

The Planning Board for the Town of Derry held a public meeting on Wednesday, February 22, 2012, at 7:00 p.m. at the Derry Municipal Center (3<sup>rd</sup> floor meeting room) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman, John O'Connor, Vice Chair; David Milz, Town Council Representative; John P. Anderson, Town Administrator; Randy Chase, Administrative Representative; Jan Choiniere, Darrell Park, Jim MacEachern (7:09 p.m.), Members; Michael Fairbanks, Alternate

Absent: Frank Bartkiewicz, Anne Arsenault, Ann Marie Alongi

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk, Mark L'Heureux, Engineering Coordinator; Craig Durrett, Environmental Coordinator/Geologist; Frank Childs, Chief Financial Officer

Mr. Granese called the meeting to order at 7:02 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. Bartkiewicz. Mrs. Choiniere filled in as Secretary Pro-Temp in the absence of Mr. Bartkiewicz.

### **Escrow**

#### **#12-06**

**Project Name: 38 Maple Street Condos**

**Developer: JRV Homes**

**Escrow Account: Same**

**Escrow Type: Letter of Credit**

**Parcel/Location: PID 29177, 38 Maple Street**

The request is to approve a final release in the amount of \$10,150.27 on Letter of Credit #5543249525-2, drawn on River Bank, for the above noted project. The amount to retain is zero.

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

Mr. O'Connor added that this marks the closure of a project that went very well and added a lot to the neighborhood. The site looks great.

### **Minutes**

The Board reviewed the minutes of the February 8, 2012, meeting.

Motion by Anderson, seconded by Choiniere to accept the minutes of the February 8, 2012, meeting as written. The motion passed in the affirmative with Chase abstained.

### **Correspondence**

Mrs. Choiniere advised the Board is in receipt of correspondence from Alternate Ann Arsenault. She advises that due to changes in her work and school schedule, she will not be seeking reappointment to the Board at this time. The Board has also received the new edition of *Town and City*.

### **Other Business**

Mr. Sioras advised abutters to the Adams Pond subdivision had an opportunity to view the plan and ask questions of the engineer prior to the public hearings while the Board was dealing with other matters. The plan was available in the training room.

### Presentation of Preliminary Capital Improvement Plan FY 2013-2018

John Anderson, Town Administrator and Frank Childs, Chief Financial Officer presented. Mr. Anderson advised the Board has a memo before it. In accordance with Section 9.8 of the Town Charter, the Board is being presented with the preliminary Capital Improvement Plan (CIP) for Fiscal Years 2013 to 2018. The memo highlights items contained within the CIP and he and Mr. Childs are available to answer any questions the Board may have. Per the Charter, they are required to present the CIP to the Board prior to the budget being placed before the Town Council. There is one correction to the memo: on page 2 the total appropriation (2012) for the Route 28 South wastewater system expansion is \$1,975,500 rather than \$1,968,500. Mr. Anderson advised the Finance Department has begun review of the departmental budgets.

*Mr. MacEachern entered the meeting and was now seated.*

Mr. O'Connor asked if the CIP can be revised between now and when it is presented to Council? Mr. Anderson explained the CIP will be adopted as part of the budget and is subject to many amendments during that time. Mr. O'Connor reported there was a recent Executive Order received by the State Legislature from President Obama that impacts wastewater treatment facilities in New Hampshire. Information provided to him yesterday from the Town of Dover anticipates an 18 to 35 million dollar revision to their treatment plant to bring the system into compliance. This will have an effect on the budget. Mr. Anderson advised Mr. Carrier is well aware of the Order and that the Town of Derry's system, at this time, is not affected.

Mr. Milz inquired what is the Planning Board's role in the presentation of the CIP? Does the Board make suggestions or revisions or is it just for their information? Mr. Anderson explained the Charter requires that the Plan be presented to the Planning Board so that the planning agency

for the town is aware of anticipated municipal projects over the next five years. They are happy to take input from the public or Planning Board on the Plan. Mr. Milz asked if it was an oversight in the Charter that it is presented to the Board at this time? Mr. Anderson felt that this would not rise to the same level as some of the other Charter amendments. Mr. O'Connor noted that presentation to the Planning Board is also required under the RSAs.

