised to add "once a building permit is applied for on either of the two lots." Mr. Chase confirmed that by saying improvements should be completed by October 31, 2012, the Board meant the bounds should be installed. Mr. Sioras explained that with the new escrow process, there needs to be a date attached to the escrow.

Mr. Park said that the simple plan, which grew complex, is now made simple again.

Mrs. Robidoux advised she had confusion over the wording of some of the conditions. Did Mr. O'Connor want Mr. L'Heureux to hold a compliance hearing? Mr. Chase thought that Mr. O'Connor meant that the new driveway profile should be submitted to Mr. L'Heureux for review and approval. That condition was removed. Mr. L'Heureux offered a friendly amendment to the motion noting that each driveway for the outer lots will have culvert issues. The person pulling the building permit for 03152-007 would be responsible for the culvert work at that lot, and the person pulling a permit for 03152-008 would be responsible for the culvert and swale work on its lot associated with the driveway.

Mr. O'Connor accepted the friendly amendments and Mr. Milz seconded them.

Chase, Park, O'Connor, Anderson, Milz, Choiniere, Bartkiewicz and Granese all voted in favor.

Mr. Anderson thanked the applicant for working with the town to bring this plan into compliance.

There was no further business to come before the Board.

Motion by Choiniere, seconded by Bartkiewicz to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:30 p.m.