

The Planning Board for the Town of Derry held a public meeting on Wednesday, February 8, 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; Jan Choiniere, Darrell Park, Jim MacEachern, Members; Ann Marie Alongi, Michael Fairbanks, Alternates

Absent: Anne Arsenault, Randy Chase

Also present: George Sioras, Planning Director; 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 the exits and meeting materials.

Mr. Fairbanks was seated for Mr. MacEachern.

Escrow

#12-05

Project Name: Boomer Wolf, LLC

Developer: Same

Escrow Account: Same

Escrow Type: Cash

Parcel/Location: PID 08275, 19 Manchester Road

The request is to rescind the vote made on January 25, 2012, and to approve a release in the amount of \$267,252.05 for the above noted project. The amount to retain is \$127,494.00. Mr. Sioras explained the escrow type is cash, not a Letter of Credit; in order to keep the record clean, the vote should be taken over again.

Motion by Anderson to approve as requested, seconded by Bartkiewicz the motion passed with all in favor.

Minutes

The Board reviewed the minutes of the January 25, 2012, meeting.

Motion by O'Connor, seconded by Bartkiewicz to accept the minutes of the January 25, 2012, meeting as written. The motion passed in the affirmative with Fairbanks and Park abstained.

Correspondence

Mr. Bartkiewicz advised the Board has received the winter 2012 issue of The Source.

Other Business

Yvon Cormier

Mr. Sioras advised that in November the Board approved a driveway access plan for this lot so that the owner could create access in order to market the lot. Once it is sold, a site plan will come to the Board. In the short term, the developer needs to do some selective tree cutting. The Board and Conservation Commission have already approved the tree clearing plan. The Board has a copy of the letter from Charles Moreno, the Forester who worked on the project, as well as the amended tree cutting plan. Mr. Cormier's representatives would like to give a quick overview regarding a proposed change to perform the tree clearing in one phase, rather than two. The thought was to have them come back and speak with the Board so that everything is in the record.

Chris Tymula of MHF Design, presented for the applicant. Also present was Charles Moreno. As discussed, the Board approved a Conditional Use Permit for the driveway crossing in November. Since that time, Mr. Roy from Cormier Development came to them and advised he wanted to start the tree clearing, but had a concern that the plan approved would not provide the visibility to the lot they had expected for prospective buyers. In speaking with Mr. Moreno, he felt that it would be better to take care of the tree cutting all at once, which would reduce the skidding impacts and be economically feasible. There are no wetland impacts nor are there any issues with specific trees. They are looking for feedback from the Board and they have been in contact with the Conservation Commission, who has a copy of the plan and letter before the Board this evening.

Mr. O'Connor asked when Mr. Moreno walked the area with Paul Dionne of the Conservation Commission, were there were any trees of particular concern? Mr. Moreno said there were not; any issues were mitigated in the area below. He reported he has walked the site recently to double check that.

Mr. Anderson said he would feel more comfortable having the Conservation Commission take a position before the Planning Board makes one. Mr. Moreno said he thought, since no wetlands were involved and it was a young forest, it made sense to do this as one operation to minimize the disruptions.

Mr. MacEachern was now seated and Mr. Fairbanks stepped down.

Mr. O'Connor asked when they thought to begin the harvesting? Mr. Moreno understood it to be this winter. It was noted Conservation meets next Monday. Mr. Sioras thought this could be tabled and bring it back in March.

Mr. Milz thought this was straightforward and maybe the Planning Board approval could be contingent upon Conservation's sign off. If Conservation does not approve of the change, then the Planning Board approval would be null and void. Mr. Fairbanks asked why this was originally broken into two phases? Mr. Tymula said for marketing. The marketing representative is suggesting this be pushed up to provide greater visibility and it will also create less disturbance on the site. Mr. Fairbanks asked if there is any benefit to doing this later? Mr. Moreno said the trees sit under the footprint of the proposed build out. It would take 30 years or so before it could grow back to what it is today.

Mr. Park thought there was a benefit to approving this change now, rather than in March, so that they could do the work while the ground was still frozen and keep the disturbance down.

