

The Planning Board for the Town of Derry held a public meeting on Wednesday, January 11, 2012, 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; Darrell Park, Jan Choiniere (7:04 p.m.), Jim MacEachern (7:10 p.m.), Members; Michael Fairbanks, Ann Marie Alongi, and Anne Arsenault, Alternates

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk; Mark L'Heureux, Engineering Coordinator; Tom Carrier, Deputy Director of Public Works; Craig Durrett, Environmental Engineer/Geologist; Bob Mackey, Code Enforcement Officer/Building Inspector; Lynne Guimond Sabeau, Esquire, 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.

Mr. Fairbanks was seated for Mrs. Choiniere and Mrs. Arsenault was seated for Mr. MacEachern.

Escrow

#12-01

Project Name: Gennaro Estates

Developer: Robert Allen

Escrow Account: Gennaro Estates, LLC

Escrow Type: Letter of Credit

Parcel/Location: PID 04074 & 04075, Gulf and Bartlett

The request is to renew Letter of Credit #216930-3 in the amount of \$148,861.15, drawn on Enterprise Bank. The new expiration date will be January 2, 2012.

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

#12-02

Project Name: Bunker Estates

Developer: JEMCO Builders & Development, Inc.

Escrow Account: JEMCO

Escrow Type: Letter of Credit

Parcel/Location: PID 02020-001, 65 Fordway

The request is to renew Letter of Credit #20001082, amendment #9 in the amount of \$62,122.86, drawn on TD Bank. The new expiration date will be December 11, 2012. The original documents were received from the bank within the deadline imposed by the Planning Board on December 14, 2011.

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

Mrs. Choiniere was now present and seated. Mr. Fairbanks stepped down.

#12-03

Project Name: Rockingham Community Action

Developer: SNHS Management Corporation

Escrow Account: Rockingham Community Action

Escrow Type: Cash

Parcel/Location: PID 03097, 9 Crystal Avenue

The request is to establish cash escrow for the above noted project in the amount of \$12,037.25.

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

#12-04

Project Name: Gennaro Estates

Developer: Robert Allen

Escrow Account: Gennaro Estates, LLC

Escrow Type: Letter of Credit

Parcel/Location: PID 04074 & 04075, Gulf and Bartlett

The request is to approve Release #3 in the amount of \$59,788.37 and request a replacement Letter of Credit in the amount of \$89,072.78 for the above noted project. Upon receipt of the replacement Letter of Credit, the Board will release Letter of Credit #21693, drawn on Enterprise Bank in the amount of \$148,861.15.

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

Mr. Anderson requested that in the future, escrows concerning the same project be condensed into one request to make it more efficient. The request was noted by the Clerk.

Minutes

The Board reviewed the minutes of the December 14, 2011, meeting.

Motion by O'Connor, seconded by Bartkiewicz to accept the minutes of the December 14, 2011, meeting as written. The motion passed in the affirmative with Choiniere and Park abstained.

Correspondence

Mr. Bartkiewicz advised the Town has received notice from the Town of Londonderry that its Planning Board has determined the Woodmont Commons PUD Master Plan has regional impact. Londonderry will be looking for input from the Town of Derry. The Board also has a copy of the Change in Use applications for 2011.

Mr. Sioras advised that when a project is determined to have regional impact, the surrounding communities are notified. Londonderry will be looking for input from town officials and interested parties with regard to this proposed development. The Town of Londonderry would like the Town of Derry staff, officials, and Planning Board to review the information they have sent and provide comments because of the scope of the project. Comment should come from Public Works, Administration, the Planning Board and town staff. There may be potential traffic and environmental concerns. The town does not see too many projects of this scope. The information is available on line at the Town of Londonderry website, and there is also a copy in the Derry Planning Office.

Mr. MacEachern was now seated and Mrs. Arsenault stepped down.

Other Business

Review of elevations for Panera Bread

Mr. Sioras advised that as part of the approval of Pinkerton Place, the Board placed a condition that they would like to review the façade and architectural renderings of the new buildings and signs. Tonight, the Board has before it the elevations for Panera Bread.

