

The Planning Board for the Town of Derry held a public meeting on Wednesday, May 15, 2013, 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; John P. Anderson, Town Administrator (7:15 p.m.); Randy Chase, Administrative Representative; Albert Dimmock, Sr., Town Council Liaison; Darrell Park, Jan Choiniere, Members; Lori Davison, Frank Mazzuchelli, Alternate

Absent: Ann Marie Alongi; Jim MacEachern

Also present: George Sioras, Planning Director; Mark L'Heureux, Engineering Coordinator

Mr. Granese called the meeting to order at 7:00 p.m. The meeting began with a salute to the flag. Mr. Granese then introduced the staff and Board members present, and noted the location of the exits, and meeting materials.

Ms. Davison was seated for Mr. MacEachern for the evening.

Escrow

#13-12

Project Name: Pinkerton Place

Developer: Boomer Wolf, LLC

Escrow Account: Boomer Wolf, LLC

Escrow Type: Cash

Parcel ID/Location: 08275 & 08276, 17 & 19 Manchester Road

The request is to approve Release #3, cash, drawn on TD Bank, Check #1036, in the amount of \$30,132.00. The amount to retain is \$61,722.00.

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

Minutes

The Board reviewed the minutes of the May 01, 2013, meeting.

Motion by O'Connor, seconded by Bartkiewicz to accept the minutes of the May 01, 2013, meeting as written. The motion passed in favor with O'Connor abstained.

Correspondence

Mr. Bartkiewicz advised the Board is in receipt of a notice from the State of New Hampshire Department of Transportation regarding a Combined Public Officials/Public Informational Meeting. The project involves the installation of centerline rumble stripes and shoulder rumble strips along sections of Route 111. The meeting is scheduled for May 21, 2013, at 7:00 PM, at the Windham High School Cafeteria. The Board is also in receipt of the May/June 2013 edition of *Town and City*.

Other Business

Accept Changes to Policy and Procedures

Motion by Choiniere, seconded by Bartkiewicz to adopt the changes to the Planning Board Policy and Procedures.

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

Voluntary Merger – Granite State Credit Union, Parcels 27002 and 27003

Mr. Sioras advised the property involved is the old Community Bank and Trust, that became People's Bank, located on Birch Street. The two adjoining properties have since been purchased by Granite State Credit Union, which include the existing building and the lot located on the corner of Birch and Pierce Avenue. They have since razed the house that was located on the corner lot. The Board is being asked to approve the voluntary merger which will allow the applicant to move forward with the site plan the Board will review later this evening.

Motion by O'Connor, seconded by Bartkiewicz, pursuant to the provisions of RSA 674:39-a, to approve the application of Granite State Credit Union to merge Parcels 27002 and 27003, located at 38 and 42 Birch Street. Parcel 27003 will be deleted and Parcel 27002 will be retained.

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

Public Hearing

Granite State Credit Union

PID 27002, 38 Birch Street

Acceptance/Review

Site Plan – new branch office and parking lot expansion

Mr. Sioras provided the following staff report. The property is located at 38 Birch Street and is the site of the former Community Bank and Trust and People's Bank. The property is now

owned by Granite State Credit Union. The purpose of the plan is for a new branch office for Granite State Credit Union and the expansion of the parking lot onto the adjoining lot. The property is located in the Office/Medical/Business District. All town departments have reviewed and signed the plan. There are two waiver requests that are outlined in a letter dated March 29, 2013, from Maynard and Paquette Engineering. He would recommend approval of the plan. He noted he has spoken with several of the abutters.

Richard Maynard of Maynard & Paquette Engineering Associates, LLC represented the applicant. The site is located at 38 Birch Street at the corner of Pierce Avenue. It was formerly occupied by Community Bank and Trust. Granite State Credit Union has purchased the building and the adjacent lot on which they would like to construct a parking lot for an additional eleven vehicles. Total parking on site would then be 31 spaces including 4 handicap parking spaces. The existing spaces in front of the building will be restriped to provide two of the noted handicap spaces. The new parking lot will have three light poles and a four foot high ornamental fence along Birch Street. At Pierce Street there will be a guardrail and the ornamental fence. Along the property line adjacent to the residential abutter, they will have a stockade fence and preserve the existing vegetative hedge. There are two waivers requests. The first is to allow a waiver of the 20 foot residential buffer, decreasing it to 10 feet. They are adding the stockade fence per the regulations as part of this request as well as preserving the vegetative buffer. The abutters, who he spoke with prior to the meeting, are comfortable with that. The second request is to allow a waiver from the general landscape requirements. Trees and evergreens were considered along Birch Street. The only viable area to add new plantings is on either side of the driveway, but placement there would block the vision of drivers entering and exiting the site. The driveway entrance is a bit steep and it is near a hilly section of Birch Street. He would not want to interfere with sight distance. The ornamental fence is intended to substitute for vegetation along the front. Due to the steep slope of Birch Street in this area and the fact that the land slopes off at a steep ratio, the far southerly end closer to Pierce ends up being seven to eight feet below the grade of the street. Because of this, that southerly section will have an 8 foot retaining wall that tapers down to two feet closer to the bank lot. Drainage will be handled by a leaching catch basin to the north of the new parking lot with overflow directed to the existing catch basin on Birch Street. The two lots will be merged per the voluntary merger the Board approved this evening. A new public sidewalk will be constructed along Birch Street, and will straddle the front property line. A sidewalk easement document has been submitted to the Planning Department for review and the intent is to grant the easement to the Town. They have received the letter from the review engineer which contains mostly clarifying notes and requests for more elevations. The comments can easily be handled as administrative items on a conditional approval. Mr. Maynard summarized that the request is for approval of a parking lot expansion to allow parking for eleven additional cars. The existing bank site will remain essentially unchanged.

