

The Planning Board for the Town of Derry held a public meeting on Wednesday, September 14, 2011, at 7:00 p.m. at the Derry Municipal Center (3rd floor meeting room) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman, John O'Connor, Vice Chair; Jan Choiniere, Secretary Pro-Temp, John P. Anderson, Town Administrator; Randy Chase, Administrative Representative; David Milz, Town Council Representative; Jim MacEachern, Member; Michael Fairbanks, Ann Marie Alongi, Alternates

Absent: Frank Bartkiewicz, Darrell Park, Anne Arsenault

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk; Michael Fowler, Mark L'Heureux, Public Works

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 the exits, and meeting materials.

Mrs. Choiniere was selected as Secretary Pro-Temp for the evening, Ms. Alongi was seated for Mr. Park and Mr. Fairbanks was seated for Mr. Bartkiewicz.

Escrow

#11-25

Project Name: Tsienneto Fourteen Development, LLC

Developer: Tsienneto Fourteen Development, LLC

Escrow Account: Tsienneto Fourteen Development, LLC

Escrow Type: Letter of Credit

Parcel/Location: PID 08079-005, 14 Tsienneto Road

The request is to release \$116,805.89 and request a replacement Letter of Credit in the amount of \$70,664.40 for the above noted project. Upon receipt of the replacement Letter of Credit, the Board will release the Letter of Credit in the amount of \$187,470.29, drawn on TD Bank.

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

Minutes

The Board reviewed the minutes of the August 24, 2011, meeting.

Motion by Anderson, seconded by O'Connor to accept the minutes of the August 24, 2011, meeting as written. The motion passed in the affirmative with Granese abstained.

Correspondence

Mrs. Choiniere advised the Board has received two copies of letters sent with regard to escrow status. One is for Tsienneto Fourteen Development. The other is for a subdivision for which the town is still holding escrow. The town is inquiring what the developer (Natural Energy Design) would like to do with it. The Board has also received an updated copy of the Change in Use applications. Board members should see Mr. Sioras or Mrs. Robidoux with questions.

Other Business

Request for extension of approval – DeRosa Site Plan

Mr. Sioras advised the Board approved a site plan on Route 28/ Ryan's Hill for an auto garage, repair facility and motorcycle showroom. The property is located just after Pete's Scoop and Ace Paving. The applicant has taken down the dilapidated house that was on the lot and is requesting more time to secure financing. The approval expires tomorrow, and the applicant would like an additional six months. This would be the second extension. Normally, for commercial projects, the Board allows two extensions.

Motion by MacEachern to approve the request for an additional six months, as requested by the Planning Director, seconded by O'Connor.

Alongi, Chase, Anderson, O'Connor, Fairbanks, Milz, MacEachern, Choiniere and Granese all voted in favor and the motion passed.

Review of sign proposed for 14 Tsienneto Road

Mr. Sioras advised the proposed sign is for the medical office building currently being constructed on Tsienneto Road. It is similar to the sign at Overlook. One of the conditions of approval of the site plan was that the Planning Board review the sign. Mr. Anderson inquired if the sign met the sign regulations? It does.

Motion by MacEachern to approve the sign design as shown to the Planning Board this evening, seconded by O'Connor.

Alongi, Chase, Anderson, O'Connor, Fairbanks, Milz, MacEachern, Choiniere and Granese all voted in favor and the motion passed.

Mr. Granese advised the Board would now recess to meet with legal counsel. The Board invited Mr. Fowler, Mr. Sioras and Mrs. Robidoux to attend.

Motion by Anderson, seconded by MacEachern to recess the meeting. The motion passed with all in favor and the meeting recesses at 7:37 p.m.

Motion by Milz, seconded by Anderson to reconvene. The motion passed with all in favor and the meeting reconvened at 7:37 p.m.

Worthley Road

Motion by Anderson to reconsider the vote at the last meeting relative to Worthley Road, under RSA 674:40 for sections A and C. The motion was seconded by MacEachern.

Alongi, Chase, Anderson, O'Connor, Fairbanks, Milz, MacEachern, and Choiniere all voted in favor; Granese abstained, and the motion passed.

Motion by Choiniere to reconsider the vote regarding parts of the road defined by RSA 231:8, seconded by Anderson.

Alongi, Chase, Anderson, O'Connor, Fairbanks, Milz, MacEachern, and Choiniere all voted in favor, Granese abstained, and the motion passed.