Mr. Anderson stated he would like to acknowledge the work the Finance Department does to let the departments know what they have available to create this document. There is a tremendous amount of time that the Departments and Finance spends on the CIP and he wanted to acknowledge their efforts.

Mr. Childs said they have highlighted the Route 28 expansion. That project has been rearranged. There are other projects on Rockingham Road/Route 28 and a replacement plan for the Transfer Station that will bring in more revenue and support the cost of the project. They also want to bond the wastewater expansion on Rockingham Road in 2013, assuming the Town Council approves the noted projects.

Mr. O'Connor asked with regard to the bond market and the town rating. Mr. Childs advised the town rating is excellent. The town is rated two from the top. They are below 4% for the Route 28 bond. The markets are remaining stable. Because of the efforts of Town Council and staff, the town has a good fund balance. Mr. Anderson explained that the TIF bond (3.4 million) has a rate of 3.75%. They did meet with the financial advisors for bonding several weeks ago and are considering being rated by Standard and Poor. Currently, the town is rated only by Moody. The agencies who bid on the town bonds are bidding lower because of the town's sound financial status.

Mr. MacEachern asked what is the level of bond indebtedness over the six year period of the CIP? Are there bonds that will retire in that period? Mr. Childs said they look at the total debt service as opposed to the total bond level. They are in good shape with regard to their bond level. They try to maintain the debt service on the bonds with good interest rates. The important item is the debt service, not the level of the bonds. Mr. MacEachern said a certain number in the tax rate is affected by bonds. When the 30 year plan was developed, they looked at the bond rate so that particular portion of the tax rate remained level. Mr. Anderson noted that not everything contained in this CIP is bonded. Mr. Childs stated they attempted to level the debt service so that there is no increase in the tax rate. Mr. MacEachern noted the large bond amount anticipated for 2013. Mr. Childs said they will have bonds retiring; the TIF district bond is supported, but without the debt schedule in front of him, he cannot be more specific.

Mr. Anderson said they look forward to any input from the Board or members of the public with regard to the CIP. Mr. Childs advised they will be working on this over the next month. The target date to bring the budget to the Town Council is March 30<sup>th</sup>.

#### Adoption of the Source Water Protection Plan

Mr. Sioras advised the Board has seen the Source Water Protection Plan previously. There were several suggestions and recommendations made, and the Source Water Advisory Committee

answered the questions that were posed to the Committee. Craig Durrett is present this evening to answer any questions. He worked on the plan along with Tom Carrier, Elizabeth Robidoux and Paul Dionne.

Mr. Durrett asked if the Board had any questions? The Source Water Protection Plan was devised to look at drinking water protection in town, mainly community public water supplies (not including private wells). The plan looked at the adequacy of current regulations to see if there were any portions that needed updating or amendment to be in compliance with current regulations. The Plan also looks at public drinking water supplies, well head protection areas and any potential contamination sources to them. Since the first presentation, there were questions posed relative to the Plan. The Committee responded to them and incorporated some of the items into the Plan. The revised Plan was redistributed to the Board late last week. At this point, he would like to answer any further questions. It is believed the Plan is ready to be adopted as part of the current Master Plan.

Mr. O'Connor thanked Mr. Durrett for answering his questions. The responses were in depth, enlightening, and he was glad to see the changes incorporated into the document.

Motion by O'Connor to adopt as part of the Natural Resources Chapter of the 2010 Town of Derry Master Plan, the Source Water Protection Plan, dated February, 2012. The motion was seconded by Choiniere.

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

Mr. Granese thanked Mr. Durrett and the Committee for their hard work on the Plan.

## **Public Hearing**

**Kerri A. Gross**

**30177, 8 Birch Street**

**Acceptance/Review, Site Plan Determination**

**Conversion from commercial to residential**

Mr. Sioras provided the following staff report. The purpose of this plan is for a change in use from offices to two residential units and a commercial/office area of 1,085 square feet, which includes an existing hair salon which is located in the carriage house. The property used to be a counseling center. There is adequate parking both on and off site as well as public street parking and municipal parking. All town departments have reviewed and signed the plan. There are no waiver requests nor are state permits required. He would recommend approval of the Site Plan Determination.

