

The Planning Board for the Town of Derry held a public meeting on Wednesday, November 30, 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; Frank Bartkiewicz, Secretary; David Milz, Town Council Representative; John P. Anderson, Town Administrator; Randy Chase, Administrative Representative, Jan Choiniere, Darrell Park, Members; Michael Fairbanks, Ann Marie Alongi, Alternates

Absent: Jim MacEachern, Anne Arsenault

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk; Mark L'Heureux, Engineering Coordinator; Attorney Lynne Guimond Sabeau, Boutin & Altieri, PLLC

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.

Ms. Alongi was seated for Mr. MacEachern.

Escrow

#11-30

Project Name: Hampstead Road & Harvest Drive (Harvest Estates)

Developer: Robert MacCormack

Escrow Account: Hampstead Road & Harvest Drive

Escrow Type: Letter of Credit

Parcel/Location: PID 10015, 10025, 10024, Hampstead Road and Harvest Drive

The request is to approve the release of \$84,045.60 and request a replacement Letter of Credit in the amount of \$174,286.08 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 \$258,331.68.

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

#11-31

Project Name: Martingate

Developer: Martingate, LLC

Escrow Account: Martingate, LLC

Escrow Type: Letter of Credit

Parcel/Location: PID 30017, 1 West Broadway

The request is to renew Letter of Credit #19981, drawn on Enterprise Bank, in the amount of \$45,961.34 for the above noted project. The new expiration date will be December 4, 2012.

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

Minutes

The Board reviewed the minutes of the November 9, 2011, meeting.

Motion by O'Connor, seconded by Bartkiewicz to accept the minutes of the November 9, 2011, meeting as written. The motion passed in the affirmative with Park and Chase abstained.

Correspondence

Mr. Bartkiewicz reviewed the following correspondence. The Board is in receipt of a letter from Attorney John Griffith that was hand delivered to the Planning Office today on behalf of his client, Property Portfolio Group, regarding the MTM Realty, LLC compliance hearing. The letter was read into the record verbatim. Attorney Griffith requests that the hearing be continued if additional information is presented during the hearing, questioned the sufficiency of notice to abutters and its wording, and stated there is a lack of material in the file by the required deadline and this is prejudicial to his client. Mr. Anderson thought the letter would be better addressed during the public hearing portion of the meeting.

A reminder letter has been sent to Robert Allen regarding the Gennaro Estates Letter of Credit. The LOC needs to be renewed prior to January 12, 2012.

SNHPC is seeking public input on the draft Regional Comprehensive Plan update. Comments are due to SNHPC prior to December 31, 2011. Copies are available in the library and on line at SNHPC's website.

The Board is in receipt of the new edition of *Town and City*.

The Town of Londonderry has forwarded an abutter notice of public hearing for the Woodmont Commons PUD Master Plan (Pillsbury Realty). The hearing will be on December 14, 2011, 7:00 p.m., at the Moose Hill Council Chambers, Londonderry Municipal Center. Plans are available in the Londonderry Community Development office prior to that date.

Other Business

Motion by Choiniere to recess the meeting to consult with legal counsel and invite Mr. Sioras and Mrs. Robidoux to attend, seconded by Milz. The motion passed in the affirmative and the meeting recessed at 7:08 p.m.

Motion by Choiniere to reconvene the meeting, seconded by Bartkiewicz. The motion passed in the affirmative and the meeting reconvened at 7:28 p.m.

Public Hearing

MTM Realty, LLC

PID 29195, 32 West Broadway

Compliance hearing to determine whether conditions precedent of the application approved on May 5, 2010 have been met.

(Continued from November 9, 2011)

Mr. Sioras advised this is a compliance hearing to determine if the conditions precedent of the application approved by the Board on May 5, 2010, have been met. There is various correspondence from Attorney Robert Moran who is representing MTM Realty, LLC. The material was presented by him to see if the conditions have been met. Attorney Moran will explain in more detail any progress that has been made to meet the conditions of approval. The Board members have a handout from staff listing the conditions of approval. The Board will need to do finding of fact to see if the conditions have been met.

