

The Planning Board for the Town of Derry held a public meeting on Wednesday, November 07, 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 Chairman; Frank Bartkiewicz, Secretary; David Milz, Town Council Representative; John P. Anderson, Town Administrator; Jan Choiniere, Darrell Park, Jim MacEachern (7:28 p.m.), Members; Lori Davison and Ann Alongi, Alternates.

Absent: Randy Chase

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk; Robert Mackey, Code Enforcement Officer; 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.

Ms. Davison was seated for Mr. MacEachern.

Escrow

#12-24

Project Name: Medical Office Building

Developer: Tsienneto Fourteen Development, LLC

Escrow Account: Same

Escrow Type: Letter of Credit

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

The request is to approve Release #3 in the amount of \$21,319.20 for the above noted project. The amount to retain is zero. This is the final release.

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

#12-25

Project Name: Deer Run

Developer: JEMCO Building & Development

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 12119-001, Adams Pond Road

The request is to approve Release #1 in the amount of \$436,306.18 and request a replacement Letter of Credit in the amount of \$98,735.76 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 \$535,041.94.

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

#12-26

Project Name: New Walmart Super Store
Developer: Walmart Real Estate Trust
Escrow Account: Walmart
Escrow Type: Letter of Credit
Parcel ID/Location: 08279, 11 Ashleigh Drive

The request is to approve Release #2 in the amount of \$197,899.20 for the above noted project and to request a replacement Letter of Credit in the amount of \$5,184.00. Upon receipt of the replacement Letter of Credit, the Board will release the Letter of Credit in the amount of \$203,083.20.

Motion by Anderson, seconded by Bartkiewicz to approve as presented. Discussion followed.

Mr. Anderson asked for clarification from Mr. L'Heureux. Is the amount to be retained related to on site work? Is any of the amount related to work that is occurring in the roadway? Mr. L'Heureux explained that the escrow was related to work on Ashleigh and on-site work. Walmart has concluded its portion of the Ashleigh Drive road work. Any remaining work in that area has to do with the Route 28 widening. This is for landscaping.

The motion passed with all in favor.

#12-27

Project Name: Hampstead Road & Harvest Drive (Harvest Estates)
Developer: Robert MacCormack
Escrow Account: Hampstead Road and Harvest Drive
Escrow Type: Letter of Credit
Parcel ID/Location: 10015, 10025, 10024, Hampstead Road

The request is to renew Letter of Credit #19959 in the amount of \$178,286.08 for the above noted project. The new expiration date will be December 10, 2013.

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

It was noted this is not an extension of approval. This is the renewal of an existing letter of credit that is being held as the development is under construction.

#12-28**Project Name: Plaza One Parking Lot Expansion****Developer: Forest Avenue Properties, LLC****Escrow Account: Same****Escrow Type: Cash****Parcel ID/Location: 32025, 37 Crystal Avenue**

The request is to approve Release #2 in the amount of \$15,923.95 for the above noted project. The amount to retain is \$3888.00.

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

Minutes

The Board reviewed the minutes of the October 15, 2012, meeting.

Motion by O'Connor, seconded by Bartkiewicz to accept the minutes of the October 15, 2012, meeting as written. The motion passed in the affirmative with Park and Anderson abstained.

Correspondence

Mr. Bartkiewicz reported the Board has been provided with the most recent edition of *The Source* newsletter from NH DES. The Local Government Center is holding its 71st Annual Conference next week at the Radisson in Manchester. If any Board members are interested in attending they should speak with the Planning Office.

The Board has also received a letter from Joe Donahue tendering his resignation from the Planning Board. His letter to Mr. Sioras cites conflicts with his work schedule. He would like to remain as a representative to the Southern New Hampshire Planning Commission.

Other Business**Request for Extension of Approval – Yvon Cormier, 7 Ashleigh Drive**

Mr. Sioras advised the Board has received a request to extend conditional approval for the Yvon Cormier project. The project is located on Ashleigh Drive, just north of the Walmart site. The Board granted a conditional use permit to construct a driveway access. The purpose of the driveway is so that the owner can market the lots more effectively. He is asking for an additional six months in order to establish escrow. This is the second extension request. Mr. Anderson asked if there has been any construction performed on the driveway entrance? Mr. L'Heureux reported minor work has been done in anticipation of the restoration required to the pavement. There was damage to the pavement when the trees were removed from the site. He has been in contact with the developer through the insurance company and they are all aware the repairs to

the road need to be made. He feels confident they will establish the escrow within the six month period.

Motion by O'Connor, seconded by Bartkiewicz to extend the conditional approval for an additional six months. The new expiration date will be May 9, 2012. Discussion followed.

Mr. Granese confirmed the Board has granted two extensions to projects in the past. Mr. Sioras stated he also felt confident the developer would establish escrow within the next 6 months.

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

Next Planning Board Meeting

Mr. Sioras reminded Board members that the next meeting of the Planning Board will be on Monday, November 19th. At that time, the Board will continue its workshop on the General Commercial rezoning.