Mr. Sioras advised he did receive a phone call from an abutter who was unable to attend this evening. Christine Devito Martinos, 10 Birch Street, is in opposition as she felt this change would create traffic issues.

Timothy Peloquin, Promised Land Survey, presented for the applicant. Mr. Peloquin advised there will be no expansion to the building or the property. The owner would like to have the opportunity to rent two apartments, one above and one below, as the building was used that way previously. There are residential uses throughout this neighborhood, mixed in with commercial. Ms. Gross realizes that if she does something different than what is depicted on the plan, she will need to come back to the town. He would surmise that there would be less traffic with a residential use than there would be with strictly commercial use on the property.

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

There was no public comment.

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

Mr. Granese inquired if DPW had any comments on this plan? Mr. L'Heureux said there were none.

Mrs. Choiniere commented she felt there would be less traffic with residential than commercial use as the residents would likely leave in the morning and come back at night.

Mr. Anderson inquired if there are dedicated parking spaces for the residential use? Mr. Peloquin directed attention to Note 4 which details the parking calculation. The calculation shows ample parking on site. He can dedicate 4 residential spaces on the plan. Mr. Anderson noted there is parking on both sides of the building. How do people access the carriage house? Mr. Peloquin stated customers use both sides of the building to park although they primarily park on the right side. They can enter through a small area to the rear (85 sf). They may end up using that area as part of their space. The residential parking will be in the area of the nine spaces.

Motion by O'Connor to accept jurisdiction of the Site Plan Determination application before the Board for Kerri Gross, located on Parcel ID 30177, 8 Birch Street, seconded by MacEachern. Discussion followed.

Mr. Anderson asked if the underlying zoning in this area will cause any issues? Mr. Sioras said no. This is the Central Business District which allows for both housing and commercial use.

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

Motion by O'Connor to approve subject to LDCR, Section 170-51, Site Plan Determination, with the following conditions: subject to owner's signature; mark off four (4) designated parking spaces for residential use; the above conditions are to be met within six months; provide interior plans to the Fire and Building Departments prior to renovation and obtain appropriate town permits (subsequent); any change in use converting the residential use to commercial use shall require Planning Board approval (subsequent).

Mr. Anderson felt adding the parking spaces would be better planning since on street parking is not available year round. Mr. Peloquin agreed and felt the residents should have the preferred parking.

The motion was seconded by Choiniere.

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

**Jean Gagnon**  
**12119-001, 103 Old Chester Road**  
**Acceptance/Review, 10 Lot Subdivision**

Mr. Sioras provided the following staff report. The name of the project is Deer Run at Adams Pond. The purpose of this plan is for a ten lot subdivision located in the Low Density Residential District. All town departments have reviewed and signed the plan. There is a letter in the packets dated January 24, 2012 from Eric Mitchell & Associates, requesting a waiver from LDCR Section 170-26.A.17, Streets, for a roadway embankment slope to exceed 4:1 slope. NHDES state subdivision and wetland approvals are pending. He would recommend the Board hear the abutters and the overview from the applicant, and schedule a site walk for a Saturday in March.

Eric Mitchell presented for the applicant who was also present. The property is identified as Tax Map 12, Lot 119-001. It is located at the corner of Adams Pond Road and Old Chester Road and is 85 acres in size. The lot includes Adams Pond; most of the surface of the pond is on the property. The purpose of the plan is to divide the 85 acres into nine house lots. There is already one existing home, so there would be eight new homes. The lots will all be three acres, with at least 250 feet of frontage. This is the Low Density Residential zone. The plan shows three lots on Old Chester Road, and six new houses on the proposed Deer Run Road, which is 1000 feet in length from the entrance to the beginning of the cul de sac. The cul de sac itself is approximately 300 feet around. The road will be constructed at a grade of 1 ½ to 2%, so will be fairly flat, and will be constructed to town standards. The intent is to install a fire cistern along the road as well. All the lots have been sized by soil type. The soils are well drained and moderately drained glacial till, and the slopes are between 3 and 15%. The site is located within the Shoreland Water Quality Protection Act (formerly known as the Comprehensive Shoreland Protection Act). This means that uses within 250 feet of the water are restricted. Anything shown on the plan behind the green line toward the road is not within the district. Under Shoreland, going from the waterline, within zero to 50 feet, little can be done; within 50 to 150 feet, a home can be