Tim Moran, applicant, was present. Attorney Robert Moran presented for the applicant. Attorney Moran advised that in late October, early November, he went over the checklist of items to be completed with Mrs. Robidoux that go back to the May, 2010 meeting. As the Board knows, the decision was appealed by certain parties and the appeal is working its way through the Court. His client received a copy of the Court decision in late spring/early summer. The owners of The Halligan Tavern had put their plans for the rooftop deck on hold pending the outcome of the appeal. Since the Court has ruled in MTM's favor, he met with Mrs. Robidoux to review the list of items to be done. MTM feels that they comply with the exception of one possibly incomplete item. The plans were resubmitted to the town on November 9, 2011. [Clerk's Note: Planning Department records indicate the plans were received on Friday, November 4, 2011, not Wednesday, November 9, 2011.] Attorney Moran went through the six conditions precedent and responded to each.

"Did the Fire Department and Building Department approve the seating capacity? They have. The capacity is 55.

The second issue: was the plan revised to accurately reflect the name of the establishment? Yes it has been and the plans were submitted November 9th.

Three – if he can pass over that.

Four: was a lighting plan submitted for approval? The answer is yes to that; it was approved previously.

Was an additional two sections of six foot high fence added from the stairwell, towards Broadway? The answer to that is also yes, the additional two sections of six foot fence.

Item six: was the final fence design submitted to staff for review? The answer is also yes; it was submitted and was approved by staff.”

Regarding item number 3: were pads/columns provided at the base of the stairs (fire escape), and were they approved by the Fire and Building Departments? MTM provided revised plans to the town in November 2011 which had the added pad detail at the foot of the fire escape showing its location in the parking lot. The plan showed the addition of a concrete post to protect it. Those were submitted to the Fire and Building Departments. MTM learned only just prior to Thanksgiving that the Interim Director of Fire Prevention wanted more detail on the fire escape and that is where they are. They submitted what the Planning Board asked for; now, the Fire Department wants more detail. The Planning Board should have a copy of the memo from James Kersten dated November 21, 2011. Given the state of the project, this is a small detail. MTM is willing to provide the detail and make sure that it complies with the Fire and Building Codes. They have complied with everything with the exception of this small detail they just learned about. They will give the information to their architect and engineer and submit plans that comply.

Mr. Granese asked if there have been any material changes to the building or operation since the May 5, 2010 public hearing? Attorney Moran stated there have not. Mr. Granese confirmed that regarding condition number three, the applicant had just received notice that more detail information was required on November 22? Attorney Moran confirmed. He stated they received a copy of the memo only a day or two before Thanksgiving. Given the holiday it did not give them enough time to get it to the architect so that more detail could be provided. He would propose that by January [2012], they could produce those plans.

Mr. Granese stated the conditions just outlined by Attorney Moran went back to the May 5, 2010 decision. Tim Moran said there was no special requirement for the pad or post stated at that meeting. Attorney Moran said the Planning Board wanted the fire escape and the pad location. When that was given to the town, they were given the information that the Fire Department was requesting additional detail last week. They will address it as soon as they can.

Mr. Fairbanks noted that Bob Mackey, in his memo dated November 22nd, advises he would like a stamped, engineered plan that verifies the existing roof will be in compliance with the loading for the use. Is that subsequent to this or is it part of the conditions the Board is looking at? Mrs. Robidoux said that without reviewing the minutes from 2010, she does not recall that the Board discussed loading capacity of the roof. The Board did not get to that level of detail. That would fall under life safety during code review during the building permit process. She did not believe it needed to be addressed by this Board. Mr. Anderson noted the condition #3 as stated in May of 2010 said “at the base of the stairs, provide a pad/columns for safety which shall be approved by the Fire and Building Department”. It is inaccurate for MTM to say they were unaware of the condition until recently. Attorney Moran said they were asked to put a pad in and there were a list of items to address. The project was put in abeyance because the matter was on appeal. They did not want to spend a lot of money and time until they knew the outcome. It was picked

up again recently. They put that item on the plan which led to the Fire and Building Departments to add other conditions. They were just informed of those and are happy to comply.

Motion by Choiniere to open the public hearing, seconded by Bartkiewicz. The motion passed with all in favor and the floor was open to the public.

No one from the public came forward.

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

Mr. Granese had questions with regard to Mr. Griffith's letter and asked Mrs. Robidoux to address the bulleted items two and three. Mrs. Robidoux stated Mr. Griffith indicated it was his belief that nothing had been submitted as of the date of his letter (November 29, 2011) into the file regarding the application. The town received two sets of revised plans, one in October, one in November. The November date was more than 14 days prior to this hearing. The material was available for anyone to view who wished to do so. Regarding the wording on the notices, the original notice said it was going to be a revocation hearing. All of the wording was reviewed by counsel before it went out. At the last meeting of this Board, the Board indicated it wanted the continuance re-noticed as a compliance hearing.