Granite State Future

Mr. Granese advised there are boxes to the rear of the meeting room and the Library containing brief survey cards. The purpose is to collect information for The Granite State Future project which is a collaborative effort of all of the regional planning commissions in the state. More information can be found at www.granitestatefuture.org. The card has questions regarding what people like most and least in their community and what they feel can be improved.

Public Hearing

Scenic Road Public Hearing – English Range Road

To review a proposal for trimming and removal of trees on English Range Road by New Hampshire Electric Cooperative.

Mr. Sioras advised the Board members have handouts containing maps. New Hampshire Electric Cooperative (NHEC) intends to cut trees along their service line on English Range Road. There are still portions of that road that are designated scenic. State statute dictates any time work is done on a scenic road, the town must hold a public hearing. The area they intend to cut is not the scenic part of the road. The proposed work area is closer to the fire station and Pingree Hill Road. The maps show the areas where the tree cutting will take place. There are only two roads left in Derry that are designated scenic.

Glenn Sutherland, of NHEC, presented. Mr. Granese asked if the areas will be clear cut? Mr. Sutherland stated this is a cycle cut that should have been performed two years ago, but they had no funding. They finally have the funds available, but need to have the work performed before the end of the year in order to utilize the funding. They will cut 15 feet, ground to sky, on either

side of the wire. There are not many trees that are greater than 4". The 8" diameter trees are potentially dangerous trees. Most of the trees to be cut are oak. They have had a lot of breakage with the last few storms.

Mr. O'Connor asked what happens if a tree is on private property? Does NHEC seek permission from the owner? Mr. Sutherland said the Cooperative obtains easements when they install the lines, but they do notify the landowner via phone. Mr. O'Connor asked if they have a start date? Mr. Sutherland said they have already performed work on some of the roads that are not designated scenic. All work needs to be completed by December 31, 2012.

Mr. Anderson read the list of affected roads: English Range Road, Pingree Hill Road, Old Auburn Road, Cove Road, Karen Avenue, Gena Avenue, Greta Avenue, Hildra Drive, Visa Avenue, Garvin Road, Overledge Drive, Symphony Lane, Winchester Avenue, Rocky Circle, Elwood Road, Jade Court, Quaker Drive, Chancellor Drive, Holiday Avenue and Happy Avenue.

Mr. Sutherland advised the contractor for the work is Lewis Tree. As a general rule, they try to cut in the existing right of way and respect trees on private property. If the tree is not a danger, they will try to leave it alone.

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

There was no public comment.

Motion by Milz, seconded by Bartkiewicz to close the public hearing. The motion passed with all in favor and this item came back to the Board for review and discussion.

Mrs. Choiniere confirmed the trees to be cut are included in the list before the Board this evening. Mr. Sutherland stated all listed trees have a flaw or a reason to be designated to be cut. They walked the entire job and marked the trees.

Motion by Anderson to approve the proposed tree cutting and clearing on English Range Road as outlined by New Hampshire Electric Cooperative. Milz seconded the motion.

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

**Estate of William Radford
PID 03152, 19 Kilrea Road
Acceptance/Review, 3 Lot Subdivision
Continued from October 15, 2012**

Mr. Sioras provided the following staff report. The plan was continued from the last few meetings. The Board has seen this plan before. The property is owned by Bruce and Jackie Radford. Ms. Radford is in the audience this evening. The purpose of the plan is for a three lot

subdivision, and the property is located in the Low Density Residential district. The property is located on Kilrea Road and has an existing farm house. The lot is being subdivided to add two new frontage lots to settle the estate. All town departments have reviewed and signed the plan. There are no waiver requests or state permits required. The Board conducted a site walk a few years ago for this project. The applicant's surveyor has provided a revised plan and staff is satisfied that all of the comments and concerns from the previous submission have been addressed. He would recommend approval of the plan.

Jim Lavelle of James Lavelle Associates presented for the applicant. Mr. Lavelle stated this plan is for a three lot subdivision to settle the estate. The parcel is 47 acres; the lots will be approximately 15 acres each. The driveway issues raised by DPW have been addressed. Associated with the plan are easements to the town for culvert maintenance and cross access agreements. During the process of meeting the conditions of the previous approval, the applicant changed attorneys. Drafts of the deeds and easements have been provided for review by Derry Town Counsel and he feels the subdivision is all set for approval, subject to review of the deed documents.

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

There was no public comment.

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

Mr. Anderson noted this plan has been approved by the Board once before, but the approval expired. This is essentially a reissue of the former approval. Has legal review taken place yet for the deeds? Mr. Sioras advised that would be a condition of approval. Mr. L'Heureux indicated his department has no issues with the plan.

Motion by Anderson to accept jurisdiction of the 3 lot subdivision application before the Board for the Estate of William Radford, 19 Kilrea Road, PID 03152, seconded by Bartkiewicz.