constructed and limited clearing can occur; within 150 to 250 feet, limited commercial use can occur but precludes uses such as a salt shed or fertilizer yard. They propose to place the homes outside of the 250 foot buffer. Each individual house would need a permit if they happened to fall within the 150 to 250 foot area. They wanted to make sure that at the time of subdivision, they could get everything on the lots to fall outside of the 250 foot buffer. They have filed an application for a wetland crossing and there will be just under 5,000 square feet of impact. The Conservation Commission has reviewed the plan and the application is approved. As part of the application tonight, they are applying for a Conditional Use Permit. Keach Nordstrom Associates (KNA) has reviewed the plans and has no issue with the granting of the Conditional Use Permit. They are requesting a waiver from the slope requirement. They would like to have a 2:1 slope which is steeper than the town regulations. This is to limit the amount of fill that goes into the wetland. KNA agreed with that as well.

Mr. Mitchell advised he has reviewed the KNA report and they have made all the suggested changes to the plan. They did not bring the revised plans this evening as they want to be able to incorporate Board comments in any revision presented to the Board. The KNA requirements were mostly editorial. They have met with the abutters this evening and they are all aware they have a chance and a right to speak this evening.

Mr. Anderson advised he wanted to share information regarding the dam and conversations with Mr. Gagnon. Mr. Gagnon has made a formal proposal to the Town for the dam. The Town Council is currently reviewing the proposal and there is no decision yet. The plan before the Board shows a lot to be dedicated to the Town which includes the dam; so the pond would stay if the town accepts that. There is an active discussion relative to the ownership of the dam, keeping the pond, and access to it. Those pieces are all in play and under discussion, but he wanted to stress there is no final agreement.

Mr. Fairbanks asked if the dam goes away, does the layout of the lots change? Mr. Mitchell said it did not. There was an early misconception that Mr. Gagnon wanted to take the dam away for more land and more lots. That is incorrect. The State said the dam needs to be fixed or taken out. Mr. Gagnon cannot rebuild the dam to the State standard. If the dam comes out, the area would become a large wetland, but there would be no increase in the number of house lots. The rear of the property is not developable because whether it is a pond or a wetland, permits could not be obtained to develop it. The dam is a separate issue. Even if Mr. Gagnon was not proposing a subdivision, a decision regarding the dam would have to be made.

Mr. O'Connor asked if the dam goes away, what would be the configuration and flow of the creek? Mr. Mitchell was not certain. It is possible it would meander through the middle of the lot. Water does come in at the edge of the property and there may be a southern tributary, but he has not looked at the low flow, satellite imagery for that area.

Motion by Choiniere to open the public hearing, seconded by Anderson. The motion passed in favor and the floor was open to the public.
--

Harold Schnitzlein, 11 Bayberry Lane, stated he has concerns regarding the proposed septic and leach fields. Mr. Mitchell has told them that all of the State laws were followed. The same State

laws were followed on Cape Cod and they have problems with the septic systems and low water levels. He fears septage will wind up in the pond. Mr. Mitchell explained the state has approved the subdivision plan which showed test pit results as well as the 4,000 square foot receiving areas and the protective well radii. The individual septic designs for each lot are not done yet, as they would have to be submitted with each of the home's building permit, after subdivision approval. The State has approved the subdivision application utilizing septic systems and wells.