Mr. Granese asked Attorney Moran why MTM has not intervened in the litigation to date? Attorney Moran stated that he came into this matter more than halfway into the course of the progress. He understood that the appeal was based on a procedural flaw, although the abutter has contested some of the representations and facts. The heart of the appeal is based on a procedural error made by the Board. That involves the Board rather than what MTM did or failed to do, so it is not in MTM's area. That is how he viewed it.

Mr. Granese asked with regard to the conditions of approval. The original decision was on May 5, 2010; it is now November 30, 2011. Why haven't they moved forward before now? Attorney Moran said that when the matter was appealed all the items were put on hold, and the applicant waited to see what the outcome would be in case it did not end in their favor. They did not want to expend a lot of money or time and find that it was not in their favor. They wanted to wait for the decision and see. He came to see Mrs. Robidoux and received the punch list of what needed to be done. He got the items to their architect so that they could revise the plans. Tim Moran noted that the original plans went back to the Halls and the current plans piggyback on those.

Attorney Moran said this brings them back to the memo from the Fire Department that indicated they need to provide more detail. Now that they know the legal issues are mostly done, they will move forward. Mr. Granese asked if the applicant has met with anyone at the town after receipt of the November memos? Attorney Moran said he has met with Mrs. Robidoux twice as a point person. She gave him the list, they revised the plans, and now they need the approval from the Fire and Building Departments. He believes he should deal with those departments directly now and provide them what they need. This might be outside of Planning now and he would like to meet with Fire and Building if they are willing to meet with him.

Mr. Granese said based on the facts presented, it appears that the five of the six conditions of approval from May 5, 2010 have been worked on and met. The Board can discuss it. There is still one issue (#3) that has not been met. What would the Board like to do? Mr. O'Connor said he would like to move on the five conditions and leave the remaining condition for additional discussion. Board members concurred.

Motion by O'Connor to accept the findings of fact regarding the conditions precedent that Number one, the Fire Department and Building Department have approved the seating capacity for the outdoor seating. Number two, was the plan revised to accurately reflect the name of the establishment. It was. Number four, was a lighting plan submitted for approval by staff which included lighting in a downward trajectory? It was done earlier. Number five, was an additional two sections of six foot high fence added from the stairwell, towards Broadway, which moved the existing third cascading section down two sections? That has also been completed. Number six, was the final fencing design submitted to staff for staff review, taking into consideration the suggestions of the Board provided during the meeting on May 5, 2010? That has been completed. Bartkiewicz seconded the motion. Mr. Granese stated this is a vote to affirm that five of the six conditions precedent, as read, have been completed.

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

Mr. O'Connor asked with regard to the submitted plans and the Fire Department memo. Did Attorney Moran feel, based on the information they currently have, that they could have that item completed by the January 11th meeting? Attorney Moran said yes.

Mr. O'Connor stated regarding item Number three, were pads/columns provided at the base of the stairs (fire escape), and were they approved by the Fire and Building Departments? Based on the current information at hand, the parties requested of MTM Realty, LLC additional information. He therefore moves to continue that item to January 11, 2012. Choiniere seconded the motion.

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

Mr. Granese advised that there will be no additional notice for this continuation.

**Yvon Cormier North Development
PID 08280-004, 7 Ashleigh Drive
Acceptance/Review, Conditional Use Permit
Driveway Access Plan**

Mr. Sioras provided the following staff report. The purpose of the plan is to construct a 550 foot driveway to access the rear portion of the above mentioned parcel. This driveway will be coming off of Ashleigh Drive across from the movie cinema. It is the intent of the developer to get the road built which will allow them to market the site for future retail development. Per the

Derry Zoning Ordinance, Section 165-80.B.3, a Conditional Use Permit is required from the Planning Board for the wetland crossing for the driveway. All town departments have reviewed and signed the plan. MHF has included a letter dated November 14, 2011 with regard to the waiver requests from roadway embankment slopes, roadway centerline tangents, and the roadway centerline radius. The state permits have been obtained (NH DES and Non-Site Specific). He would recommend approval of both the waiver requests and the Conditional Use Permit for the driveway access plan. He noted Ashleigh Drive was originally a driveway and is now a road. The developer wants to market the site. Individual site plans would be brought before the Board in the future.