Mr. Anderson noted it was said earlier the reason for clearing is to allow for additional marketing, but it appears there is a potential buyer. Mr. Tymula said he meant that people are looking at the site. There is no Purchase and Sales on the property.

Motion by MacEachern to accept the revised forestry management plan (tree cut phasing schedule), submitted by Charles Moreno for the Yvon Cormier North Development site plan, previously approved by the Board on November 30, 2011, located on Parcel ID 08280-004, 7 Ashleigh Drive, with the following condition: pending approval by the Derry Conservation Commission. The motion was seconded by Bartkiewicz.

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

Workshop

Zoning in the area of Webster's Corner

Mr. Sioras advised he prepared a memo dated January 30, 2012, for the Board. This past fall, the Board discussed the zoning at Webster's Corner. There is a map in the packets. The area is located near Grandview Flea Market, Dollar Bill's and Community Electric, in the area just north of the Robert Frost Farm. The discussions over the last few months were at the Town Council level and involved the potential to extend water and sewer to that area of town. Design work has been approved with possible expansion in 2013. The Board had said it wanted to take a look at what it would like to see in that area. It is possible, given the current situation with the site, that the lot containing the Grandview Flea Market might be sold. Based on all that, the Board wanted to take a look at the zoning in that area. In the past, the Board has held visioning workshops, that can take place on a Friday evening, a Saturday morning, or during the regularly scheduled Planning Board meetings. The Board can hold a series of workshops. The intent tonight is not

to make any decisions about zoning but to see when the Board would like begin the process to look at that zone. Once water and sewer reach that area, it will become more attractive for development. He would ask the Board to provide direction to staff as to when it would like to begin the process of looking at the zoning in that area.

Mr. MacEachern thought the Saturday morning workshops were very helpful and beneficial. It affords the Board the best opportunity to obtain citizen input, especially from those who can't attend a night meeting. Mr. Sioras thought it might be good to wait until April or May to have the workshop. Mr. Granese said keeping it to Wednesday evening would work better with his schedule, Mr. Fairbanks agreed. Mr. Sioras knew that people have ideas as to what they would like to see in that area, but they need to set a time to start the process. Mr. Anderson thought the Board could decide on a date at some point after the March election, since that date was a given. The Board was polled and the majority felt that Wednesday evenings would be the best and pizza can be provided. It would be an off night, where there are no public hearings. This can begin in April.

Impact Fees

Mr. Sioras said in the fall, the Board began the discussion with regard to impact fees. There has been some discussion as to whether the town would like to have some sort of impact fee where a developer coming into the area would pay a portion of the infrastructure improvement such as water and sewer extensions or road improvements, using a set formula. The other option is to create a TIF district, or a Betterment Assessment area where a fee is assessed to the development. He introduced Marty Kennedy and Gordon Leedy, of VHB. They have experience with impact fees and betterment zones used in other communities. They will provide the Board with a quick presentation to begin the discussion.

Mr. Kennedy said they would discuss impact fees and other financial options. They prepared a PowerPoint for the Board to begin discussion. Impact Fees refer to a municipality's ability to exact a fee from a developer as a means of off-setting the development's impact on the municipality. This is authorized under RSA 674:21,V. Impact fees must be determined in proportion to the impact the development will have on the municipal area, it can't be used to address existing deficiencies or regular maintenance. In order to have impact fees, a town must have a Capital Improvement Program. There are many different types of impact fees such as school, recreational, public safety, sewer, roadway, etc. The fees are used to offset future growth. Mr. Fairbanks asked if these are used for items already in the Improvement Plan or are they for items the town would like to see in the Plan in the future? Mr. Leedy said the idea is to take all of the different improvement plans from the schools, public works, etc., and combine them into one so that anyone coming into the community will have a roadmap that shows them what needs to be done and to assess what their impact might be as they are doing their due diligence to acquire a property.