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

Motion by Anderson to approve, seconded by Bartkiewicz, pursuant to RSA 676:4, I, Completed Application, with the following conditions: Subject to owner's signature; all new structures are to be served by individual residential sprinkler systems. If sprinklers are not to be installed, a fire cistern (design and location) approved by the Director of Fire Prevention shall be constructed. The driveway for lot 03152 shall be reconstructed to meet town regulations at the time of construction for either of the driveways serving lots 03152-007 or 03152-008. The language of the above motion must be included in the deed for Parcel 03152. Deed language will be reviewed by Derry Town Counsel prior to recording. Fees for the review shall be supplied by the applicant. Prior to issuance of the building permits for Parcel 03152-007 or 03152-008, the first 40 linear feet of driveway must be constructed according to the Subdivision

Plan of Tax Map 03 Lot 152 approved by the Derry Planning Board on this date and reviewed by the Department of Public Works. The cutting of brush and trees, excavation and shaping of the swale, and extension of the existing culvert along the frontage of Parcel 03152-008, shall be completed by the owner of record of said lot prior to issuance of a building permit. Escrow in a form acceptable to the Derry Planning Board may be established in lieu of completing the work prior to the issuance of the building permit, but all work must be completed prior to the issuance of the Certificate of Occupancy. Subject to on-site review by the town's engineer, establish escrow for the setting of bounds or certify the bounds are set; establish appropriate escrow as required to complete the project; obtain written approval from the IT Director that the GIS disk is received and is operable; Certified Wetland Scientist stamp shall be added to the plan; easements for the culverts shall be reviewed by Town Counsel and recorded. Fees for review shall be supplied by the applicant. Cross driveway easements presented by the applicant are to be reviewed by Town Counsel prior to recording. Fees for review shall be supplied by the applicant. Note conditions of approval on the plan; the above conditions shall be met within six months; a \$25.00 check, payable to Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirement, along with the appropriate recording fees.

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

Jim MacEachern entered the meeting at 7:28 p.m. Ms. Davison stepped down.

**Peter M. Kershaw Trust of 2009
Scott S. Kershaw Trust of 2009
PID 03087 & 03089, 185 and 187 Rockingham Road
Acceptance/Review, Lot Line Adjustment**

Mr. Sioras provided the following staff report. The purpose of this plan is for a lot line adjustment between the above referenced parcels. A site plan application will follow this application for an expansion at Pete's Scoop, which includes the addition of a driving range. No department signatures are required for a lot line adjustment. There are three waiver requests; he would support approval of both the waiver requests and the plan.

Todd Connors of Long Beach Development Associates presented for the applicants. The two parcels are located on the southern end of Route 28, on Rockingham Road. The larger parcel containing 8.9 acres is the location of Pete's Scoop. The smaller parcel contains 5 acres and is the location of the Robert Frost Motor Inn. The proposal is for a small lot line adjustment. Parcel B is currently on the lot to the right; Parcel B is currently on the lot to the left. The intent is to swap two equal parcels of 0.08 acres and adjust the common lot line between the two parcels which will accommodate the upcoming site plan. Neither lot requires the additional acreage to conform to land use requirements. The intent is for an equal land swap which is not dependent upon soils or lot loading. Therefore with regard to the waivers, it is believed that HISS mapping and topography is not required for the purposes of this plan to meet zoning criteria.

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

There was no public comment.

Motion by MacEachern to close the public hearing, seconded by Bartkiewicz. The motion passed with all in favor and the plan came back to the Board for review and discussion.

Motion by MacEachern to accept jurisdiction of the Lot Line Adjustment application before the Board for Peter M. Kershaw Trust of 2009 and Scott S. Kershaw Trust of 2009, 185 and 187 Rockingham Road, Parcel IDs 03087 and 03089. The motion was seconded by Bartkiewicz. Discussion followed.

Mr. L'Heureux advised DPW has no issues with this proposal.

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

Motion by MacEachern to grant a waiver from LDCR Section 170-24.A.11, two foot contour intervals, LDCR Section 170-24.A.12, HISS Mapping, and LDCR 170-24.A.13, Wetland mapping, as after review of the waiver requests, the Board finds strict conformity to the regulation would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations. Bartkiewicz seconded the motion.

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

Motion by MacEachern, seconded by Bartkiewicz to grant approval pursuant to RSA 676:4, III, Expedited Review, subject to the following conditions: Subject to owners' signature, subject to on-site inspection by the Town's Engineer; establish escrow for the setting of bounds or certify the bounds are set; obtain written approval from the IT Director that the GIS disk is received and is operable; note approved waivers on the plan; add a note to the plan in compliance with LDCR 170-24.A.8 indicating the total number of sheets in the plan set, etc.; that the above conditions be met within 6 months; improvements shall be completed by November 07, 2013; a \$25.00 check, payable to Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirement, along with the appropriate recording fees.