Kelley Martin, 6 Bayberry Lane, has lived there for 16 years. She is concerned with the impact to the families, neighbors and Derry residents. She has a concern with the proposed public access area around the pond. The current area around the pond is a quiet and serene area and it's not a recreation area. It is a great concept to open the pond up to the public, but it raises problems. The public access is close to Old Chester Road and Adams Pond Road and creates a hazardous condition. They are both narrow roads with a dangerous bend in the road right at the dam. Encouraging people to stand on or near the dam is not safe and children or intoxicated people could fall in. This will increase the tax cost because of the impacts to Police, maintenance of the dam, signage (No Parking on Old Chester, Adams Pond and Bayberry), the placement and emptying of trash containers, the installation and maintenance of portable toilets, and the installation and upkeep of a natural barrier to block views of the toilets, trash containers and parking lot. After dark, it could become an attractive nuisance. The parking lot could become an overnight campground. There is potential for overflow parking to occur on Bayberry Lane. She has concerns for the residents on Bayberry Lane and Adams Pond Road. There is no way to limit the access to just Derry residents who would pay for it all.

Ms. Martin stated she had recommendations for Mr. Gagnon to consider both during and post construction, such as no parking or driving on Bayberry Lane at any time by construction vehicles, and the adoption of a 50 year covenant for the new residents. The residents of Bayberry Lane have covenants on their property and she feels it is in Mr. Gagnon's best interest to adopt them. It would protect the abutters and the new residents of his property. The covenants cover items such as the style of homes that are consistent with the character of the area, placement of sheds and garages so that they are in harmony with the exterior of the homes, the prohibition of mobile homes and trailers and things of that nature.

Mr. Granese asked if the Bayberry residents pay an association fee? Ms. Martin said they do not. They purchased the property with the covenants in place. Mr. Sioras said in this area, there had been a plan for a Planned Residential Development which is similar to a cluster or open space development. There was common ownership of land. The developer put covenants in place on some of the properties. The subdivision ended up not being developed as an open space development. The covenants are common with these types of developments. Ms. Martin said she would leave a copy of the covenants. Mr. Granese said a copy would be made available to the developer. Ms. Martin stressed the residents do not want to see tradesman, daycares, animals other than common household pets, and things of that nature. This would include the prohibition of horses. She had a question with regard to blasting for the new homes. They are concerned with the effect that may have on their foundations, wells and septic systems.

Mr. Granese said he assumed there would be a pre-blast and post blast survey conducted so that residents are assured that anything caused from blasting would be covered. Mr. O'Connor said



he lives near the new Walmart site, where they have been blasting for 45 days. The blasting is controlled by the Fire Department. The blasting will be done at various levels and there won't be any 'megablasts'; all the blasting is controlled. The Fire Chief ensures that is in place and issues the permit.

Ms. Martin inquired with regard to their wells. Have there been studies performed of what might change with regard to the functionality of their wells and the groundwater levels? Mr. Mitchell stated they did not do a water study for these lots. In the areas where the homes will be located, the lots are large (more than an acre) and there is usually sufficient water based on his experience. This subdivision has less density than the residents have on Bayberry. Ms. Martin asked if there are any studies that can be done prior to construction so that they can have a level of confidence that their wells will not be effected by the wells for the new homes? Mr. Mitchell said water quality testing and the depth of well needs to be reported to the Well Bureau at the State. There is no protocol for them to do a study in areas where there are no known water problems. There have been requirements for studies or test wells in areas where there are known water problems, but that is not the case here. Ms. Martin asked if Mr. Gagnon would pay for individual well studies to be done on their properties so that they will know if there is an impact? Mr. Mitchell said the developer probably won't pay for that. Ms. Martin said they could have a problem but won't know about it until after the new homes are built. Mr. Mitchell said based on his experience, he does not feel the existing residents will have a problem. He does not believe the applicant is willing to pay for a study to see what the residents have now, so that they can see what they will have after the new homes go in. Ms. Martin asked if the Board had experience with this type of situation where the abutters could have a problem with their well?