Mr. O'Connor asked about looking forward. If something is on the CIP and has been for five years, does that make it ineligible to use the impact fee? Mr. Kennedy explained it does not matter how long something has been on the CIP, it matters what the impact will be with regard to future growth. For example, is a roadway being widened to accommodate future growth, or is it

being widened for routine maintenance? Their experience is with roadway or traffic impact fees. The overall methodology can be applied to any type of infrastructure. Mr. Kennedy and Mr. Leedy provided examples of the types of impact fees they have developed for other communities such as Hudson and Salem. Timing has a lot to do with the success of the impact fees. For roadway improvements, the town takes a look at the future plan, the cost of the plan, its capacity, how much of the capacity is used by the existing, and how much will be used by new development. With this information the town can put together fairly simple formulas. In Hudson, the formula is based on the total capacity that includes future development and traffic. It takes into account existing traffic and the available reserve capacity. That is what is available in the plan, minus the existing. The fee is based on the total cost multiplied by the number of trips used by the new development, over the total capacity. For any impact fee system the municipality needs to make sure there is a rational nexus to the development and what its impact will be, in this case, on the roadway. Mr. Kennedy and Mr. Leedy recommended dividing the town into zones so that the town can make sure it is applying the correct impact based on the projects in those zones. Fees can be estimated based on the square footage of uses, based on the zone. There are several methods to come up with impact fee systems, but the town needs to make sure the fee is tied to the impact of that particular development.

Mr. Kennedy reviewed the pros and cons of impact fees. On the positive side, there is an ordinance that provides the authority. Fees offset the development cost and provide a revenue stream, which lowers tax impacts. They are also predictable. Many developers are agreeable to impact fees if they are reasonable and they know what the expectation is going into the project. Mr. O'Connor asked if developers look at communities and compare impact fees? Mr. Kennedy said that might be a negative. Towns don't want to scare developers away. If two communities have similar benefits, with one charging an impact fee and one does not, that will be a consideration. Also on the negative side, there is administrative time involved, there is added cost to the developer, the fees are fixed and they are non-negotiable, although they can be waived. If they are waived, the municipality picks up the cost, not other developers. The impact fees fund a relatively small portion of total costs. As just discussed, there is disincentive to development if the fees are disproportionately high. It can be many years before the town can collect sufficient funds to build something. It is important to remember that impact fees come in as the development comes in. The town can plan for things such as traffic signals or intersection improvements so that when the impact fees come in, they are able to do those projects. For things such as sewer and water expansions that are needed to encourage economic development, there are other things that can be discussed.

Mr. Leedy stressed the money collected from impact fees needs to be segregated from the general fund. It has to be dedicated to one project, and used within six years, or the funds go back to the developer. If the primary goal is to encourage economic development, there might be better ways to do that. One of them is by using a TIF or a Betterment or Special Assessment District.

The Tax Increment Finance District (TIF) has been around for a while, and there are many misconceptions such as the town is giving up revenue. It is important to note that without the improvements the town is willing to participate in, with funding through TIF financing, the development would not have occurred, and therefore there would be no building of the tax base

in that area. A TIF refers to a municipality's ability to recoup the incremental tax revenue from land that is developed after establishment of the district. It captures all increased property tax revenues generated by development within a TIF district to fund public infrastructure improvements and operating costs. The incremental tax revenue is the difference between what the tax was before the improvement occurred and what it is after the improvement. Bonds are able to be paid back sooner utilizing the revenue generated by the TIF. Mr. Leedy reviewed the process to implement a TIF district. A financing and development program plan is developed and adopted as part of the process. He then provided an example of how the incremental tax value is calculated and where the funds are applied in the budget. It was confirmed the tax assessment is based on the value as of April 1st of each year. Mr. Leedy reviewed the essentials when establishing a TIF district which included the necessity to have a written agreement with the developer that backstops the TIF. If the development gets delayed and the revenue does not come in, there should be an agreement that the developer will pay the bond payments in any event (through bond payments or tax revenue). The town should consider working in phases, as the scope of the TIF can be expanded. The developer should guarantee the assessed value, and make sure they are not planning on selling to a tax exempt entity. Reserves should be established to keep a year of operating costs and debt service on hand to protect against economic declines. He also suggested holding back some tax revenue for appeals of assessed valuation. He used as an example the development in Hooksett, at Exit 10. That district was a resounding success for the Town of Hooksett and funds were paid back into the general fund sooner than expected. Concord and Nashua have also had great success with TIF districts.