Mr. O'Connor asked if the retaining wall near the 100 year floodplain is sufficient to withstand flood conditions? Mr. Maynard said the floodplain barely reaches the existing wall and the water elevation at that location is only measured in inches. The water comes up the slope to touch the wall under those types of flood conditions, similar to what one might see at the beach. Mr. L'Heureux concurred adding there is not a flooding issue with the parking lot as it is elevated.

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

Mr. Anderson was now seated.

There was no public comment.

Mr. Sioras read a letter into the record from representatives of the Nutfield Professional Park located at 44 Birch Street, addressed to Mr. Maynard. A copy of the letter is retained in the file. The letter states that a copy of the plan was provided to the Nutfield Condominium Park Board of Directors. They have reviewed the plan and have no objection to it. The Board of Directors also agreed to waive the Association's right to abutter notification for this matter. Mr. Sioras noted an abutter notice was sent to the Association last week and the return receipt has been received by the Planning Office.

Motion by O'Connor 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 comment.

Mr. Granese asked if anything is planned for the exterior of the existing building? Mr. Maynard said all changes will be internal, with the exception of the addition of an emergency access stairwell. The exterior color will not be changed. Jack Reed, of JBR Associates, advised under an existing building permit, they have totally redone the outside of the building with new finishes. The colors are exactly the same. They added a stairway off the second floor to the back at the request of the Derry Fire Department.

Mrs. Choiniere asked if there is any place to put low shrubbery along Birch Street? Mr. Maynard said that the area is very tight given the sidewalk and the ornamental fence. That had been discussed with staff. He is not sure where they could put something as even low shrubbery will expand over time. Mr. O'Connor felt the addition of the 5 foot sidewalk was a great idea, so that the children in the area have a safer place to walk as they go to Alexander Eastman. Mrs. Choiniere asked what is the distance between the parking and the fence? Is there room there to add shrubs? Mr. Maynard said there is only 6 feet left after the sidewalk is constructed and in the middle of that is the fence. He felt it would look attractive once complete. Mr. Granese asked for the color and material of the fence. It will be black aluminum.

Mr. Anderson asked Mr. L'Heureux if there was any issue with a fence being located that close to the intersection of Pierce Avenue? Will it inhibit sight distance to the north? Mr. L'Heureux took a moment to review the plan. Mr. Chase stated the Highway Safety Committee looked at just that issue when they reviewed the plan. Due to the elevation difference between Birch and Pierce, a driver in a sedan would be looking over the fence at that intersection. Mr. L'Heureux commented the detail view shows the ornamental fence and there will not be an obstructed view from that type of fence. Mr. Maynard added the fence will be setback 7 feet and if it becomes an issue they will address it. He believed there was more than sufficient sight distance at this intersection. Mr. L'Heureux stated most of the DPW issues were addressed, and that Keach Nordstrom brought up several good comments that should be addressed, notably elevations and

the manner in which the applicant should approach construction of the wall. Those should be on the plan.

Motion by O'Connor to accept jurisdiction of the application before the Board for Granite State Credit Union, 38 Birch Street, PID 27002 and 27003, seconded by Bartkiewicz. Discussion followed.

Mrs. Choiniere asked if jurisdiction should only reference Lot 27002 since the lots have been merged? Mr. Sioras agreed and Mr. O'Connor and Mr. Bartkiewicz accepted that as a friendly amendment.

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

Mr. O'Connor asked if the plan was corrected with the appropriate PID noted? Mr. Sioras said that could be made a condition of approval if the Board requested it.

Motion by O'Connor, seconded by Bartkiewicz, to grant a waiver from Section 170-64.A, General Landscaping Requirements, and Section 170-64.B, Residential Buffering Requirements, 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 waivers would not be contrary to the spirit and intent of the regulations. Specific circumstances relative to the plan, or conditions of the land in such plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

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

Motion by O'Connor, seconded by Bartkiewicz to approve pursuant to RSA 676:4, I, Completed Application, with the following conditions: Subject to the Keach Nordstrom report dated May, 2013. Subject to onsite inspection by the town's engineer. Establish escrow for the setting of bounds or certify the bounds have been 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. Note approved waivers on the plan. That the above conditions be met within 6 months. Improvements shall be completed by November 30, 2014. The plan submitted to the Planning Department should indicate the Parcel ID is 27002. The sidewalk easement document is to be reviewed by town staff. Discussion followed.

Mr. Granese asked for more information regarding the discussion with the residential abutter. There had been mention of a fence. Mr. Maynard stated the residential abutter is to the right on Pierce Street (2 Pierce Avenue). They had not understood the plan and the depressed parking lot. They had concerns regarding the lights. He explained to them the parking lot sits down and the fence will go all the way to the front property line. They discussed the location of the fence and the abutter is comfortable with the fence going to the front of the property line rather than the rear. That is how it is depicted on the plan.

Mr. Anderson noted this was an existing bank. Why do they need the additional parking? Mr. Maynard said this bank plans to be more successful and this is their standard for parking.

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

Mr. Anderson and Mr. Granese welcomed the applicant to the Town of Derry.

Accurate Transport, Inc.
PID 08017, 41 Ashleigh Drive
Acceptance/Review
Site Plan – The Dumpster Depot
Continued from May 1, 2103

Mr. O'Connor recused himself as he is an abutter to the project. Mr. Mazzuchelli was seated in his place.

Mr. Sioras provided the following staff report. The project is located at 41 Ashleigh Drive. The purpose of the plan is for a 7200 square foot contractor/office building and exterior storage area for trash containers. The parcel is located in the Industrial III zoning district. All town departments have reviewed and signed the plan. There are no waiver requests. NH DES Sewer Extension and Alteration of Terrain permit applications are in process and copies of the applications are in the file. The Board held a site walk last Saturday and there was a large turnout. He felt it was a good site walk and there was input from the neighbors as well as the engineer for the project. There are two emails from Board members. One is from Randy Chase who was not certain he was going to be able to attend tonight; he had some questions based on what was discussed out in the field. The Board has a copy of that. The other is from Jim MacEachern who was not able to attend the hearing this evening. Mr. MacEachern would like to see three rows of arbor vitae trees added as discussed in the field.