Mr. Granese commented he is not a well expert but understands that everything is based on the fracture. The applicant will do test pits. He explained how it is possible to have a good flow rate on one property and not have the same success on an adjacent lot; it all depends on where the well is drilled into the fracture. Mr. Sioras recalled one project where the town required a study be performed, he believed it was in the area of Goodhue Road, where the town knew there were issues with ledge and a lack of water. The Planning Board hired an outside consultant to perform a well study. He stressed that in that case, there was a known well problem. This area is different.

Mrs. Choiniere recalled the issues on Drew Road where there were also problems with ledge, which is common in that part of town. Mr. MacEachern felt ledge issues and water issues were different, but the Board could bring this issue up with the developer.

Ms. Martin asked if the developer has waived rights to build on the remaining acreage or to further subdivide it? There are some large parcels in this plan. Mr. Mitchell stated there will be no waiver of rights. The developer cannot build on the other side of the pond because he does not have frontage. There cannot be a bridge constructed over the pond or wetland, nor can they cross it, because the State will not approve it because of the excessive amount of fill that would be required. For this subdivision, they will utilize the land as it is. He is not sure of the disposition of the rear portion. This developer has no plans, but he cannot speak for the other landowners on that side of the pond. Ms. Martin asked if there is any condition in which

Bayberry would be used as a cut through to access another parcel of land? Mr. Mitchell said there is not. This is not Phase I of a multi-phase project.

Susan Morgan, 9 Bayberry Lane, stated she has lived in her home for sixteen years. She supports the public access comments. The residents are concerned with the opening of the public access and would like to retain the rural nature of their properties. They do not want to deal with too much calamity there. They don't want their property devalued. Is there any time table on when the public parking would be finalized and where they could go with those concerns? Mr. Anderson said he cannot give a time frame. Mr. Mitchell explained Mr. Gagnon has until the end of 2012 to decide what he is going to do with the dam; irrespective of anyone else helping or not. The dam needs to be finalized by 2013, so he will need to decide this year as to what exactly will happen to the dam.

Ms. Morgan spoke with regard to covenants; they are a significant marketing tool. Subsequent owners are kept to the document and it ensures the area stays nice. They feel strongly about their properties and want to keep their neighborhood nice, not overly built out, and without any trouble.

Marion Schnitzlein, 11 Bayberry Lane, stated she has not lived here long. They moved here because they love the pond, and the quiet and clean neighborhood. She is concerned about the pond and the parking area being open to the public. She understands Mr. Gagnon would be creating a lot for that purpose. Mr. Anderson said part of the proposal under discussion is that Mr. Gagnon would construct the parking lot at the same time he is constructing the subdivision. Mrs. Schnitzlein confirmed the proposed parking area is immediately adjacent to the road. She said they are concerned with teenagers hanging around in the area, fishing, bait boxes and beer bottles floating in the pond. Who will clean this up? Who polices the parking lot against clandestine activities? Is it in the plan that some of the pond will be drained or lowered because of the six to eight homes that are to be built? Mr. Anderson said it is not. Mrs. Schnitzlein asked if the pond will stay exactly as it is? Mr. Anderson said if there is no agreement with the town, and the dam is removed, the pond could become a stream. Mrs. Schnitzlein said it was stated to the residents that if there is no development, the pond will be drained. She felt that was a threat that if she did not go for these homes, that the pond will go away.

Mr. Anderson explained there are two issues and they are very separate. The first is that the Dam Bureau has stated this dam is not to code. The owner, Mr. Gagnon, has until the end of the year to come up with a plan to repair or remove the dam. The State does not care which option he chooses. From Mr. Gagnon's perspective, it is less expensive to remove the dam than to repair it. The town has looked at several dams that have been repaired around the state. Some are expensive, some are not. The residents need to remember the dam is a separate issue from this subdivision proposal. Mr. Gagnon can go forward with the subdivision no matter what he decides to do with the dam or the pond. Realistically, the value of the lots is enhanced if they have a water body behind them. To have a wetland or creek does not make them as attractive. Mrs. Schnitzlein said they do not want bugs and animals from that area in her neighborhood. If this goes through, will the pond stay at the same level of depth? Will the pond be emptied or lowered? Mr. Anderson said the pond will either stay and remain at its current level, or become a creek. Mr. MacEachern reiterated the dam issue has nothing to do with this plan. There is no

relation between the subdivision and the level of water in the pond. They are coming together at the same time, but they are two different issues. Mrs. Schnitzlein felt the water and the homes have something to do with her on Bayberry Lane. Mr. Anderson advised there is a group in town that would like save the pond and that group approached the Council before this subdivision was brought before the Board. Mrs. Schnitzlein asked how long will it take to finish this subdivision? She has heard five years but there is no clear answer. The road might take three months, but the homes may take longer.