Another opportunity would be Betterment Assessments. They allow implementation of improvements that are funded by a surtax or fee on benefitting properties. The fees need to be rational and fair. Derry has several projects it may want to do from an economic development standpoint. Betterment Assessments would allow benefitting landowners to take advantage of the municipality's lower finance charge that is paid back through a surcharge or fee. It is usually used by water and sewer departments for utility extensions. He believes it should be approved by the affected landowners and should not be imposed on the landowners. Any economic development is a result of a partnership between the town and landowners.

Mrs. Choiniere asked if a particular project had to be in mind if the town was using impact fees as they had to be returned if not used in six years? Mr. Kennedy did not believe that any of the communities he worked with ever had to return the funds because they hit the six year mark. For a traffic signal, if the town provided the difference required, the project can be done. Mr. Kennedy felt it would be difficult to fund new schools with impact fees as they are a different type of project than traffic improvements.

Mr. Granese recalled the town did something similar on Tsienneto Road. Mrs. Alongi asked if impact fees were collected on future developments, could the town spend the money as it wished? Mr. Kennedy explained the funds are collected as development comes in; they are charged the proportional share of the future road improvement, but the funds can only be spent to fund those particular road improvements.

Mr. Granese commented if the state comes in and upgrades the infrastructure at Webster's Corner, the town knows that the fund won't be able to be used for that infrastructure. Mr.

Kennedy said the town can only collect money on what it will be spending its own funds on. Mr. Anderson said in this area, the project would be water, sewer, and drainage; the state upgrades the road. The town would capture impact fees for the water, sewer and drainage improvements. The plan would have to be laid out large enough so that it is not constrained by the six year rule; the town would be paying itself back for the money spent on the improvements, and may use the fees to pay back the bond.

Mr. Granese confirmed that impact fees could be collected to pay back the bond that was established to fund the improvements. Mr. Leedy agreed, but noted that the town will always have to pay for something. The town has to make sure the fees are fair, proportional and reasonable. Mr. Kennedy suggested the last step in creating fees it to take a look at them and make sure they are proportional based on reality, and what other communities are charging to keep it economically feasible.

Mr. Fairbanks asked, where in the planning process should the town look at impact fees, specifically with regard to the proposed improvements on Route 28 at Webster's Corner? Mr. Sioras commented the Board had been asked to consider it as the town discusses infrastructure improvements in that area. Mr. Anderson said the town is considering doing the actual construction of the project in 2013-2014, so if the fees were put in place now and the plan was developed, when development happened, the developers would pay the impact fee. Ms. Alongi asked if the current TIF districts were working well? Mr. Anderson said the Ash Street TIF district is working extremely well; it is on track to be paid off early and is generating revenue for the town. The TIF district just approved on Manchester Road was projected at 5.4 million, it is now 3.4 million. The bond rate is 2.75%. The projected growth, based on the projects in the area, will easily pay off the bond.

Ms. Alongi asked does the town raise the cash through the municipal bond and then pay it back from the developer? Mr. Anderson gave an example of how the properties in the TIF district provide incremental value based on new development and how that goes to pay the bond. There are pros and cons for impact fees and TIF districts. They are tools for the tool box. TIF districts are typically used for economic development, where impact fees are most likely used for residential development. If Derry had impact fees back in the 1970's, Derry might look different today.

Mr. Leedy noted they are powerful tools, but need to be used in the right way and there are rules to be followed. Mr. Milz said the Town Council wanted the Board to look at impact fees because they know that the town will need to finance the bond for the sewer improvements, and that will have an impact on the tax payers. The landowners in the area will double or triple the value of their property, based on what the Derry taxpayers have done. Their intent is to find some way to put some type of assessment so that they pay their fair share of the increased land value. It appears there are a number of options for the board to consider.

There was no further business before the Board.

Motion by Milz, seconded by Anderson to adjourn. The motion passed and the meeting stood adjourned at 8:20 p.m.

Approved by: _____

Chairman/Vice Chairman

Secretary

Approval date: _____