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

**Peter M. Kershaw Trust of 2009
PID 03087, 185 Rockingham Road**

Acceptance/Review, Site Plan

Expansion of Pete's Scoop to include a driving range and additional parking

Mr. Sioras presented the following staff report. The purpose of this plan is for an expansion of Pete's Scoop to add a driving range and additional parking. All departments, including the Conservation Commission, have reviewed and signed the plan. A waiver request has been received this evening and is being passed to the Board members. There are no state permits required. He would recommend approval. There are several abutters in attendance this evening who will wish to comment on the application.

Todd Connors of Long Beach Development Associates presented for the applicant. This proposal is for one of the lots (8.9 acres) the Board just saw in the previous application. The proposal is to create a golf driving range. Pete's Scoop will remain and is located in the lower right hand corner of the lot. To the left is the existing restaurant located on a lot also owned by the applicant. There will be an adjustment to the existing easement on the restaurant lot to accommodate this plan.

The proposal is to construct a parking lot with 32 additional spaces, an 18' x 30' covered pavilion, and 22 golf tees. Eighteen will be typical tees on a concrete pad and the remaining 4 will be grass tees. The pavilion will have seating, picnic tables and a self-service golf ball machine which will be staffed by ice cream stand staff in the event there is an issue with the dispensing machine.

Mr. Connors provided an overall property view. To the left of the tees there is a 200 yard fairway. There is a large, earthen embankment where fill has been placed over the years. They will reconstruct to create a stable slope and add loam and seed. They will add drainage improvements near the restaurant and fairway, adding a 200' grassed treatment swale to collect runoff from the parking lots, which will travel through pipes, be treated in the swale and then discharged to a stormwater pond. The pond is a detention pond so the project does not increase runoff. The bottom of the pond has an infiltration area that is required by the Department of Environmental Services. One state permit is required for this application, an Alteration of Terrain permit. The drainage and erosion control for the project meet state standards. The pond is located on the restaurant parcel owned by the Kershaw Trust. They will create an easement for the maintenance of the pond in the event either parcel is sold.

Regarding landscaping and lighting, there are six trees planned and 95 shrubs. The landscape plan meets the requirements of the LDCR with regard to street trees and parking lot trees. The zoning district boundary is General Commercial and Low Medium Density Residential. The boundary is along the lot line to the west and requires a buffer. They have chosen to propose a solid wood fence and landscape plantings which is allowed by the regulations. The fence will be a six foot high, solid wood fence placed close along the property line in most locations. Near the north arrow on the plan, the fence will be moved closer to the fairway to accommodate the slope and to buffer the golf area. The fence will be on top of the fairway slope in that area.

The proposed photometric plan shows the lighting will be placed on top of 30' or 50' utility poles that will hold the netting system. They will place flood type lights on top of the poles. The direction and target area is on the fairways so that the light will be aimed and targeted per the plan to protect the neighbors to the rear. They want to prevent spillover. The lights have been angled toward the southeast and southwest to create a longer distance for the light to travel. They do have ½ foot candle of spillover onto the restaurant lot but there is common ownership of those properties and this is a commercial district.

Regarding the waiver request, the project has the required three street trees, but the regulations call for them to be in a 15 foot tree strip along the right of way. The ice cream shop has a paved apron from the window to the street line that contains picnic tables where the tree strip would need to be placed. Pete's Scoop has been there a long time. Although they are proposing items behind the ice cream stand, they are leaving the ice cream stand alone. Given the location, they did not want to lose seating, but do want to acknowledge the intent of the regulations to get the street trees. They have added landscape planters to the front of the restaurant.

Regarding hours of operation for the driving range, the plan indicates that during the golf season of March through August, they will be open 7 days a week, from 6:00 a.m. to 10:00 p.m. They would expect crowds in favorable weather, and would turn the lights on accordingly. Off season from September to February the range will be available 7 days a week, from 6:00 a.m. to dusk with no operation of the lights.

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

Mike Connor, 2 Skylark, advised he is an abutter. He respects the rights of the owner to develop his land as he chooses, but does not feel the owner has been considerate of the neighbors. There is a landscape business located within 10 feet of the common property line. The equipment may be there to accommodate the driving range plans, but there are piles of mulch and loam. He is also concerned with property values. This used to be a wooded, reclusive area. Now he can see Dunkin' Donuts and hear the outdoor music from the Tavern. This is no longer a desirable neighborhood and he feels this use is intrusive. He asked the Board to please consider his concerns especially with regard to the lighting.

Leanne Buyck, 4 Skylark, advised she has similar concerns with regard to property values. She agrees the owner has not been forthright or considerate of the neighborhood behind his property. A few years ago, he changed the property behind Pete's Scoop. They had been told he would be building a home similar to the ones in their neighborhood and instead, it is a large home with a three car garage. He is storing heavy equipment and running a landscape business on the property. A six foot fence with 30' high lights on top is not a fair compromise. There is also natural water runoff that has created a ditch along her property and the fence will interfere with that runoff. She would like to see more privacy and consideration for the neighborhood. Pete's Scoop has been there for a long time, but the neighborhood been there longer.