Mr. Sioras said the developer has to put up escrow for the project and that has a five year timeline. That protects the abutter and the town so that the road could be completed. Road construction normally occurs first and the economy and the market drive the construction of the homes. The Planning Board can put conditions on the plan and can add a time frame to complete the project. If the project is not completed within that time frame, the developer will need to come back to the Board. Mr. Mitchell noted the Board has stated the dam and the subdivision are two different issues. His firm was hired to look at the subdivision before the State looked at the dam. The outcome of the dam is not tied to the outcome of the subdivision approval and the two are not connected. Whether or not the subdivision is approved, Mr. Gagnon still has to deal with the issue of the dam.

Steven Balloch, 10 Bayberry Lane, felt the two issues need to be connected. He felt the town has leverage. If the town approves the subdivision without knowing the future of the dam, the town will lose the leverage. The residents see them as one and the same issue. Mr. Anderson said the town does as well, but he can't discuss negotiations between the town and Mr. Gagnon. Mr. Gagnon has ties to this neighborhood and likes the pond as well. But, the State has put this pressure on him and the town for its dams. The town is removing its dam at Beaver Lake. In Chester, \$250,000.00 was spent to repair its dam. People who are not direct abutters understand the value to the community to keep the pond in place. They understand the two issues are tied together, but the Planning Board approval of the subdivision is not contingent upon the outcome of the dam.

Mr. Balloch understood the value of the land would decrease by about \$30,000 if the pond went away. He felt that legality is one thing, but there is another when he looks out into his backyard.

Regina Coel, 18 Bayberry Lane, also had concerns. She is a new owner and has a ten acre lot. When she purchased her lot she was told that it was in the conservation corridor and could not be further developed. This is a quiet neighborhood. How is Mr. Gagnon's property different from her property? Why can't she develop hers and he can develop his, not that she has any plans to do that. This a residential area, not a recreation area. Regarding the well issue, has anyone looked at this issue or looked at the soils? The septs would be a concern with the leach fields rather than holding tanks. What about radon levels once blasting occurs? People come onto her land now, if a public lot is created, there will be more people on her lot. There will be an increase in traffic and kids drinking. She mirrors all that has been said here tonight.

Mr. Granese advised she should post her land. If someone enters, she can contact the Police Department. He felt she may not be able to develop her land because of the wetlands. Mr. Anderson suggested she speak with Mr. Sioras separately about the conservation corridor and the

ability to develop her lot. Ms. Coel stated the State has indicated that the proposed lots cannot be developed with water access. Because of their location, they will have water access. They had been provided notes from a good source at the State. She shared the following. "None of lots have water access nor the allowance to build docks or utilize watercraft; there is no water access in the plans; there is a 150 foot setback from the Bayberry property abutters to the new development; the road for access to the development is approximately 200 feet past the dam towards Bayberry Lane; there will be guardrails in place due to the steep slope; the steep slope is there to protect wetland; if the slope is made at a lesser grade then more of the wetlands would need to be filled in; guardrails may not be aesthetically pleasing, however the slope needs to be this steep in order to preserve more of the pond and wetland area. Derry has a very active Conservation Commission who has walked the property numerous times and is making sure that all safeguards are in place to preserve the environment. The State of New Hampshire Environmental Department has also been on the property numerous times to make sure that safeguards are in place. Both departments will continue to follow the process through its fruition. The hours of operation are mandated by the town ordinance. A vernal pool study was done as ordered by the State of New Hampshire to ensure frogs, salamanders, etc., were not affected. E.C. Mitchell has conformed to all orders by the town and State to safeguard the area and environment. Adams Pond was a natural wetland but was made into a pond by the building of a dam. That being said, it does not fall under wetland zoning laws like a natural wetland would. Finally, the paperwork, and licenses were to be available for tonight's meeting." Those are the notes she has from the State.