Chris Tymula of MHF Design presented for the applicant. The lot is located across from Flagship Cinema and is to the north of the proposed Walmart. The site is challenging. There is a large wetland pocket that traverses the site (north to south) and there is a significant elevation difference of 50 feet from the front to the back. The site is wooded. The client originally wanted to clear cut the lot to provide visibility because you can't tell from the road there is a potentially usable site. They are proposing to construct a 550 foot driveway to town roadway specifications including vertical granite curbing, etc. This will be a phased plan. They want to build the driveways and cut trees. They will come back to the Board in the future for the site development. What is shown on the plan tonight is just a concept and may change depending upon the final use at the site.

To access the upland, they had to cross the wetland in two places; this is near STA 2+50 and 4+50. There will be a total of ~~850~~8550 square feet of wetland impact. The intent is to install a box culvert at the first crossing and an additional overflow pipe as required by DES. They did receive their wetland permit. They have met with the Conservation Commission several times. The Commission's main concern was the tree clearing. The Commission asked for a plan to be prepared by a Forester and they did have that prepared. A copy of the plan was included with the application. That plan will also be a two phase project. Charlie Moreno, the Forester, walked the site. He will come back to flag the trees to be removed before work starts on the site.

Mr. Tymula advised they received the comments from VHB; many of them are detail oriented. They will need to apply for an Alteration of Terrain permit. They will also need to apply for a sewer extension with NH DES. Their original intent had been to apply for the sewer extension permit when they came back to the Board for site development, but will incorporate the application for that permit into this phase.

Mr. Milz noted the Forester also met with the Conservation Commission and walked the site with one of its members. It appears they all agree on the flagging and cutting of trees. He assumes that is for sight lines for safety. Mr. Tymula indicated the forestry will be phased as well. Mr. Milz asked, in addition to the sight lines, were the existing trees considered with regard to safety so that this is not a blind driveway? Mr. Tymula indicated that the trees will be cut back along the frontage and the sight lines are on the plan.

Mr. Anderson noted in the TRC comments, there had been a question about the American Chestnut saplings on the property. Mr. Tymula stated Mr. Moreno is aware of their location; they will be identified and not cut.

Motion by O'Connor to open the public hearing, seconded by Bartkiewicz. The motion passed in the affirmative and the floor was open to the public.

There was no public comment or input.

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

Motion by O'Connor to accept jurisdiction of the Conditional Use Permit application before the Board for Yvon Cormier North Development, located on Parcel ID 08280-004, 7 Ashleigh Drive, seconded by Park.

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

Mrs. Choiniere inquired if instead of a box culvert, could there be a bridge to minimize the wetland impact? Mr. Tymula said they incorporated the box culvert because a bridge is not economically feasible and would have more impact on the wetland. Mr. Anderson asked Mr. L'Heureux to explain the box culvert and why it might be preferable over a bridge. He noted the town has used these types of culverts on its own projects.

Mr. L'Heureux explained the use of a box culvert is more typical now and is used to minimize the area for footings and abutments. They come prefabricated and are set in place. Some are three sided with an open bottom so that there is natural ground; others are four sided and incorporate material at the bottom to allow the free flow of material and animals. Mr. Anderson said this one is open so there will be no impact to the natural stream bed.

Mr. L'Heureux stated he has no problem with the waiver requests; this is a well-designed access plan.

Motion by O'Connor to grant a waiver from LDCR Section 170-26.A.17, Roadway Embankment Slopes; a waiver from LDCR Section 170-26.B.2, Roadway Centerline Tangents, and a waiver from LDCR Section 170-26.B.4, Roadway Centerline Radius, seconded by Bartkiewicz.

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

Motion by O'Connor, pursuant to the Town of Derry Zoning Ordinance, Section 165-80.B.2.a, a Conditional Use Permit is granted to allow the proposed access way from Ashleigh Drive to cross 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 the proposed construction is essential to the productive use of the land not within the Wetland Conservation District; the

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; no alternative which does not cross a wetland, or has less detrimental impact in the wetland, is feasible and economic advantage alone is not reason for the proposed construction. The conditions are as follows: comply with comments provided by VHB (the town consultant); establish appropriate escrow as required to complete the project; receipt of applicable local permits; the above conditions to be met within six months and the driveway access improvements shall be completed by June 31, 2013. Bartkiewicz seconded the motion. Discussion followed.