There was no further public comment.

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

Mr. O'Connor had a question regarding the note on the cover sheet placed near the Conservation Commission signature. Mr. Sioras advised the handwritten note is included in the staff report. Margie Ives indicated they would prefer to see deciduous trees rather than ornamentals. Mr. Anderson further explained she wants to see trees with leaves. Mr. Connors advised that the street trees are proposed to be a red maple and a linden, which are broad-leaved deciduous trees. There are no ornamentals proposed. He feels they have complied with the request. The height of the trees will get to be about 50 to 75 feet, and the canopy will be close to the same in diameter. His office met with Conservation and held a site walk. At the meeting, Margie Ives was given authority to sign the plan and she made the note at the time she signed the plan.

Mr. Milz asked if the single family house on the lot has a business being run from it without town approval? Mr. Connors said that is the caretaker's house. He does not believe that came before the Board for approval. Mr. Sioras said he would defer to Bob Mackey, the Code Enforcement Officer, who is present this evening.

Mr. Mackey advised that currently, to the rear of the Pete's Scoop lot, there is a single family home that has garage bays underneath which is to be occupied by the property owner. There is no authorization to run a business from this home, and there is no Occupancy Permit for the home at this time. The issue was recently raised with regard to the landscape business as his Department received the complaint today, and they will investigate it. Mr. MacEachern thought if the house was under construction it was acceptable to have a mulch pile there. Mr. Mackey said his office will visit the lot and make a determination if a business is being run from the lot or if the material and machines are incidental to the construction.

Mr. Milz asked with regard to lighting. Is there a maintenance plan? Will the lights be changed and adjusted? What happens if they get misaligned? Mr. Connors said there is no plan for periodic adjustments or checks. The lights will be set per the plan and bolted down in the housing, which is not flexible. A golf ball could knock a light out of alignment. If that happens, it will be addressed. The applicant would be smart to periodically check the alignment.

Mr. Milz asked with regard to the 6:00 a.m. opening. Will that generate a lot of noise? Mr. Anderson thought the noise would be more verbal. Mr. Milz agreed, but asked if it was necessary to open at 6:00 a.m? Is that customary? Mr. MacEachern said typically, this type of facility is open at first light. Golf courses are open at 6:00 a.m.

Mr. Granese asked why is there so much lighting? Mr. Connors explained people want to see where their balls are landing. Mr. Granese asked if there could be ground lighting instead? Mr. Connors said golfers need to be able to follow the trajectory of the ball. It is an important part of practice to see where the ball goes.

Mr. MacEachern noted the lighting is addressed in the report provided by Vanasse Hangen Brustlin (VHB). It is nice to have lights, but they need to make sure the light does not spill; there

should be shielding behind the lights so that the light is focused on the range. The other issue is buffering. How tall is the screen? Mr. Connors said in one section it is 30 feet high; in another it is 50 feet high. It will be 50 feet closer to the houses. Mr. MacEachern asked if it will be a green screen? Mr. Connors said it will be similar to what is at Hoodcroft, black nylon netting. Mr. MacEachern was not sure the 6 foot high stockade fence will do much to screen the fairway from view of the neighbors. Mr. Anderson said the fence will define the buffer between the neighbors. Mr. MacEachern suggested not having a fence. They won't see anything as it is on top of a hill, and he feels it adds an expense to the project. Mr. Granese said the fence will help buffer the sound. Mr. O'Connor noted there will also be noise from the ball collecting machine. Mr. Granese said voices carry and the fence will buffer the noise.

Mrs. Choiniere noted there will be 50' high nets that transition down to 30' in the front. Why can't the lights be lower than 50 feet on the hill? Mr. Connors said they spent a lot of time designing this component of the project. They tried to lower the lights and did not get enough light onto the field. They are generating 2 ½ foot candles on the fairway. If they have the light up high with a steep angle to target the field, more light goes to the grass. If they lower the light, it throws the light further away. They worked hard to make sure there was no spillover. They looked for light shields. The lights that are responsible for light levels behind the screen fence are not adjacent to the property line. It is the lights on Route 28 that throw the light to the abutter's property. They had to create a diagonal light flow to prevent spillover onto the abutting properties. They tried to do it at 30 feet and found it threw the light further. The shallow angle creates spillover onto the residential lots. This plan strikes a balance. There is no spillover onto the residential lots at 50 feet.

Mrs. Choiniere asked how much noise will the abutters hear at 6:00 a.m? Mr. Connors thought they might hear the ping, ping of the golf balls and some errant golfer comments. Sound does carry but most of the abutters have woods between them and the fairway. In areas where there are not woods, is generally where they have proposed the fence. It won't be silent, but it won't be loud. Sound decibels are more intense at the point of impact. Between the tees and the homes, the closest home is 300 feet away. He does not feel any noise would violate a noise ordinance. Abutters may not hear anything if they are inside their homes.