Chris Tymula of MHF Design presented for the applicant, David Paul, who was also present. Mr. Tymula stated there had been a site walk this past Saturday with a fairly large turnout of abutters. The two main items of concern seemed to be the landscape buffer and the stormwater and treatment of the stormwater for the project. Since the site walk, they have prepared a plan showing a substantial landscape buffer along the edge of the dumpster storage area, specifically geared to screen the northern abutters and the homes that can be seen in the distance. The east buffer is fairly thick and there is a distance of about 800 feet to the residential neighborhood to the east. The stormwater management pond is located in that direction as well, so the plan he will be presenting does not show landscape buffering on that side so that they don't impede stormwater flows going into the pond.

Mr. Tymula handed out a packet from the USDA that depicted the types of plantings they have depicted on the plan. The major change to the plan is that they are now showing three rows of Christmas-type trees along the northern area where the dumpsters are to be stored. The trees consist of Balsam Fir, Norway Spruce, White Fir, and Colorado Blue Spruce. They have been staggered in three rows to be consistent with the town's requirements. They provide a good

buffer that was not shown prior. When they spoke with their landscape architect, he stated this is a better way of buffering as the arbor vitae typically are more narrow and don't tend to last as long; arbor vitae would also provide a less uniform buffer than what is proposed. Mr. Tymula noted the current plan the Board has does not show this update. It will be shown on the revised plans to be submitted based on the outcome of this meeting.

Mr. Tymula said the other key item discussed during the site walk was the stormwater management plan. The stormwater management plan is consistent with the NH DES Stormwater Management Manual. In the Manual it describes the different factors and treatment facilities DES is looking for with regard to stormwater management. They include stormwater ponds and wetlands, infiltration and filtering practices, treatment swales and vegetative buffers. The plan shown includes the wetland pond, the small infiltration basin to the west, the vegetative treatment swale to the east and pre treatment area that catches all the run off from the dumpster area and parking lot, and directs it to the stormwater pond. There had been mention of the concern that pollutants such as oil and grease would be come from the parking lot of the dumpsters. The Manual has a section that states this type of system can remove high levels of pollutants. He read from the Manual. Based on the DES guidelines, he believes they are going above and beyond what is required. They understand the proximity of the site to the wetlands and he believes they are complying with what is required by the town and the state.

Mr. Bartkiewicz asked with regard to the spruce trees. He wanted to confirm they were proposed to be in three rows. Mr. Tymula stated they are in a triple row, staggered, at about 15 feet on center; there are about 40 of them. He noted this is not an inexpensive buffer. The cost to install the trees will be between \$15,000 and 20,000.00. This is just the buffer adjacent to the dumpsters. There is still a buffer to the east and a not as thick wooded buffer to the north in the area that had been clear cut prior to his client's involvement.

Mr. Dimmock said he has a blue spruce in his yard and felt it was more substantial than a fir tree. He thought spruce would be a better buffer because the branches are closer together. Fir trees can sustain broken branches in a wind storm. He would prefer that all the trees be blue spruce. Mr. Tymula said they can look at that. Their landscape architect felt the combination of the species would be a better buffer; however if the Board does not have an issue with all the trees being blue spruce, his client will not have an issue with that.

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

Brenda Wilson, 4 Greenwich Road, read the following petition dated May 8, 2013, into the record. She stated the petition has over 100 names. "The undersigned are all in opposition of the plan to build a Dumpster Depot at the site on Ashleigh Drive, which actually requires Ashleigh Drive to be extended. Development at this site, with it being so close to a residential area, will substantially lower our property values as well as demolish the aesthetic scenery and wildlife that we all enjoy. Already, there has been massive tree destruction in that area, including wetlands, and our quiet neighborhood is subject to all the sights and sounds of Route 28. This is an eyesore at best and has eliminated a great natural buffer that was in place from lighting, noise, traffic, etc. We ask you to carefully consider the impact this building, with 350 dumpsters and large, loud