Mrs. Choiniere offered a friendly amendment to correct the date to June 30, 2013. Mr. O'Connor accepted the amendment.

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

WORKSHOP

Mr. Granese advised the Board would now enter a workshop to discuss changes proposed by the Conservation Commission with regard to wetland setbacks.

Margie Ives, Chair of the Conservation Commission, thanked the Board for the opportunity to hold the workshop. The Commission has worked on the suggested changes for a while and has been assisted by Cecile Cormier, who has a background with the Planning and Zoning boards. Currently, there is no protection for the wetlands from parking lots. They would like to add some protection as the only setbacks are for buildings to the wetlands. They would like to add a buffer for parking lots, drainage outlets, and grading.

In Derry, you can have a parking lot next to the wetland and have the drainage outlets that close as well. The Commission feels changes are long overdue. There is no protection. They have only obtained information from a few towns but have found it is not unusual to have this type of protection. In Auburn, there is a 125 foot buffer to vernal pools, a 125 foot buffer can be reduced based on the results of a Functional Analysis, and there is no disturbance between zero and 75 feet. Other towns have similarly strong ordinances, such as in Bow and Exeter. Exeter has a 25 foot no cut, no disturb buffer and no construction to 75 feet. They do not have the complete story on Londonderry's regulations yet. Mrs. Ives said it is self-obvious that there needs to be some protection. Parking lots within a foot or so of wetlands do not make sense.

Mr. Granese confirmed the first recommendation which is to amend Section 165-18, reads "No waste disposal system or grading for said system shall be located closer than 75 feet to any wetland." The second recommendation is to amend Section 165-20a to read "No buildings, parking lots, drainage outlets, or grading for said system shall be located closer than 75 feet to any vernal pool as defined in Section 165-77, wetland one acre or larger in size, no closer than 30 feet to any vernal pool or wetland less than one acre in size." Section 165-77 would be a new definition that defines vernal pools.

Mr. Anderson asked if the concern was with regard to the slope for septic systems that abut wetlands? What if the resident can't meet the slope unless they were within 75 feet? Is there an allowance for a variance? Mrs. Cormier said a variance would be the release of this restriction and the resident would have to show hardship. Mr. O'Connor asked if it is the degree of slope that is a concern to the Commission? Mrs. Cormier said it is the disturbance of the natural soil that goes into the wetlands. The natural soil is likely taken off the land and they would like 75 feet to protect the wetland. During construction, it is likely the area will be disturbed.

Mr. O'Connor asked if a running stream would also count as a wetland or would it be grandfathered? Mrs. Cormier thought that might be grandfathered. Mrs. Robidoux disagreed. Once an ordinance goes into effect and then a permit is applied for, it falls under the new regulation. Residents are not going to be able to replace in kind to keep the grandfathering. If there is any difference at all it falls under the new regulation.

Mr. Anderson asked how the Commission came up with the proposed changes? Are they anecdotal or do they have hard numbers to back up the proposed distances? Was there a particular issue that brought this forward? Mrs. Ives said not that she is aware of. It is based on regulations in other towns. They can discuss the number of feet, but the idea is to provide some level of protection for the wetland.

Mr. Granese noted vernal pools are different from wetlands. Residents can have a wetland and vernal pools on a property which can limit the installation of a system. Mrs. Ives agreed it could encumber the setback. Mr. Granese felt vernal pools, by the definition provided, are the same as the retention ponds installed in many subdivisions. Mrs. Ives said they may need to do a better job in defining vernal pool. They are breeding sites for amphibians. Mrs. Cormier said fairy shrimp are specific to vernal pools. Mr. Granese maintained that by the definition provided, the detention pond at the end of his street meets the definition. A regulation of this type would affect his neighbor. Mrs. Cormier reiterated the release of the restriction is to seek a variance.

Mr. Chase did not believe the state allowed any longer the replacement of septic in kind and many of the approved designs are now raised beds. This requires a slope since the system is raised. This proposal would require a variance for many replacement septic. This would make the resident dependent upon the ZBA for approval and may create an additional expense for the homeowner. There could be a case where the ZBA feels there is enough room on the other side of the house to put the system and it would require the homeowner to re-plumb the system in order to get the variance.