Randy LaClaire, RKL Consultants, was present representing the owner. Dan Brennan, the architect for Panera Bread was also present. Mr. LaClaire advised the elevations show the building as seen from Manchester Road. The Planning Board has a packet that contains elevations for all four sides and sign locations. Mr. Granese asked if the tile component was actual tile or stone? It is tile. Mr. Brennan said the building is concrete block, and they do have stone specifications available if the Board requires them. Mr. Anderson noted the question had been asked because when Walmart came before the Board, the Board had requested that regional material, native to New Hampshire be used, such as granite. If that type of material can be utilized, it is preferred. Mr. LaClaire said they would take that under advisement and look for that.

Mr. Granese asked if there are any other Panera's that look like this one? Mr. Brennan said there are similar ones in Dover, and Newburyport, Massachusetts. The one closest to this would be Newburyport; that also has a drive-thru, but there are minor differences. Mr. Granese noted the design looks nice. Mr. Anderson asked if the awning over the drive-thru has accounted for snow

load? Mr. Brennan said they have never had an issue. The steel frame is very sturdy. Mr. LaClaire commented it is nice to see the change in the area, especially since the Tavern has been removed. Mr. O'Connor noted the outdoor seating with extra heat.

Mr. Anderson had a concern with the west facing view towards Manchester Road. This is a big, brown expanse with a little green sign. This is the drive-thru side. Mr. LaClaire thought that side faced Woof Meow. Mr. Anderson felt the plan set should be changed to indicate it faces Ashleigh Drive rather than Manchester Road, if that is the case.

Motion by MacEachern to accept the elevation plan as presented, with a change to the notations regarding the west/east elevations to conform to the roads they face, for example, west is Ashleigh Drive. Bartkiewicz seconded the motion.

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

Mr. Anderson added he spoke with 140 freshmen today at Pinkerton Academy. They were all thrilled to hear that Panera Bread is coming to Derry. Is there a timeframe as to when they might want to open? Mr. LaClaire said the design is complete and they will be submitting for the building permit next week. They would look to be in the ground within 60 days. A conservative estimate for completion would be June or July.

Other

Mr. Sioras advised the Town Council is scheduled to consider the floodplain zoning amendments on January 17th. He will be in attendance, as will Mr. Mackey. It is hoped the Town Council will vote to approve the amendments.

Motion by Anderson, seconded by Choiniere recess the meeting so that the Board may consult with Legal Counsel, and to invite Mr. Sioras and Mrs. Robidoux to attend. The motion passed with all in favor and the meeting recessed at 7:21 p.m.

Motion by Anderson, seconded by MacEachern to reconvene the meeting. The motion passed with all in favor and the meeting reconvened at 7:40 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 30, 2011.**

Motion by MacEachern to accept the revised plans received this afternoon by the Planning Department, seconded by O'Connor.

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

Motion by MacEachern to continue this public hearing to the next meeting to be held on January 25, 2012, as the plans were just received this afternoon, to allow staff and the Board time to review what has been presented. O'Connor seconded the motion.

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

Mr. Granese said this would give everyone enough time to communicate. Mr. Sioras said as part of the conditions of approval, Building and Fire were to review and comment on the revised plans. It is his understanding that Mr. Kersten and Mr. Mackey will do that over the next few days.

Attorney Robert Moran asked to address the Board. He thanked the Board for its consideration. They did not want the Board to think they were presumptuous enough to drop off plans at 1:00 p.m. and think the Board would just accept and review them right away. He wanted to explain the efforts to get the plan to the Board. Two to three days following the last meeting, he met with the architect. They came up and measured the building materials. Just after that, the architect had a bad accident on a job site and was hospitalized for several days. This put the architect behind on his work on the plans, which also had to be referred to an engineer. Attorney Moran stated he was made aware of the delay in early January and opted to wait to see if the required information could be pulled together by the date of the hearing so that it could get done. He appreciates the consideration and patience of the Board, and does not presume that he can drop off plans and that the Board would accept them the same day. Mr. Anderson stated it would be very helpful if the applicant communicates with staff so that the Board can be aware.