Mr. O'Connor spoke with regard to lighting. The residential side points to the abutters but still has a spot that casts light across. Can they enhance the residential toward Route 28, and tone down the one from Route 28 that points to the residential area? Residents in back yards will be able to see the lights pointed at them. Mr. Connors said these are 1000 watt fixtures. He did not think they could get light across the field to light the entire fairway. They would need to use more intense light and that would create a dark half of the field. It would create a lot of brightness on the residential side and cast light on the Route 28 side. It would be brighter near the neighbors.

Mr. Anderson asked if Mr. Connors could address the abutter's comments with regard to drainage to the rear. How is that addressed? Will the slope be adjusted to correct that? Mr. Connors explained the swale she was referring to is between 2 and 4 Skylark. There is a drainage ditch coming from Skylark between the properties that drains onto the property behind the single family residence located on the Pete's Scoop lot. The drainage flows east. The

treatment swale would receive the runoff from that ditch. This proposal is not directing water to that area. She did not want the fence to go across the ditch as that would direct water onto 2 and 4 Skylark. The fence runs east to west along the property line with Skylark and ends before 2 Skylark. The fence would not stop the water from running onto Parcel 03087.

Mr. Milz commented he did not see restrooms on the plan. Mr. Connors explained that is because they did not propose any. Pete's Scoop is a seasonal drive in. State law does not require public bathrooms if there is no indoor seating. They are not proposing an indoor facility or indoor food service. They don't expect anyone would be there long enough to require facilities.

Mr. MacEachern asked where the machine that collects the balls will be stored? Mr. Connors explained that a few years ago, construction began on the single family residence on the lot. That will be the caretaker's quarters for this property. The first floor level contains three large bay garages. All the machinery will be stored there for the property including the lawn mowers and ball collection machine. The second floor will be the residence; that portion is currently under construction.

Mr. Anderson asked if Mr. Connors was aware of a business being run from that location currently? Mr. Todd said he was. Mr. Anderson asked if Mr. Connors was aware it was being run illegally? Mr. Connors said that some earthwork has been done at the property over the last few years. There is a large stockpile of loam on the property. Kershaw Landscape has and may be staging equipment there. They have been performing the work on the property. Mr. Mackey will make the determination if the business is illegal or not and will address it accordingly. There is no intention to run a landscape business from this location.

Mr. Anderson felt a condition of any approval should be that the ball collection machine cannot run after 10:00 p.m., so that the neighbors don't hear it after hours. That will be the noisiest aspect of the business. Perhaps the machine could run between the hours of 8:00 a.m. and 10:00 p.m. Mr. Connors said he expected the balls would be collected during a "dead" hour. It is reasonable to restrict the hours.

Mr. Anderson asked with regard to the proposed landscaping along the zoning district boundary. Mr. Connors said that landscaping is proposed to comply with the LDCR. It is a requirement in the event a fence is used there needs to be X number of shrubs per foot of fence. Mr. Anderson asked that instead of 95 shrubs, if the shrubs could be replaced with deciduous trees to add a buffer over time for the lighting. Over time, there would be leafed out trees. Mr. Connors thought that was an excellent idea. They tried not to request waivers where they could comply with the regulations. If in lieu of three to four shrubs they could plant trees that would be of benefit, he would agree. Mr. MacEachern agreed. Shrubs in front of a fence don't serve a purpose. He agrees if they add the fence to not have shrubs and to change the shrub allotment to trees. Every 3-4 shrubs could equal one tree. During the summer, this will add a better buffer.

Mr. Anderson suggested three shrubs equal one tree. Perhaps they could swap them out for maples. Mr. Connors agreed if there was such a condition of approval he would amend the landscape plan to the satisfaction of staff.

Mr. Granese said he had an issue with the potential code violation because the building is shown on this plan. Mr. Anderson said Adam Kershaw has been doing landscaping for Peter and Scott Kershaw. He has been trying to grade the site to make sure it works. He did not mean to suggest earlier that he believed there was an illegal business being operated here. Mr. MacEachern said he has seen the mound of loam come and go because they continue to grade the area. He can see that they have been leveling the area off. Mr. Mackey reiterated the complaint came into his office this afternoon.

Mr. O'Connor asked what will control the lighting? Is there a daylight sensor or will there be a manual shutoff? Mr. Connors said the electrical plan is not designed at this point. There may be a solenoid that turns them on. There will be a main switch. He is not sure if the lights will be turned on automatically or manually. Mr. O'Connor noted the golf tees are open when the ice cream stand is closed. Mr. Connors agreed, noting however Mr. Kershaw's home is on the property. He is not sure yet how they will control the lights, but they will be shut off at ten p.m.

Motion by MacEachern to accept jurisdiction of the site plan application before the Board for Peter M. Kershaw Trust of 2009, 187 Rockingham Road, Parcel 03087, seconded by Milz.

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

Motion by MacEachern to grant a waiver from LDCR Section 170-64.B.1, street tree strips, per the memo dated November 07, 2012 from Long Beach Development Associates, seconded by Milz. Discussion followed.