trucks, will have on our community. We ask you to consider the following: Industrial III zoning – the list does not include any type of waste management business. In the 1990's the land was zoned residential. Many neighbors bought in this area for that reason. Who will be responsible for the nosedive their property values take? The natural buffer is already gone – any new buffer would take years to mature to what we once had. There are several “wet” areas and wildlife on that property that will, or may already, be destroyed. The Site Walk on May 11 was deceitful at best now that spring is here and the few trees left standing are starting to grow in. What will happen to the other 30 acres of land that can still be developed? The town has worked very hard over the last few years in the Ashleigh Drive area to present a clean, friendly environment, i.e. Panera Bread area. Do we want residents of Derry to drive in that area now and see 350 orange dumpsters? Near a cinema and grocery store? The deceitfulness of the owner – he emphatically stated that the dumpster are stored empty and returned empty. However, on further questioning by a planning board member, he stated they do in fact come back full at times. This was an outright attempt to deceive the board and neighbors into thinking that the dumpsters would always be empty. Is this the kind of person the town want to do business with? What else is Mr. Paul not telling you about what goes on in his business? What does he have planned? Even for those dumpsters that do remain empty, they will still have residual material in them that can drain, especially in the rain. What about asbestos? Any leakage could cause a hazard and the company has no control over what goes in the dumpsters. Years ago, the present owner, Mr. Cormier, attempted to change the zoning for that area and presented plans to build a golf course. It never made it past the Zoning Board. The residents would much prefer a golf course in that area – that would only increase our property values. He even had plans that would preserve all of the wet areas. A Dumpster Depot instead of a golf course? Environmental impact, painting of dumpsters without property equipment, truck repairs, noise, sound, smell, rodents. What is the benefit to the Town of Derry? It will not bring new jobs and it certainly will not lower our property taxes. It will also cause an eyesore to the newly developed Route 28 area. The overall well-being and quality of life for residents in this neighborhood – we emphatically do not want a Dumpster Depot in our backyard. 900 feet from the closest neighbor is much too close. Consider the noise, smell, the disruption. We ask to you to please consider all these facts and listen to the needs of your taxpaying residents. We are vehemently opposed to Dumpster Depot being built in our backyards.” Mrs. Wilson noted the signatures come from other areas of town as well. She said she would like to know if the property is 800 or 900 feet away from the neighborhoods. She was told that she should have checked to see what was allowed around her home before she purchased and she assures the Board she did do that. The land was zoned residential when she purchased her first and only home in Derry in 1995. The zoning was changed to Industrial she believes in 1997 without any notification to the abutters. She was told that they did not do that back then and it appears she has no recourse. Her family has worked very hard to maintain a beautiful home and to ruin everything they have worked so hard for is to her, inexcusable. Mrs. Wilson discussed pictures she stated she took at the existing Dumpster Depot in Manchester. Those pictures were not retained for the file. She stated the lot was like a dump with garbage all over the parking lot and not in the dumpsters. At the last meeting, Mr. Paul stated they do not perform truck repair on site. He did not say that it would not be done on this site, but that they did not do it at their site in Manchester. One of the pictures depicts someone performing maintenance on a truck. She felt Mr. Paul was stating untruths. The Board should feel insulted. The Union Leader has also reported that Mr. Tymula said there would be space in the building for vehicle maintenance, which is also contradictory. Mr. Paul has stated

he has no plans for the development of the remainder of the property but Mr. Tymula has stated there is an overall master plan for development of the property. Which is it? What type of business will want to be located next to 350 dumpsters? There has been no clear answer with regard to cleaning of the dumpsters. It was stated at the last meeting the dumpsters are not cleaned. She also questions how this plan was passed through the Conservation Commission. The Conservation Commission Chair had stated she was not pleased copies of the plan were not provided to Commission members and that the Commission would not hear future plans if detailed copies were not provided. She believes this plan needs to go back to the Conservation Commission with the proper plans provided to members. She said the town has worked hard on the appearance of the Route 28 area, specifically near Pinkerton Place. She felt this use was going to look like a dump next to that and would drive business away rather than attract business. Dumpster Depot advertises itself as a waste recycling company but the owner is telling the Board there is no garbage on site. If the Board does the wrong thing and allows this business here, there should be a condition that no dumpster comes back to the site with anything in them, ever. The list of allowable uses for Industrial III does not include any type of waste management or dump. She does not know into what category of allowable use Dumpster Depot falls. Under prohibited uses in the zone, it specifically states there shall be no industrial use that would be "injurious, noxious, or offensive..." She believes this proposal falls into that category of prohibited uses. Many of her neighbors will speak with regard to restrictions that could be put into place to protect the neighborhood such as higher berms and trees, modifying the facade of the building and semi annual groundwater testing. She prefers to believe the Board will listen to their concerns and deny approval of this project based on what the abutters present. She felt this use clearly did not belong in this area. Mrs. Wilson also stated she received an email from Town Councilor Wetherbee and she read part of it. "As one of the six councilors who supported creation of this TIF district, this is not the kind of establishment I think any of us had hopes of attracting to our community. I sincerely empathize with the litany of issues that have been raised by many of you."

Paul Beliveau, 14 Donmac Drive, stated he has lived in Derry for 13 years. He moved to Derry because it was a suburb of Massachusetts. He has seen this town go from a relatively small town to a town that brings a Dumpster Depot into his backyard. He can see through the trees and see the movie theater. It is ridiculous that the town can't preserve the Pinkerton Tavern, a building from the 1600's and can put a Dumpster Depot in town. He is considering leaving Derry.

Kathy Beliveau, 14 Donmac Drive, stated they adamantly oppose the Dumpster Depot. It will drastically decrease their property values. The tree buffer is not going to stop the noise of the dumpsters being loaded and unloaded from 7:00 a.m. to 6:30 p.m., Monday through Friday. She did not believe the Board members would want this behind their houses. The residents in this area are on well water. It has been stated dumpsters will be cleaned off site, but being lifted and tilted will not remove paint or chemical residue. A large number of his clients are foreclosures. She does not believe those clients will be too careful in the disposal methods or pay attention to instructions printed on the side of the dumpsters. People involved in foreclosures are normally not in the frame of mind to care about this type of thing. It is not likely a bank employee will be too careful either. The owner also stated there is no inspection on his company's part as to what goes into the dumpsters. This all has the potential to impact their drinking water. She did not feel any of this was right.

Daniel Shovlin, 2 Olde Coach Road, has lived in Derry for about three years. He is opposed to this project. He would request the Board consider adding the following conditions to any sort of approval, although his preference is the Board deny the plan. He would like the Board to consider the following: 1) some sort of non-concrete pad for the dumpsters to limit potential noise. 2) No garbage stored on site under any conditions. 3) Stipulation that no truck maintenance occur on site at any time. 4) Stipulation that no washing of dumpsters occur on site and that dumpsters be washed prior to being stored at the site. 5) No moving of dumpsters prior to 8:00 a.m. and no moving of dumpsters after 5:00 p.m. He would strongly request the Board deny the plan but these types of conditions would be greatly appreciated if the Board places conditions. Mr. Anderson asked for clarification as to the requested condition number one. Is Mr. Shovlin asking for concrete? Mr. Shovlin said he would prefer to have something that is not concrete to limit the banging and loud noise of the dumpsters. The major issues with this plan are with sound, sight and smell.