OTHER

Review of Source Water Protection Plan

Mr. Sioras advised a Local Source Water Protection grant, provided by the NH Department of Environmental Services, was awarded to Southern New Hampshire Planning Commission in 2010 to assist with the preparation of Derry's Source Water Protection Plan. This document would become part of the Master Plan, similar to the Open Space Plan, Recreation Plan, and Route 102 Access Management Plan. He wanted to commend Craig Durrett, Tom Carrier, Elizabeth Robidoux, Paul Dionne and Jack Munn for their work on this Plan.

Jack Munn, of SNHPC, presented. Groundwater is a valuable municipal resource. Once it is contaminated, it may never recover and it is costly to clean. Plans such as this are prepared to

help officials become aware of Well Head Protection Areas in town and potential threats to the system. Mr. Munn provided the following background on the Plan. Over the last year, the Advisory Committee has been putting this document together to be used as an advisory tool for staff and others to use. There were several goals and objectives including adoption of the Plan by the Planning Board as a part of the Master Plan. The Plan includes inventories and maps of active public water supply systems, well head protection areas, and potential contaminant sources along with potential vulnerabilities to those systems; and also provides guidelines and recommendations. In the town of Derry, half of the water supply comes from Lake Massabesic through Manchester Water Works, and the remainder comes from groundwater. There are 36 public water supply systems in town and 51 well head protection areas. One of the reasons these plans are prepared is because the state does not have regulations in place for well head protection areas. It is up to the local authority to determine how to protect the well head protection areas. Mr. Munn provided a copy of Map 3, Potential Contamination Sources. On this map, the salmon colored areas indicate areas with a higher vulnerability, with potential contamination sources indicated. The Aquifer Transmissivity Map is the latest and best map that shows the aquifer areas in Derry. The Advisory Committee is recommending this map be included in the zoning districts.

In this plan, Potential Contamination Sources have been identified and ranked. They all ranked as low to moderate threats to the Well Head Protection Areas. Options are identified in the Plan to protect the Well Head Protection Areas.

Mr. Durrett, Environmental Engineer and Geologist for the Public Works Department, advised that the Appendix D referred to in the presentation this evening has been removed from the Plan. The Committee felt that rather than providing exact wording to the Board for potential amendments to the Land Development Control Regulations, since there would be so many people involved in an amendment, it would be better to look at the regulations and see what needs to be changed. Mr. Munn advised there is funding available to purchase land to assist the town in its source water protection efforts. The town should also continue its efforts with the Household Hazardous Waste Day, the Pharmaceutical Take Back Day, and outreach and community awareness efforts.

Derry has a variety of protection programs but they need to be maintained and the public educated. The request this evening is for the Board to adopt this Plan as an element of the Master Plan. Additionally, there are a variety of other recommendations from the Advisory Committee as they relate to this plan.

- Adopt this Source Water Protection Plan as an element of the Town's Master Plan;
- Incorporate stratified drift aquifer map (#5) as part of Town's existing GRCD;
- Review the GRCD ordinance in comparison with state's model ordinance for revisions;
- Incorporate town's stormwater management regulations within the PB's Land Development Regulations
- Review and revise the Land Development Regulations to incorporate goals of this plan;

- Support ongoing DPW efforts to expand water and sewer service;
- Continue to update DPW's road salt management plan;
- Continue to support existing and future land conservation protection efforts of Conservation Commission that will provide additional aquifer and groundwater protection
- Seek grants from NH DES through wetlands mitigation programs and water supply land protection program for aquifer and groundwater protection;
- Pursue and implement as part of town's environmental outreach and marketing program education of the public about the importance of aquifer and groundwater protection;
- Encourage expansion of educational programs on groundwater protection in the schools (Pinkerton Academy Science Dept. and local elementary schools);
- Development of a brochure "what you can do to protect drinking water" to be distributed as part of Household Hazardous Waste collection events;
- Include a groundwater protection brochure in Welcome Wagon educational materials to all newcomers;
- Advertise Drinking Water Week promotion on Town's website and bulletin boards;
- Prepare a power point presentation to be shown on cable access; and
- Add a groundwater protection link to the Town's website.