Ms. Coel said she is curious, because that is waterfront. As part of a covenant, she would like to ask that a retention of a 20 foot buffer of mature trees and shrubs be maintained along the abutting property line. The residents on Bayberry have a private neighborhood and they don't want to look at houses. They had purchased with the assumption that nothing could be built to the rear. Ms. Coel asked for an explanation of plans that are "binding" versus "non-binding." Mrs. Robidoux explained that when the developer first discussed the plan with the TRC, staff requested that it be shown on the plan where the houses could possibly go on the lots and that the potential owners could expand on the lots without going into the 250 foot protection area, given the setbacks. The developer prepared this sheet in the plan set. It is labeled 'non-binding' because the exact locations may change depending on conditions on each individual lot. For example, a driveway or house may need to move a few feet to accommodate ledge.

Ms. Coel spoke with regard to taxes. She felt that the new homes will increase the taxes because of the liability of the open area if the town takes over the dam. The taxpayers in town will pick up that cost and the associated maintenance costs. They will deal with higher property taxes and the nuisance of public areas.

The Board indicated the tax rate may not necessarily rise because of this public area.

There was no further public comment.

Motion by MacEachern to close the public hearing, seconded by Park. Discussion followed.
--

Mr. Anderson asked if the Board wanted to close the public hearing or continue it? Mr. Granese advised the Board would close the hearing and open a new one at another date. Mr. Anderson explained to those present that they would have another opportunity to speak with regard to the plan after the Board holds a site walk.

The motion passed with all in favor.

Mr. Mitchell spoke regarding the access to the pond. He was not aware of the requirement that the lots can't have water access. It may be that additional permits would be required if a resident wanted to construct a personal dock at the pond; this is not a swim pond. He was unaware that construction of docks would be prohibited as long as they have access to the water. Mr. O'Connor asked if Mr. Mitchell was in possession of any of the permits referred to by Ms. Coel? Mr. Mitchell said he did not believe there is a condition that the lots can't access the water. The plans have always showed access to the water. One can't go through the wetland to get to the water. Access to the waterfront would require Wetland and Shoreland Protection permits.

Ms. Coel advised her information was informal and came from a source at the State.

Motion by MacEachern to accept jurisdiction of the subdivision application before the Board for Jean Gagnon, identified as Deer Run at Adams Pond, located on Parcel ID 12119-001, 103 Old Chester Road and Adams Pond Road, seconded by O'Connor.

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

Motion by MacEachern to schedule a site walk of this property for Saturday, March 10, 2012, at 10:00 a.m., seconded by Choiniere. Discussion followed.

Mr. Granese explained the public is welcome to attend. Mr. O'Connor asked if the area of the proposed parking area could be marked off so that it could be easily identified. The meeting place will be at the intersection of Old Chester Road and Bayberry Lane.

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

Motion by Choiniere, seconded by MacEachern to continue the public hearing for the above noted application to March 28, 2012 at 7:00 p.m.

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

Mr. Granese advised there will be no further public notice of this continuation. All are welcome to attend and speak. Anything discussed this evening will hopefully be addressed and he asked

that people only bring up new items at the next hearing. If the weather is torrential downpours or it snows, there will be no site walk on March 10<sup>th</sup>. A notice will be placed on Cable TV that the site walk was postponed. He thanked the residents for coming out this evening; it is appreciated.

Mr. Anderson asked if a map could be produced that showed all abutters in the Bayberry subdivision. He would like to see distances from their property lines to the proposed homes and have that available for the site walk.

There was no other business before the Board this evening.

Motion by Milz, seconded by Choiniere to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:42 p.m.

Approved by: \_\_\_\_\_

Chairman/Vice Chairman

\_\_\_\_\_  
Secretary

Approval date: \_\_\_\_\_