Mr. MacEachern stated there was a lot of public discussion during the last public hearing. Understanding the votes that just took place, he thinks the Board needs to take a series of motions with regard to Worthley Road. It is important to point out that the Board will look at this in sections.

The first section of road starts at North Shore Road and goes as far as 56039 and 56043, denoted on the Board's plan set in yellow highlighter. That portion of road already has the status of a public street. That is due to maintenance and the history of the road and what the town has done for years in taking care of it.

In accordance with RSA 674:40,I, MacEachern moved to recommend acceptance of that road and move the matter on to Town Council. Milz seconded.

Alongi, Chase, Anderson, O'Connor, Fairbanks, Milz, MacEachern, Choiniere and Granese all voted in favor and the motion passed.

Mr. MacEachern said extending further along Worthley Road, the next section is outlined in green on the plan before the Board, beginning at Parcel 56039, abutting 56043 and continuing up to Parcel 12009.

MacEachern moved, under RSA 231:8 to recommend the Planning Board agree to the layout of the road as is, and recommend acceptance by Town Council, and that they accept it as is, for what is denoted on the plan set as Areas A, B & C, seconded by Choiniere.

Alongi, Chase, Anderson, O'Connor, Fairbanks, Milz, MacEachern, Choiniere and Granese all voted in favor and the motion passed.

Mr. MacEachern stated the next section of the road is noted in yellow on the plan before the Board along Parcel 56007, ending along the property line of 12006 and 12004. MacEachern moved to recommend under RSA 674:40, I, similar to the lower section, and moved to send the recommendation to Town Council, seconded by O'Connor.

John Gill called Point of Order. Mr. Granese advised the public would have an opportunity to speak at the Town Council public hearing on September 20th. This is not a public hearing; it is a reconsideration of the vote from the last meeting. Mr. Granese advised there is a motion on the table. Mr. Gill stated he officially objected as this involved his property.

Alongi, Chase, Anderson, O'Connor, Milz, MacEachern, Choiniere and Granese all voted in favor; Fairbanks voted no. The motion passed in the affirmative.

Mr. MacEachern said the next section of the road is noted on the plan as Area D and encompasses a line around Parcel 12004 to 12006.

Similar to the other green area, MacEachern moved to recommend under RSA 231:8 that the Planning Board has agreed to the layout of the road as is, and recommends acceptance by Town Council, as is, seconded by O'Connor.

Alongi, Chase, Anderson, O'Connor, Fairbanks, Milz, MacEachern, Choiniere and Granese all voted in favor and the motion passed.

Mr. MacEachern noted this matter will go to Town Council for their process. Mr. Granese advised that Town Council will hold a public hearing on this matter and any issues or discussion will be able to take place at that hearing.

Public Hearing

BR-10, LLC

PID 04084, 1 Bartlett Road

Acceptance/Review, 11 lot subdivision

Mr. Sioras provided the following staff report. This application was continued from the last meeting. The parcel is located on Bartlett Road. The engineer has revised the plan

and will meet with DPW to discuss the drainage. He knows that several abutters had questions. The applicant has addressed the town's items and he recommends approval of the plan and the two waiver requests provided by the applicant. Keach-Nordstrom also recommends approval of the waivers.

Jim Lavelle, Lavelle Associates presented for the applicant. At the last meeting, the Professional Engineer had not fully addressed the comments in the August 22, 2011, Keach-Nordstrom review. Those comments have now been addressed. Since the last meeting, his office has had some discussion with Steve Keach who has suggested further revisions and they have agreed to make those changes. The proposal encompasses eleven lots to be located off Bartlett Road. The proposed Steele Road runs parallel to Island Pond Road and Gennaro Estates. The lots all meet the lot sizing requirements in the town regulations. At the last meeting, abutters expressed concern regarding the drainage on Bartlett Road and the sight distance.

On Sheet 9, Mr. Lavelle indicated the wetland area about 150 to 200 feet up Steele Road. It will intercept with their drainage and they will divert the water into a culvert area. Keach-Nordstrom suggested adding a swale and drop inlet above the basin. There was a concern that water might come out onto Bartlett Road; the proposed revision should help alleviate that.

Regarding the sight distance (Sheet 11), the plan shows the sight distance profile. There is clear sight distance 300 feet in each direction and they meet or exceed that requirement at the entrance to Steele Road.