Susan Salvaggio, 19 Donmac Drive, said she is opposed to the construction of Dumpster Depot on Ashleigh Drive. As a new resident she was initially attracted to the area because of its quaintness and natural surroundings. This past year she has seen these are slowly disappearing. She understands the Planning Board must legally approve the facility if the applicant can show he can meet all of the requirements. She has a feeling he will meet the requirements and show it on paper, but how do they know this will actually happen. Who will monitor him? Will it be the neighborhood? They are concerned about health and safety issues as well as lighting and noise. Who determines what "loud" is, the Planning Board or the residents who are living with it? They know the land is zoned for business but this is not the type of business they condone. They do not feel this type of business will enhance the image of Derry and will make it joke. The small town feel and quaintness will continue to disappear if businesses of this type continue to pop up. They feel their property values will continue to drop because of this eyesore. They pay very high taxes in town and their opinions should carry some weight. She asked the Board to please do what is right for the community not because of the tax revenue the Board feels Dumpster Depot may generate but do what is right for Derry and the people who love this town. They do not want to see it dragged down.

Jillian Mordarski, 12 Donmac Drive, said she and her husband purchased two years ago. They do not want to start a family with a Dumpster Depot in the backyard. They saw the wonderful things that Derry was doing to make itself a better and more beautiful community and did not think they would have to worry about such things going in their backyard. They knew it was zoned for business and thought it was a risk worth taking. They now feel that risk was not worth it if the town is going to consider allowing this use. They have even discussed selling. She thanked the Board for listening to the comments this evening.

Karen Struthers, 20 Donmac Drive, stated her house directly abuts the property. She had her house on the market in March of last year. One of the things prospective buyers had asked her to find out was if the land was zoned residential or commercial/industrial. She was told by town hall that the land was residential. She does not know where it is coming out that seventeen years ago it was disclosed that it was commercial. No one was notified. When she called town hall last year she was told the land was zoned residential. If the zoning has been changed in the last

year, she believes all the property owners should have been notified. She is against this because she feels it will devalue her house. She is putting her home back on the market. She appreciates the Board's consideration.

Mr. Granese asked if the property in question was zoned Industrial III or IV? Mr. Sioras said this is Industrial III. On the other side of the power lines, the land is zoned Industrial III. Industrial III is between the first set of power lines at the cul de sac to the other set of power lines at Scobie Pond Road. The other side of the power lines is Industrial IV.

Erica Mahon, 4 Arrowhead Road, is concerned about what will be dumped in the dumpsters. They have heard they are not cleaned often and if someone dumps asbestos or other carcinogens either knowingly or unknowingly, they don't have any idea what will be dumped. People taking apart their house may not know they are removing asbestos. What happens to the residents? Asbestos can travel long distances in the air before it settles. The fibers are very small and cannot be seen by the naked eye or household microscope. Asbestos never breaks down or biodegrades, it does not absorb into the soil. It sits on top of the soil where it stays until it is disturbed and it can easily be moved by the wind blowing. Whenever the wind blows, asbestos redistributes into the air where they and their children can breathe it in. Her concern is that they will not know what will be dumped in the dumpsters. The dumpsters will come back to the site every day and every day she will be wondering what her children are going to be breathing in. Every day she will be tucking her children in and wondering if she should be opening the window or not. It can't be seen so she will never know. She has fought cancer three times and has no interest in treating a fourth time nor does she want her children to go through anything she has gone through. If she can avoid that, she will. If that means fighting this Dumpster Depot, she will. They have already infected one place with all these carcinogens and there is nothing the town can do about that. Why let them infect our place? Leave it where it is. Don't infect Derry. She loves Derry. It took a long time to find a place where she felt she could build a home and community and to teach. Now, to have this fear eating away at her is something she cannot do and she asks the Board to think very carefully about this and to please don't let them come to Derry.

Dave Fischer, 19 Donmac Drive, wanted to take this opportunity to reinforce what he said at the last public hearing on this important community issue. He is vehemently opposed to putting a trash dump in his backyard. He was disappointed to hear the Planning Board does not have the authority to oppose the proposed plan, because the property is zoned for industrial use. If the applicant meets all of the requirements, he hopes the Board will heed the feedback and unified opposition from the abutters directly affected by this proposal. He would like to urge the Board to do the right thing on behalf of the community and make sure this plan does not come to fruition. Anything less is unacceptable to the residents in this neighborhood. The health, safety, and aesthetic quality of the residents should be first and foremost in the minds of the Board members as they are making their decision, not just the tax benefit. They feel this will decrease property values and will not enhance Derry's image. He hopes the Board takes the concerns of the neighbors into consideration before the Board does something the residents feel will be a real detriment to the community and quality of life. He thanked the Board for the careful consideration of their concerns.

Bruce Wilson, 4 Greenwich Road, stated that most people in the Olde Coach Estates/Donmac area have lived there for many years, some since the inception of the neighborhood. Unbeknown to most, the land was changed from residential to industrial. They have all worked very hard to make this area a nice place to live. A few years ago, the current owner Mr. Cormier, came forth with a plan to put in a golf course and indoor driving range. The town refused to change the zoning and failed to protect the integrity of the abutting neighborhood and its many longtime residents. They are now asking this Board to do what the variance board did not and to keep what they have all worked so hard for. The neighborhood requests this and feels they are just in their effort. If the Board fears they cannot protect the neighborhood, they are asking for the following restrictions. The town and businesses in the surrounding area have worked hard to maintain a certain look. The Dumpster Depot building is just the opposite of what has been done in the area and they feel the structure should match the area and not be a metal building. A metal building will only open the doors to more. What will the applicant be doing as a master plan for the rest of the property? They also request the orange strip on the building be removed and be a different color so that the neighbors are not waking up and looking at that eyesore instantly. They request the hours of operation be restricted, with no truck running after certain hours as he does now. They ask that a buffer zone be created, not only of trees, but with a berm as well. A five foot high, twenty foot wide berm with trees planted on top of the berm would then give an extra five feet of buffering and would make a huge difference from what is currently proposed. It has also been stated that there will be no buffer planted to shield Greenwich Road. He requests they do. Right now, the trees are filling in, but it will be much worse in the winter. From his deck, he can see the mulch building. He does not want to have to look from his deck and see 350 dumpsters. Mr. Tymula has said he was on Greenwich Road, but he was not standing on Mr. Wilson's deck. They ask the Board to take all these considerations into effect and do what is right for the town and residents of this area.