Mrs. Ives noted these are all good things to think about. They can learn from other towns and come back to the Board with something that protects the wetland but takes these facts into consideration. Their definition of vernal pool came from a conservation fact sheet.

Mr. Fairbanks suggested they include in the definition of vernal pool an exclusion for "man-made". Mr. Milz noted vernal pools, by definition, are temporary. They can fill up with leaf litter and disappear over time. He agreed with Mr. Chase that a homeowner may have a hardship created by something that may go away in two years. He can understand protecting the wetland, but including vernal pools just because other towns do, he cannot. The Commission may want to

ask an engineer to look at their suggested changes and get some feedback as the engineer may have other solutions.

Mrs. Cormier thought if the regulation included an exemption for current lots of record it might address the Board's concerns. The regulation would then apply to all new subdivisions. A wetland scientist would identify or prove the location of vernal pools. Mr. Milz asked if vernal pools are identified on the wetland maps? Mrs. Cormier said that is why a wetland scientist does the mapping for new subdivisions. That should be a requirement in our regulations. If identification of vernal pools are in the regulations or zoning, then the developer will need to identify them. Mrs. Ives said when they do site walks, the wetland engineer will identify vernal pools and is able to do that even when the area is dried up. One of the concerns as development come in, is that vernal pools are an important link in the chain. Feedback would be beneficial. Protecting vernal pools is tricky.

Mrs. Robidoux advised that vernal pools are identified by specific criteria when the wetland scientist is mapping the wetlands. Vernal pools meet certain values and functions that a forested wetland or standing water wetland do not. Depending on the type of method used (ACOE or the NH Method), the vernal pools would be identified by a series of checklist items. If the area has the criteria, it falls under the definition of vernal pool. She agrees vernal pools are important and should have some level of protection, but does not agree grading for septic systems should have anything to do with vernal pools. The definition of vernal pool needs to be tightened up.

Mr. O'Connor advised that at the state level, they are addressing this issue on the Agricultural Committee. There is a law and statute already established. DES has released its vernal pool authority to Fish and Game. He suggested reviewing the State Administrative Rules. The Committee study determined 100 feet is a good buffer but does little to protect amphibians living around the pool. Pool breeders require at least 300 yards around their habitats. A proper buffer would be 300 yards, but we don't have that available on the lots; therefore there is a need to mitigate using other methods such as porous pavement. He recommended reviewing Env WT 101-106. Some of this will change in January when the state holds its final vote. The wetland terms may change. The vote was held over from the last session.

Kevin Coyle, 68 North Shore Road, thought the original changes were supposed to be about parking lot distances, and now the Commission is talking about septic systems, and vernal pools. The septic system grading issue had previously been brought to Town Council and it was denied. He is not sure how this is coming back. He has built several homes in Derry and it is understood sometimes they need to stay within 75 feet of a wetland, and they need to protect the buffer while grading. Once the land is seeded, there are no issues. He feels discussion of anything other than parking lot setbacks is inappropriate.

Regarding drainage outlets, what about foundation drains? His drains into what would be defined as a vernal pool. Many in town would have their foundation drains going into vernal pools. The proposed definition of vernal pool is a slippery slope. It will add thousands to the costs of development. For example, Exit 4A has been held up because of vernal pools and has cost millions of dollars. Mr. Coyle did not feel this regulation was needed in Derry. The state has enough regulations in place to protect the wetland. Derry does not have any problems with

development. He asks the Board to consider not adding a definition of vernal pool because it will add thousands of dollars to any development because now they will need to perform additional mapping and be concerned with the location of foundation drains. He asked the Board to deny the recommended changes.

James Degnan, 18 Brian Avenue, said he was not a member of the Conservation Commission when this was drafted. Currently, he is an alternate member. Regarding parking lots, he looks at the wetland at Hood Plaza and the businesses on Crystal Avenue. There is a varying degree of space between the parking lots and the water. He can see the difference and believes there is risk for damage to the wetlands from trash and salt. He would be more focused on the parking lots.

Mr. Anderson said there are no regulations currently for parking lots. Would Mr. Degnan be comfortable with 75 feet? Mr. Degnan felt that was a good topic for discussion. A strong number should be in place. As a Commission, they may need to find out why other towns did what they did. Mr. Anderson suggested the Conservation Commission look at towns similar in size and scope to Derry and with similar land conditions, specifically residential versus commercial. With a 75 foot buffer, the plan the Board saw this evening would not happen. Derry is a commercial hub and is very different from Auburn and the other rural towns. We need to be cognizant of what we are and what we do as a community.