They are requesting two waivers. One is for the 8% grading on the roadway. They would like to have the grading in that section at 8% because it would require less site disturbance. They want to keep as many trees on this site as they can. Keach-Nordstrom agrees with the waiver request. The second waiver request is with regard to the sloping from the road, and they are requesting a 2:1 slope near the wetland areas rather than the 4:1 so that there is less filling of the wetland. In other areas, near the cul de sac, the 4:1 slope will go off the roadway, but at the end of the grade they want to be at a 2:1 slope to limit the cuts. Steve Keach had commented on the K-value on the first curve. On the plan, it was left at 30.00, but Mr. Gregsak will change it to 40.00 to meet the requirement by lengthening the vertical curve. They feel they are now ready for conditional approval.

Mr. Anderson asked Mr. L'Heureux to explain the changes in layman's terms to the public specifically regarding the drainage, slope issues and K-value.

Mark L'Heureux, Engineering Coordinator, Department of Public Works, advised there is a wetland area, noted with a hatch mark on the plan between STA 1±00 and 1±50. It is a finger of the wetland that will be filled over. This is a consistent source of water that goes into the roadway in the wet seasons of fall and winter. The drainage to be installed with an additional drop inlet, will provide insurance that the water stays in the drainage system. The run off will be caught by the catch basins, and redirected to a

wetland on lower Bartlett Road. There is an existing 12" culvert that runs under the road that will be replaced with a 24" culvert to alleviate flooding issues. It will be an outlet for the collected water. There will also be underdrain along both sides of the road to catch the underground flow. That will help assist to dry out Bartlett Road at the intersection and alleviate any frosting issues.

Regarding the slope issues, the town wants to see flatter slopes along the roadside to allow for snow storage. The town will allow steeper grades further from the 50 foot right of way. Mr. O'Connor asked about wooden barriers at the edge of the steep slopes to prevent people from running off the road? Mr. L'Heureux stated if the slope runs away from the road, they will put in guardrails. Mr. Chase asked if the 8% slope on the roadway presented any issues? Mr. L'Heureux advised that it meets the spirit of the regulation in that there will be a 4% plateau before and after the 8% grade that is commonly seen on rolling terrain.

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

Mr. Granese asked if there was anyone from the public who wished to speak on this matter. There was no public comment.

Motion by MacEachern, seconded by Choiniere to close the public hearing. The motion passed with all in favor and the plan returned to the Board for review.

The Board had no questions or comments.

Motion by MacEachern to accept jurisdiction of the subdivision application before the Board for BR-10, LLC, located on Parcel 04084, 1 Bartlett Road, seconded by Choiniere.

Alongi, Chase, Anderson, O'Connor, Fairbanks, Milz, MacEachern, Choiniere and Granese all voted in favor and the motion passed.

Motion by MacEachern to grant a special permit for residential development in the LDR zone, for Parcel 04084 as proposed on September 14, 2011, for an eleven lot subdivision, pursuant to LDCR Section ~~165-44~~. ~~170-16~~, seconded by Milz.

Alongi, Chase, Anderson, O'Connor, Fairbanks, Milz, MacEachern, Choiniere and Granese all voted in favor and the motion passed.

Motion by MacEachern, seconded by Anderson to grant a Conditional Use Permit, pursuant to the Town of Derry Zoning Ordinance, Section 165-80.B.2.a, to allow disruption for the purpose of the proposed 11 lot subdivision of 1 Bartlett Road, of an area of poorly drained or very poorly drained soils, other than prime wetlands, with conditions. After review of the proposal, the Board finds that 1) the proposed

construction is essential to the productive use of the land not within the Wetlands Conservation District, 2) design and construction methods will be such as to minimize detrimental impact upon the wetland and the site will be restored as nearly as possible to its original condition, 3) no alternative, which does not cross a wetland, or has detrimental impact to a wetland, is feasible; and 4) economic advantage alone is not the reason for the proposed construction. A note regarding the approval of the Conditional Use permit shall be added to the plan.

Alongi, Chase, Anderson, O'Connor, Fairbanks, Milz, MacEachern, Choiniere and Granese all voted in favor and the motion passed.

Motion by MacEachern to grant a waiver from LDCR Section 170-26.C. (4), Table of Geometric Roadway Design Standards, to allow a 365' section of the proposed roadway, Steele Road, to be constructed at a grade of 8% rather than the 6% maximum grade required by the regulation, seconded by Choiniere.