Scott Southmayd, 7 Olde Coach Road, shares the same concerns as his neighbors about this business coming to town. It sounds like the Board has already made up its mind about this project coming in. One of the items he would like to request is the installation of monitoring wells on this site. He believes they need to take a hard look at 350 dumpsters on a site. This area sees quite a bit of rainfall; where is that rain going to go? He understood Mr. Tymula said there would be a retention basin. That only holds the water, it does not treat it. There are concerns regarding the residual material that will be left in the dumpsters even if they are empty. Every time it rains and the 350 dumpsters fill up, the water will come out and percolate into the ground. He would strongly suggest that one of the conditions be the installation of monitoring wells on site and semi-annual groundwater sampling that test for a variety of items such as VOCs, Chromium, Lead, Mercury, oil and grease to find out if there is truly an issue going on; that is the only way to be certain. He feels the residents are raising strong concerns and he hopes the Board takes that into consideration.

Dave Hile, 16 Donmac Drive, asked for a brief synopsis of how plans are approved and where this plan is in that process. Mr. Sioras stated when a plan comes in, by law, the town is obligated to notify the direct abutters or those within 200 feet. The plan comes in, the abutters are notified and have an opportunity to review the plan ahead of time in the Planning Office or at the public hearing. In this case, the Board held a site walk. The plan came back for another meeting and was opened to further public input. These are the opportunities the abutters have to comment.

The plan then goes back to the Planning Board and they take the comments into consideration and make a decision to continue a plan if they need more information or further answers, or they can make a decision. In general terms, they can put conditions on an approval similar to those suggested this evening. The process is that the abutters are here today; by law they are to be notified of the hearing when any type of development comes in.

Mr. Hile said he has a question with regard to the tree buffer. What would the size of the trees be when they are planted. Mr. Tymula said they would plant six to seven foot tall trees, with varying height such as seven foot in the back, six foot in the middle, and a combination of the two to give it a bit of perspective. Mr. Hile asked for confirmation that there has been no consideration of planting trees on a berm. The proposal tonight was for just trees. Mr. Tymula agreed. Mr. Hile noted there has been a drastic change in his back yard over the past year. When it was first logged it looked like a logging effort, but then the land was clear cut. He now sees everything that happens on the back side of Route 28. When he opens his window in the morning all he hears is traffic and he can hear traffic at night. He feels the magnitude of noise may increase if this plan is approved. The equipment noise and the noise from moving the dumpster will be pretty bad. He is opposed to this project. He does not know what latitude the Board has. If a plan comes in and meets the current laws and regulations, then the Board may have no choice but to approve it. But if it comes to that, he feels there needs to be discussion about the conditions the abutters would like to see imposed so that this project is as least offensive as it can be.

John Meyer, 17 Donmac Drive, said he is curious as to why a business such as this would be situated in what is essentially a retail area. He questions how difficult it will be for the town to attract other new retail development if the anchor of the neighborhood is a dumpster storage facility. He questions why someone would purchase 60 acres of land to put up a three acre dumpster storage facility and whether or not there is a three acre parcel of land outside of what is becoming the town's retail center. He thinks this will have a negative effect on the town's ability to develop. He believes approving this would put a stop to some of the retail development the town has seen recently. He was surprised the local businesses were not here voicing their concerns. As Mr. Hile said, he would like to know if repairs to the dumpster will be taking place on site. He would like that to be a condition of approval that cutting, grinding, welding, painting, and beating of dumpsters in his backyard will not be allowed. He also stands in strong opposition to the Board approving this plan.

Sampson Metz, 12 Olde Coach Road, stated he does not directly abut the project, but his neighbors do. They chose their homes for themselves, their children and their futures. He would hate to see their futures marred by dumping 350 dumpsters abutting an upscale neighborhood. If the Board can do anything to stop this, he would beg them to do so.

Marin Shovlin, 2 Olde Coach Road, agreed with all her neighbors. At the site walk, no one mentioned the issue of mosquitos. With water sitting in the dumpsters, what will prevent mosquitos breeding and bringing disease to her family and the town in general? She felt 350 dumpsters full of water would increase the mosquito population drastically. In an already wet area, this will make it worse. She does not know what can be done, but if they can keep the Dumpster Depot out that won't be a problem.

Scott Dellisola, 6 Cilley Road, said he had been sitting home watching this on TV and felt that what Mrs. Wilson said was enough. This is all getting done because the town needs money. Didn't the town learn its lesson last week with the incident surrounding the carnival? Mr. Granese stated that had nothing to do with the plan before the Board. Mr. Dellisola felt the town should wait for something decent to come into the area. He has lived in the area for six years and moved here because of the school system and it was far enough away from Interstate 93 that he would not hear any noise. After the tree clearing - which he heard they did more than they were supposed to - were they fined? Do they have to replace the trees that they took? He does not think so. If he did that on his property he would be fined. He maintained this whole project was about money for the town and suggested the town hold off and wait for something decent to come in instead of this. He felt if the Board passed this it would be stupid and uneducated.