Mr. O'Connor commented that the University of New Hampshire has been working on parking lots next to wetlands. Maybe the Commission should contact T² and see what progress they have made. The medical center parking lot on Tsienneto is within a few feet of wetland and that experiment has been working well. Mrs. Ives agreed, but they can't get developers to buy into these types of construction. Regarding Overlook, there is no breathing room between that parking lot and the wetland? Their focus tonight is how do we stop parking lots from going up to the wetland. Derry is the fourth largest town in the state. There are towns that are as developed that have setbacks. The Commission would like more room to protect the wetland. They do not want to see this bogged down by discussion of vernal pools. They want to concentrate on discussing Section 165-20a because parking lots and drainage outlets go right up to the wetland currently. They are asking developers to give consideration and some do try to make some accommodation. Developers do understand about wetland impact. The Commission is concerned with wetland impact and would like to see the proposed changes stay alive. She can look at the discussion regarding vernal pools because that is a difficult issue. She can speak with Mr. Coyle separately regarding the grading discussion.

Mr. Sioras said he echoed Mr. Degnan and Mrs. Ives. This started as a conversation with Mr. Doolittle regarding parking areas. The specific example cited was CLM and Overlook Medical Center. They do come close to the wetlands. The other example is River Bank/People United and Enterprise Bank. Those were a good compromise. He agrees the focus should be on parking lots. He asked Mr. L'Heureux if he had any comments with regard to the drainage outlets?

Mr. L'Heureux said he has been inspecting in the Town of Derry for many years and hears both sides of the argument. The regulations in place regarding the distances to wetlands for new projects are pretty strong. Plans go through the AoT process with DES. Our process dealing with storm water pollution control is built into the plans so we don't get the same issues

developing in the wetland that you would have seen thirty years ago. Hood Plaza was more than likely originally a swamp and would not be able to be built under today's regulations. When you change one aspect, it will steamroll into other areas you may not have considered. It might be that they are trying to do a good thing, but it may preclude development. He suggests looking at other zones. Many lots now have challenges such as steep slopes, ledges, and wetlands. We need to make sure we don't prohibit good development which is what every community wants.

There was no further public comment.

Mrs. Choiniere noted that we inherit the state regulations. Mr. O'Connor agreed, adding we can be more stringent, but cannot be less stringent. The AoT permits have very stringent regulations and conditions and are stronger than those suggested here.

Mrs. Ives asked if there will be another workshop? Mr. Granese said possibly in February or March. Mr. Sioras suggested the Conservation Commission complete their research regarding vernal pools and the other towns. Mr. Granese said he would suggest looking at the parking lot buffer. He felt 75 feet was a lot. He would also suggest removing the grading, and striking vernal pools. His day drain goes into a possible vernal pool and a wetland is located 15 feet away. Regulations of this type would negatively impact the use of his backyard. There was a short discussion regarding possible dates for the next workshop (tentative February 22, 2012). The Commission will come back after it has time to look at the wording again. Mr. Milz suggested the focus be on regulations for parking lots first. When that is done, it can be determined if more is required. The focus should be on commercial parking lots. Mr. Anderson thought there might be a medium they can come to and there might be a way to include that as a regulation such that between zero and x number of feet between a wetland and a parking lot, the developer must use a specific product. Then the developer must comply, and would be able to use the new techniques to minimize the impact. If the distance is beyond that, they can use the other standards. This gives a tool to use as a requirement so that everyone can get to the same place.

Mrs. Ives said this would give the Commission time to explore and discuss the various experiments. Developers are not buying into the porous asphalt because it needs a lot of cleaning. She likes the idea of looking at the various methods available that make a difference with regard to wetland impact and they will look at that further.

Mr. Sioras said given what is already in the pipeline and that there is limited commercial space available, there are future commercial developments where the parking lot issue will come up more. He would recommend focusing on commercial lots rather than residential areas.

Mr. Granese thanked Mrs. Ives, the members of the Commission and public who attended the workshop this evening.

There was no further business to come before the Board.

Motion by Anderson, seconded by Milz to adjourn. The motion passed with all in favor and the meeting stood adjourned at 9:00 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____