Mr. O'Connor asked if it were possible to have a copy of this evening's presentation emailed to the Board? The volume of work this group did is remarkable and it will take a while to digest the material. Mr. Durrett advised the presentation can be emailed to the Board members in the morning. Mr. Milz asked if the Pennichuck system was included in the inventory and maps? Mr. Munn confirmed all the public water supply systems are included. Mr. Carrier explained the Well Head Protection Area map, found as Map 1 in the Plan. Mr. Milz asked where are the wells listed? Mr. Carrier explained that on the listing found at Table 1, some of the Pennichuck systems are indicated as "PEU". All of the Pennichuck, town owned and private water sources are listed in the plan.

Mr. O'Connor asked with regard to the Potential Contaminant Sources, are there any serious situations that the Board should be aware of that are red flagged? Mr. Durrett said that PCS' are areas with activity or storage of material where if the materials are improperly used or stored, they could contaminate the area. Known Contaminant Sources (KCS) are things such as a leaking underground storage tank at a gas station. That would be a known. There are no KCS' within the Derry Well Head Protection Areas. A PCS could be a gas station. He does not believe there are any in our Well Head Protection Areas. Other PCS could be agricultural operations that utilize fertilizer and manure. There are proper Best Management Practices that if managed, reduce the risk. If the BMPs are improperly managed, they can cause issues. The

Committee is recommending outreach to provide information and assist with proper Best Management Practices, utilizing existing information from DES and other agencies. Homeowners with improper disposal techniques can contaminate a private well. He noted half of Derry obtains its drinking water from groundwater. Mr. Durrett explained the Water Service Map (Figure 1). Anything that is white, obtains water from a private well. He further clarified that “half” is a number taken from population figures, not land area figures.

Mr. Fairbanks said this was an impressive report. There are a lot of recommendations. How does this Board and other Boards get moving on them? Mr. Durrett stated there are several action items, one of them is an update of the existing well ordinance. The current ordinance is out of date with current regulations which have changed since the ordinance was last approved. DES will have a new model well ordinance published this spring/summer. It makes sense to look at that and see what we can use. The LDCR will need to be reviewed with an eye to the current standards. The town developed Stormwater Regulations and a Storm Water Ordinance per the EPA because of the MS4. The Town provides an annual report to the EPA on its programs and stormwater pollution reduction efforts. Those regulations should be compared to the LDCR and cross referenced, to make sure they work together. Mr. Fairbanks said this sounds like a two year process. Mr. Durrett said it won't happen overnight, but the town will work on it. Regarding the outreach, the town will piggyback the programs so that it meets the regulatory requirements for all of its permits. The town already does some work with the schools, and the Beaver Lake Improvement Association. Not everything will stand alone. Mr. Milz confirmed this Board's goal is to take this Plan and approve it in its entirety.

Mr. Anderson asked, out of the sixteen recommendations, has a list been put together that indicates a timeline of where the town is in this process? Mr. Durrett felt it would be premature to do that tonight. The efforts involve different people. Some are easy and ongoing, such as updating the GIS with the updated Aquifer Transmissivity maps. Mr. Milz noted the first item is a recommendation to adopt the Plan. He recommends taking the next two weeks to review the plan and vote on adoption at the next meeting. Mr. Sioras agreed that would be beneficial. It will give the Board time to review the Plan and staff would be able to develop a timeframe to work on items.

Mr. O'Connor asked with regarding to recommendation number 9. Has Mr. Durrett spoken with DES regarding the funding that is available? With the budget cuts at the state level, some of the funding may not be readily available. Mr. Durrett advised there are several grants available from Forestry, DES, OEP and the I-93 Mitigation funds. Mr. O'Connor said there are matching grants available from NH DOT that require the matches come from town funds; that would require Town Council approval. Mr. Durrett explained there are some grants that require the matching funds come from the town, but there are also others where the town match can be made up with funding from other available grants.