Dave Mordarski, 12 Donmac Drive, wanted to make sure the Board members were paying attention because this issue is not a joke. He had several questions. The residents on Donmac are on private wells. The people renting the dumpsters are not licensed contractors; is anyone inspecting what goes into the dumpsters? Are the contractors being deceptive and deceitful? Asbestos remediation is very expensive; it is less expensive to hide it in the dumpsters. He thinks monitoring wells might be a good idea. Mr. Mordarski asked for more information on how water drained out of the retention basin? Mr. Tymula explained the retaining pond is located to the east of the site. There is an outlet control structure, made out of concrete that has a "T" inside it. The "T" is perforated with holes and mitigates the water that is in the structure. The standard is that whatever is going to the wetland pre-development, needs to be the same post-development. Per the analysis, they will have no increase on peak runoff post-development to the wetland. That is controlled by the sizing of the basin and the structure. The basin is in direct correlation to what DES requires for stormwater treatment. The basin will also treat the stormwater. The water is drawn down to a certain level and discharged to the wetlands. The adjacent wetland is about 20 acres in size; the basin is less than ½ an acre. With regard to standing water, this is minute in size compared to the wetland on the east; that does not take into account the wetlands on the remainder of the site. Mr. Mordarski asked if the retention pond would be considered a stagnant pond in drought conditions? Mr. Tymula said there is a low flow orifice at the bottom of the pond so it can be drained down so that there is no water in it. If the pond needs maintenance or if any grading or mediation needs to be done, the low flow orifice will drain out the pond. Otherwise there will always be water in it because it is a wet basin. In drought conditions it has the potential to breed mosquitoes in the same manner as the 20 acre wetland. The wetland is essentially at the same elevation as the pond. Mr. Mordarski noted the existing houses are at an elevation above the retention pond. Mr. Tymula said Donmac is about 20-25 feet higher in elevation to the proposed design. He is not certain of the elevation of the homes located to the east. Mr. Mordarski asked if Mr. Tymula would recommend the berm since the homes are at a higher elevation. Mr. Tymula stated the landscape plan that they are proposing has 6 foot tall trees. The dumpsters are a maximum of six feet tall. Over time, the plantings will grow taller. The trees directly buffer Donmac. To the right, there is about 800 feet of woods and the nearest home is about 900 feet away. There are woods and wetlands in between. Mr. Mordarski stated they have lived in this neighborhood for two years. He felt that as two young adults, he and his wife add to Derry. They pay their taxes. It feels like they are being alienated. There are about 40 homes in this neighborhood with an average tax rate of

about \$8,000.00. That is a lot of money they are paying. The Board is voluntarily in place to protect them. He is asking the Board to protect them.

Joyce Waterhouse, 8 Arrowhead Road, agrees with the sentiments expressed this evening. She has the same concerns. She noted that Route 28 has just been expanded to accommodate the new businesses in the area. Does the Planning Board take into consideration the traffic impacts that will take place from the trucks carrying the dumpsters coming in and out every day on a brand new road? Who pays for the road if it breaks down in a short period of time? Mr. Anderson asked Mr. L'Heureux to address that question. Mr. Anderson believed that the road had been constructed to state standards. There is a life expectancy for all roads. Mr. L'Heureux advised that town roads are constructed with gravel, drainage and typically four inches of pavement. On Manchester Road they utilized high performance pavement that will last a bit longer. Ms. Waterhouse said Derry is primarily a suburban town. The newer businesses in the area, such as Walmart and the restaurants, don't have trucks carrying heavy equipment. This business will have trucks with heavy equipment and it sounds like they come in and out a lot during the day. She is not sure the road was constructed for that purpose. Mr. Anderson said it was designed to meet the standard hauling loads. The trucks that haul goods to Walmart are heavier than the dumpsters. And they travel in and out to Walmart very frequently. Mr. Anderson assured her that they built the road to meet the standard.

Jim Long, 9 Olde Coach Road, asked if the owner could share why he was moving from Manchester to Derry? Mr. Paul said they lease the space in Manchester and his intention is to create a home in Derry for his business. Mr. Long asked if the dumpsters were industrial size or of a consistent size? Mr. Anderson said that at the last meeting, the Board was told the dumpsters would be in varying sizes. They are for residential and commercial use. They are mostly used by people renovating homes. They are not rented by food service establishments. Mr. Paul said they do rent to commercial/industrial and all types of businesses. The dumpsters don't come back to the facility full of trash. They don't handle garbage. Mr. Long asked how the dumpsters are treated or cleaned prior to coming back to the warehouse? Mr. Paul said they don't use a cleaning method. He is not sure where that comes from. They are cleaned out as they get dumped out at the different facilities. It is illegal to clean out a dumpster per state regulations. Mr. Paul could not confirm if there were food grade materials in the dumpsters because he does not have documentation as to what goes into them. Mr. Anderson asked for further clarification. Mr. Paul said they rent out for non-hazardous materials. They do not operate the food service side of the business. What they do is they own the dumpsters, but don't operate a garbage business at this time.

Erica Mahon, asked Mr. Paul to explain why it is illegal to clean out a dumpster. Mr. Paul said he did not know. It was illegal to wash out a lot of things. Ms. Mahon said if they only accept non-hazardous materials, they should be able to get in there with a toothbrush and clean the dumpsters. Mr. Paul said if someone chose to clean out a dumpster, he supposed they could. It is against the law to wash out a dumpster. It is also against the law to wash a truck without the right type of filtration system in an industrial setting; that is what he is trying to say. It is all about water and runoff. That is why the area is designed to handle any type of runoff. They do not wash out any dumpsters. Ms. Mahon said it had sounded like he had said it was illegal to wash out a dumpster because of all the hazardous chemicals that might possibly be in there that

could be hazardous to the community. Mr. Paul provided the following example. Someone could go into any parking lot, such as Walmart or a supermarket and look at the oils that leak from a car. The property owner is required by law to construct the ponds and filtration systems to collect the items that may leak from the vehicles. That is why the state and town have systems in place to make sure these things are all treated properly. Ms. Mahon wondered if there were dumpster washes, similar to car washes. Mr. Paul stated a car wash can't even get rid of their water in most cases; it needs to be filtered on site. Ms. Mahon also had a question regarding the dumpsters holding water and breeding mosquitos. If there were a lot of mosquitos, sometimes people spray for them. Typically that is done with a chemical. The chemicals that kill mosquitos are chemicals that are hazardous to people. She did not want anyone to think spraying chemicals is a simple solution.