Mr. Anderson stated a reason for granting the waiver would include the fact that compliance with the regulations reduces visibility of the long standing ice cream window and reduces seating.

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

Motion by MacEachern, seconded by Milz to approve, pursuant to RSA 676:4,I, Completed Application, subject to the following conditions: comply with the Vanasse Hangen Brustlin report dated November 02, 2012; subject to owner's signature; subject to onsite inspection by the Town's Engineer; establish appropriate escrow as required to complete the project; obtain written approval from the IT Director that the GIS disk is received and is operable; subject to receipt of state or federal permits relating to the project (cub cut, AoT); Conservation Commission prefers deciduous trees to ornamentals; the above conditions to be met within 6 months, improvements shall be completed by May 07, 2014; a \$25.00 check, payable to Rockingham County Registry of Deeds should be submitted with mylar in accordance with the LCHIP requirement, along with the appropriate recording fees. In addition, the ball collection occurs between the hours of 8:00 a.m. and 10:00 p.m. March through August, and between 8:00 a.m. and dusk during September through February; for every three shrubs shown on the plan, they can be replaced with one deciduous tree; shrubs in front of the proposed fence will be replaced at the same ratio by deciduous trees throughout the plan. Discussion followed.

Mrs. Choiniere asked if the Board would limit the hours of operation of the lawnmower as well? Mr. Anderson said no as the town does not regulate lawn mower operation anywhere else in town. Mr. L'Heureux advised he did not believe there were any issues with complying with the VHB report. Mr. Connors said he spoke with Bryant Anderson and they walked through the comments. He feels comfortable replying to all of the comments. If there are any they can't comply with, he will come back to the Board.

Mr. MacEachern clarified the intent of the motion is that there will be no shrubs in front of the fence throughout the plan. They will be replaced 3:1 by trees, and the remainder of the trees can be placed to the best effect throughout the plan. The trees should be placed where they will provide the best buffering. Staff will review and approve the revised landscape plan. Mr. Granese asked if additional conditions of approval could include the owner working with the abutters if there is an issue with the lighting and the plan be approved pending resolution of the complaint currently being investigated by Code Enforcement to the satisfaction of staff.

MacEachern and Milz accepted the friendly amendments.

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

Mr. Anderson asked if there was a target date to be open to the public? Mr. Connors said they are planning for next summer. The earthwork will begin as soon as conditions will allow.

Workshop

Discussion of request to amend the Town of Derry Zoning Ordinance, Section 165-35.B, Permitted Uses in the Office/Medical/Business zone to allow Elderly Housing.

Mr. Sioras advised the Board members have a map showing an outline of the Office Medical Business (OMB) district. The proposed location is Shute's Corner, running east to Webster's Corner near Winter Hill Road. There is a lot located across from Winter Hill Road that had a previous approval for a medical building. Elmer Pease of PD Associates is present this evening. He will speak to the request. He is proposing the addition of Elderly Housing to the OMB zone. He provided handouts at the last meeting. Mr. Pease's business partner, Robert Howard, owns a 27 acre parcel in the OMB on Rockingham Road.

Mr. Pease advised he provided the Board, along with his written rezoning request, empirical data on Elderly Housing. He has been working with Elderly Housing and affordable Elderly Housing since the early 1990's. He developed Ledgewood Retirement Community in Manchester and ensured that the development complied with the Human Rights statutes. He provided a brief history of the evolution of elderly housing statutes in New Hampshire. The laws differ with regard to elderly housing throughout the country. In New Hampshire, a town can set its own guidelines so long as they meet the requirements of such that at least one member is at or over the age of fifty-five. Because this is an addition to a class of housing and not a restriction, a community can discriminate on the basis of age.

He wants to add Elderly which is non-assisted care, in the OMB, as two other types of elderly housing are already allowed in the zone. Staff thought it prudent to ask the Board to add the OMB to Article XIX, which is the Elderly Housing regulation. The Zoning Ordinance does not define what “elderly” is. He has made some recommendations for a definition. Article XIX explains the type of housing but it should be included in the definitions, since ‘elderly’ is referred to elsewhere in the Zoning Ordinance.

Mr. Granese asked if elderly included one person in the household age 55 or older? Mr. Pease said that is the standard definition. Mr. Granese said the Board could say one person has to be 65 years of age or older and not discriminate? Mr. Pease said that would be a different type of housing. It is most commonly preferred that one member of the household be 65 years old and 100% of the other members of the community have to be 55 years of age or older which a community is allowed to do. If the community maintains the 80%, it can deny housing to anyone under 18 years of age, 100% of the time. Mr. Granese said the concern would be not to have teenagers running around. Mr. Pease said that is why most communities state both members need to be 55 years of age or older. Many developments attract the older group. Manchester has elderly developments where the residents are aged 60 and over. Mr. Sioras noted many years ago, the parcel owned by Mr. Pease was approved for a one story medical facility. Now, town sewer crosses the property and water will run along the frontage. The property is beautiful and to the rear, there are views of the golf course. This is a challenging piece of land. The site plan was approved but the approval lapsed. The neighbors did not want to see commercial development and at the time recommended low density housing or senior housing. Mr. Pease came into the office and staff asked him to speak to the Board. This land is not located in the General Commercial zone but is somewhat related to the changes the Board is proposing in the General Commercial zones. This would be a transition from single family residential and multi-family.