Friendly amendment by Anderson to add "as depicted on the plan shown this evening". MacEachern agreed to the amendment, seconded by Choiniere.

Alongi, Chase, Anderson, O'Connor, Fairbanks, Milz, MacEachern, Choiniere and Granese all voted in favor and the motion passed.

Motion by MacEachern to grant a waiver from LDCR Section 170-26.A. (17), Streets, to allow a 2:1 slope along sections of the roadway embankment as shown on the plan presented this evening, where the regulation requires a 4:1 slope for the full length of the embankment, seconded by Choiniere.

Alongi, Chase, Anderson, O'Connor, Fairbanks, Milz, MacEachern, Choiniere and Granese all voted in favor and the motion passed.

Motion by MacEachern to grant conditional approval pursuant to RSA 676:4, I, Completed Application, subject to the following conditions: Comply with the KNA forthcoming review(s), subsequent to August 22, 2011; subject to owner's signature; subject to on-site inspection by the Town's engineer; 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 the disk is operable; a Certified Wetland Scientist stamp should be added to the plan; subject to receipt of state or federal permits relating to the project and associated plan modifications related to same (NH DES Subdivision, AoT and Wetlands Permits); that the above conditions be met within 6 months; improvements shall be completed by February 24, 2013; and a \$25.00 check, payable to Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirement along with the applicable recording fees. Choiniere seconded the motion.

Alongi, Chase, Anderson, O'Connor, Fairbanks, Milz, MacEachern, Choiniere and Granese all voted in favor and the motion passed.

Public hearing to review the proposed amendment to rezone 8 properties that lie within the Office Research Development zone to Low Medium Density Residential. For the lots affected, this amendment is comprehensive in nature. The properties affected are as follows. This hearing was continued from July 13, 2011.

**Parcel 02082, 20.5 Berry Road
Parcel 02146, 7 South Range Road
Parcel 02147, 15 South Range Road
Parcel 02148, 17 South Range Road
Parcel 02082-001, 25 South Range Road
Parcel 02070, 7.5 Willow Street
Parcel 02149, 57.5 Frost Road
Parcel 01027, 105 Frost Road**

Mr. Sioras advised this hearing had been continued to allow the neighbors to investigate whether some of the involved parcels could be purchased as conservation land. Time was allowed so that the neighbors could approach the Conservation Commission and Town Council. The Board wanted to allow enough time for movement in that area. He would recommend, if the Board choses to move forward, to rezone the parcels to Low Medium Density Residential, which is a 2 acre residential zone.

Mr. Granese read the list of affected parcels into the record. Mr. Anderson noted the parcels were shown on the map provided for the public.

Motion by MacEachern to open the public hearing, seconded by Milz. The motion passed in favor.

Mr. Granese asked if there was anyone from the public who wished to speak on this matter?

Nancy Penney, 25 Miltimore Road, stated she abuts Parcels 02146, 02147 and 02148. She moved into the area and purchased here because she liked the idea that it was 'real New Hampshire'. She likes the conservation and wildlife. When she thinks that land may be changed for re-development, she is not for it. She has seen town houses that have been turned into rental units which can cause problems. There is a lot of ledge in the area. A neighbor on Craven Terrace drilled for 18 hours before they hit water for their well. The area has changed over the last five years. RiteAid opened and created more traffic in the area. She wants to keep the area the way it is and she does not like not knowing who is living behind her. There are good people in this neighborhood and many of them purchased here to enjoy the little wildlife that is left.

They would deeply appreciate it if the town could purchase the land. Children can't play outside now. This does not need to be a high volume area. She would like to maintain the quality of life. They don't need all of Derry to become a concrete jungle.

Maria Marotta, 26 Berry Road, stated she knows this is not an option for tonight, but agrees with Ms. Penney regarding putting the land in conservation. She went to the Conservation Commission and the Town Council and is waiting to hear back from Town Council on the matter.

Alana Missildine, 28 Berry Road, asked if the children in this area would go to South Range School and is the school able to handle the additional volume of students from any development here? Mr. Anderson explained the School Board governs where the children go to school. Typically, if one school was to be overburdened, the School Board would redistrict the children to balance it out. All of the schools are okay at this time. Ms. Missildine stated she would rather this land stay as Office Research Development rather than be changed to Low Medium Density Residential.