Mr. Anderson advised he would like to see the town boundary added to Figure 1. With regard to grants, about \$15,000 was provided to SNHPC to prepare this plan; much of the effort came from town staff, so this is taxpayer money coming back to the town.

Motion by MacEachern to accept the Plan and move approval of it to the next meeting on January 25, 2012, to allow Board members time to review the Plan. Seconded by Bartkiewicz. All voted in favor and the motion passed.

Mr. Granese stated the Committee did a lot of work on this Plan and it is a comprehensive document. He thanked the Committee members for their work.

Follow up discussion – Proposed changes to the Town of Derry Zoning Ordinance, Sections 165-5, Definitions and 165-42, Industrial IV district.

Mr. Sioras advised that in December, the Board looked at suggested changes to the definitions and the uses in the Industrial IV zone. Attorney Boutin reviewed the suggested changes, and his comments are highlighted in yellow in the document before the Board this evening. Mr. Anderson had asked if non-profits and churches could be prohibited uses in the zone. Attorney Boutin recommends not prohibiting them in those zones based on Federal regulations for those uses. It is hoped the Board will approve the changes this evening and they can be incorporated and brought back to the Board to schedule them for a public hearing. The Industrial IV zone is in the area of the proposed Walmart/Panera Bread/Hannaford Plaza. The proposed changes clean up the zone and reflect the existing uses. Approval of the amendments would also make it easier for Mr. Mackey to interpret uses in that zone.

Bob Mackey, Code Enforcement Officer/Building Inspector, presented. There are two documents before the Board this evening. One is suggested changes to the zone, the other is suggested changes to the definitions that go with those uses, so that there is no confusion as to what fits in the zone. The Board reviewed the suggested changes to 165-42 first. The intent was to separate out manufacturing, from the industrial uses as there are differences. Manufacturing can include a retail component. Regarding the comment from Attorney Boutin on Home Occupations, residential uses are not allowed in this zone. When it comes to the prohibited uses, based on advice of counsel he recommends that the Board not list churches or non profits as prohibited uses. This would not be enforceable in court. Churches should not be excluded in any zone.

There were a few minor adjustments to the definitions contained in Section 165-5. He would like to move these changes forward if possible. It would make the zone more clear and identify what is allowed in the zone.

Mr. Milz asked if the heading on one of the documents could be changed from “Town Council” to “Town Counsel” so that there is no confusion. The recommendations did not come from the Derry Town Council. Are the suggested changes now complete? Mr. Mackey said he would clean them up and bring them back to the Board. Mr. Sioras said the goal is to bring the amendments back at the next meeting to schedule them for a public hearing, then they would move to Town Council.

Mr. MacEachern asked with regard to churches being allowed in all zones. Mr. Sioras advised research was conducted and churches were approved in Derry in the 1980s to be allowed in any

district. Mr. MacEachern pointed to Section 165-14. Mr. Mackey noted that is where the ordinance says that churches are allowed in any zone. Mr. Fairbanks noted this is not the same list of amended definitions the Board saw at the last meeting. Mr. Sioras explained that as the Board wanted to tackle the definition amendments separately, only those definitions that pertained to uses in the Industrial IV were included tonight. Mr. Mackey added that the previous document contained amendments prepared by Mrs. Robidoux for almost all of the definitions.

Mr. Chase asked if the Board would be looking at permitted uses versus prohibited uses being listed with regard to the zoning ordinance being a permissive ordinance? This seems to be a problem. Should the Board deal with it now? Mr. Mackey said that issue will need to come forward and Attorney Boutin has a valid point. The focus at this time is the Industrial IV.

Motion by MacEachern to accept the changes as proposed and schedule a public hearing at the next meeting, seconded by O'Connor. All voted in favor and the motion passed.

Mr. Sioras advised this would be placed on the agenda for January 25th and the hearing would be some time in February.

Motion by MacEachern, seconded by Bartkiewicz to adjourn. The motion passed and the meeting stood adjourned at 8:29 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____