Mr. Anderson noted a significant chunk of the OMB would not be able to be elderly housing, given the current uses on the lot. The lots that could support the use would be the lots located off Rockingham Road adjacent to the GC that the Board has been working on. Mr. Sioras noted behind the storage facilities in that location is town owned land that is prime wetland. Mr. Anderson thought the proposed use would be limited. This is privately owned land and it appears Mr. Pease wants to develop the land through a zoning change. Mr. Pease said he was present for the previous public hearing when the land was being considered for zoning amendments. Mr. MacEachern recalled that a fire station had been proposed for this property with the development behind it. The other property that could be affected by this potential change would be the one across from the gas station at Shute’s Corner. The next lot down from that is Birch Heights. Nearer to the hospital is the used car lot and residences.

Mr. O’Connor asked if the lots on Rockingham Road, closer to the GC zone were being considered for addition to the GC zone? Mr. Sioras said the Board decided not to change the zoning of those lots and to keep them in the OMB.

Mr. Milz recommended the Board should take advantage of the expertise of Robert Fleig who heads up the Housing Authority. He would feel comfortable setting up a subcommittee and

including Mr. Fleig to review all of this. It might expedite the process. Mr. Sioras advised the purpose tonight was to introduce Mr. Pease to the Board and begin the process for the zoning change.

Mr. Pease said his partner would like to see affordable elderly housing on his lot. Mr. O'Connor asked if that meant HUD 202 housing? Mr. Pease said that is a possibility. Mr. O'Connor asked who manages the regulatory aspect? Mr. Pease said the 80/20 is a federal regulation. It is self-certified. The owner provides identification and birth documents to establish residents have met the age requirement. The town and HUD can audit the files.

Mr. O'Connor concurred with Mr. Milz that this was a complex issue and the Board may need its own expert, and input from the Assessor as this could impact taxes. Mr. Pease said he has developed two separate projects. One was the one in Manchester, which is affordable elderly housing. The other was stick built housing in Londonderry. The tax revenue versus impact is significant.

Mr. MacEachern had questions. Before adding the use to the proposed section of the Ordinance, why not add the zone to the list contained in Article XIX? That speaks to 55 and older housing. Birch Heights was allowed in the OMB.

Mr. Sioras said that fell under a different definition, Congregate Care, which has a medical component; that is why it is allowed in the OMB. That is different than elderly housing. Mr. MacEachern noted the use is not allowed in OMB. So, should the Board extend the current zoning to the OMB? It could be that simple. He does not want to spend a year on this. He feels the Board can look at Article XIX. There is nice elderly development in town. He feels the use can be added to the OMB as an option. Mr. Anderson said he has heard discussion this change may be beneficial to the tax rate. He agrees there should be a subcommittee to figure this out. It would be beneficial to work this through a committee that includes Mr. Fleig and the Assessor to find out what are the benefits and what are the drawbacks. Mr. MacEachern said there are developments in town now that could provide the information relative to the tax impact. Mr. Milz said it may be advantageous to have this type of development, but the Board needs to find out. Mr. Anderson suggested finding out if there is a tax benefit to adding the use to this district and determine if it panned out in other districts. Mr. MacEachern confirmed the Board was considering taking Article XIX and determining whether it would be beneficial to add OMB to the list of zoning districts in the overlay.

Mr. Granese said the subcommittee members can be Mr. Milz, Mr. Anderson, Mr. MacEachern, Mr. Bartkiewicz, Mr. O'Connor, staff to include the Planning and Assessing Offices, Mr. Fleig, and Mr. Pease can also be invited to attend. The subcommittee will come back to the Board and provide a brief.

Discussion of revisions to the Town of Derry Zoning Ordinance, specifically, signs.

Mr. Sioras advised staff made changes to the proposed sign regulations. If the Board agrees with the changes, staff can provide a date for the public hearing at the next meeting of the Board.

Mr. Mackey said there were not many concerns with the last draft. The Attorney looked at the draft and did not have a lot of comments, and they were incorporated into this draft. He feels the draft before the Board cleans up the Zoning Ordinance, makes it clearer for enforcement purposes, and deals with the issues the town has been having. He feels it is ready to be brought to public hearing. Mr. Granese thought the staff did a great job on this.

Motion by MacEachern to move the draft forward for public hearing, seconded by Anderson.

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

There was no further discussion.

Motion by MacEachern to adjourn, seconded by Bartkiewicz. The motion passed unanimously and the meeting stood adjourned at 9:06 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____