Kevin Yonge, 67 Berry Road, advised he has a concern regarding new developments and Berry Road. He does not want Berry Road to become another I-93. Berry Road connects Route 28 and Windham Road. A sizeable number of homes would add to the traffic volume on Berry Road. He would be very concerned with an increase in the number of vehicles on the road. This is an isolated section and there are some large curves. Halloween would introduce a high level of risk to the children's safety on the roadway.

Mr. Sioras explained that if a development proposal came in, the Board would look at access points, the impacts on the roads, and intersections. Down the road, there is a potential that the land could be developed, but the Board would take those things into consideration when it looked at a plan.

There was no further public comment.

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| Motion by MacEachern, seconded by Choiniere to close the public hearing. The motion passed and the matter came back to the Board for discussion. |
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Mr. MacEachern noted this is the second public hearing on this matter. The Board understands the concerns of the residents. The parcels are currently zoned Office Research Development. Currently, any of the property owners can sell their land for the uses that are allowed by the Ordinance in that zone. It could be a business district which has a whole different set of traffic issues than a residential neighborhood. Travel would be busy during the morning, during the day, and quiet at night. Prior to being zoned ORD, the lots were zoned residential and could have been developed that way. The landowner worked with the town to create more business zones and the lots went from one acre zoning, which allowed duplexes, and if developed back then, would have been densely populated. Years ago, there was potential for water and sewer to be constructed on Windham Road, and then the lots were changed to ORD. The LMDR

zone requires two acre zoning. Each lot would most likely need to be larger than two acres because of the soils, and then area needs to be deducted for the roads. There are no plans before the Board to build homes in this area; given the economic times, it is not likely there will be one in the immediate future. If a proposal comes before the Board, the abutters are notified and all public hearings are posted on the town website. Each plan is taken on its own merits. He wanted to state that he will vote in favor of the change because he feels it is a better use for the property and would have less of an impact on the neighborhood than an office medical park. This is privately owned property. Perhaps there is a potential to put some of the land in conservation.

Motion by MacEachern to recommend and forward to Town Council for their consideration, the rezoning of 8 parcels that lie within the Office Research Development zone to Low Medium Density residential. If approved, these properties would be subject to the Low Medium Density Residential zoning requirements contained in Section 165-47 of the Town of Derry Zoning Ordinance. An amendment to the Zoning Map, delineating the lots in the Low Medium Density Residential zone is being adopted to reflect this change. The affected properties are as follows: Parcel 02082, 20.5 Berry Road; Parcel 02146, 7 South Range Road; Parcel 02147, 15 South Range Road; Parcel 02148, 17 South Range Road; Parcel 02082-001, 25 South Range Road; Parcel 02070, 7.5 Willow Street; Parcel 02149, 57.5 Frost Road and Parcel 01027, 105 Frost Road. The motion was seconded by Milz. Discussion followed.

Mr. Chase stated he is never in favor of moving commercial land to residential land; the town needs all of its commercial properties. However, in looking at the history of the land involved he took into consideration the 1980-90 Master Plan which was a great plan. The town hoped the Plan would come to fruition and economically benefit the town. But that did not happen. These parcels are surrounded by residential land. If left as is, it can be developed as an office park. Leaving it as is and saying that is as good as conservation land is a disservice to the landowners. They have a right to do what they can with their land. He feels it would be better for the residents if the land is moved to a two acre, residential zone. He does not feel the present zoning will benefit the town.

Mr. Fairbanks asked if all the affected landowners are in favor of the change? Mr. Sioras stated they are. Mr. Caras owns three of the parcels. Mr. Allen attended one of the meetings. Mrs. Robidoux advised that the office had received phone calls or emails from the Valliant's and Mr. Magnan attended the April meeting. The Board noted that the southern two parcels would be difficult to develop under the current regulations. There was no further discussion.

Alongi, Chase, Anderson, O'Connor, Fairbanks, Milz, MacEachern, Choiniere and Granese all voted in favor and the motion passed. Mr. O'Connor added that he concurred with Mr. MacEachern and Mr. Chase's statements.

Mr. Granese advised this matter will now be forwarded to Town Council for their consideration. They will hold their own public hearing at which the residents can express their thoughts and concerns.

There was no further business before the Board.

Motion by Chase, seconded by Choiniere to adjourn. The motion passed unanimously and the meeting stood adjourned at 8:34 p.m.