Mr. Sioras asked Mr. Paul to clarify the process. His understanding is that a dumpster goes to a site for a job such as a renovation project. If that dumpster is used so many times, it can get the normal dust and dirt build up from the accumulated projects. He thinks people are asking if the dumpsters are cleaned out at any point? What happens to the wood, dust and things like that? Mr. Paul explained in most cases when a dumpster is dumped after being at a home or construction site (open top dumpster), the truck hoist lifts up over 19 feet. The centrifugal force of the material cleans the entire bottom. Sometimes a piece of roofing or something may remain in the bottom of the dumpster, but the driver makes sure nothing will fly out of the dumpster as they travel on the road. The dumpsters are constructed of steel, they basically clean themselves. There are hundreds of dumpster companies throughout Massachusetts and New Hampshire. He is no different from anyone else. He is abiding by the laws of the State of New Hampshire, the cities and towns they go through, as well as those in the States of Maine and Massachusetts. They need to make sure they are complying with all the laws, regulations and rules. When the contractor rents a dumpster, he is responsible. When a homeowner or contractor does a renovation project that person is required to pull a building permit. During the building permit process, they are supposed to make sure they have performed the remediation with regard to asbestos and all that before they are issued the permit. That is why they feel very confident they are not dealing with hazardous materials. The facilities that they go to are regulated and have inspectors on site in most cases, so that if a load is dumped and there is something that should not be in the dumpster, it is found. It is rare to have any issues.

Mr. Dimmock disagreed with Mr. Paul that is against the law to wash out a dumpster. It is against the law to wash them out without the proper equipment. If the ZBA had an applicant for a car facility in the wetland boundary, they would tell the applicant they can't wash cars because they are in the wetland boundary. This business is planned to be in the wetland boundary, and the dumpsters cannot be washed there – unless he had the proper equipment to do so. Mr. Paul said they don't plan to wash them. Mr. Dimmock noted he is not only on the Board as a member, but also as a Town Councilor and he is looking out for the residents. He asked Mr. Paul to make sure his statements were truthful.

Mrs. Wilson did not believe the dumpsters cleaned themselves. Do the dumpsters come back full or do they not? She felt Mr. Paul kept contradicting himself. There will be garbage in the dumpsters sitting in the back of their homes. She took issue with what she felt were untruths that were being stated to the Board.

Mr. Granese asked the audience members to keep to themselves and refrain from making comments at each other.

John Meyer said he rented a dumpster two years ago from Dumpster Depot when he was re-siding his house. He was not required to pull a permit to re-side the house and he felt that negated the argument that someone had to pull a permit to put material in a dumpster. If his house had been older and previously painted with lead paint, no one would have known and that material would have gone into the dumpster. The dumpsters are not self-cleaning, and small particles will stick to the side of the dumpsters. It won't all fall out. He felt Mr. Paul should be more aware of the rules and regulations. There may be other similar companies, but they are not trying to locate in his neighborhood.

Kathy Beliveau said Mr. Paul had stated a small number of his clientele are food based companies and he has no plans to change over to a larger number in the future. If these trucks come back to the facility after hours, the dumpster would be sitting overnight full of food and that can attract vermin. They don't want that behind their houses.

John O'Connor, 13 Arrowhead Drive, stated he has lived at this location for 30 years. He also stated that when the zoning changed, he was not notified individually and was shocked when he heard the zoning had changed. He read the following letter addressed to the Planning Board into the record. "First, I'm well aware that the site plan before you is an accepted permitted use under our zoning regulations. However, is it best for the Town of Derry, especially in an area that has been developing into a retail-type district with anchors like Hannaford's, Panera Bread, Super Wal-Mart and a high end pet store? Your decision will be difficult. As many of you are aware, I was out of the country on a family matter for the May 1st public hearing and at my request, my email, based on the information I had at that time, was read into the record. After watching the hearing on the town's website I found my questions were not answered. Specifically, one question was directed to the Town's Public Health Officer, Mr. Raiche regarding breeding of mosquitos as it relates to triple EEE and West Nile virus. A recent posting of his department shows areas to be tested and treated and none were in this area. I would like to hear from him what kind of monitoring will be taking place for mosquitos. Although I'm aware some open-top dumpsters do not have sealed doors but could still trap rain water depending on the slope of their position. The four cubic foot, open top, top loaders cannot drain out as I had observed at the Manchester location. Keep in mind there will be 300 plus dumpsters of various sizes, and based on the owner's statement of rolling 15-20 dumpsters a day, then the turnover rate will be about 15 weeks. My second question was directed to Craig Durrett, the Town Environmental Coordinator, regarding any potential toxic materials such as lead paint or asbestos as a residual that could affect the aquifer. After watching the video and taking the site walk, I have an additional concern since I'm aware that discarded fluorescent tubes can break and contain mercury residues, would be going into sub surface. Which brings me to my next concern, the location of the 330 dumpsters. I compliment the owner for trying to be Green in using an asphalt/gravel combination to put these dumpsters on. {Mr. O'Connor noted that in his other job, he is a State Representative and is working on the Environmental and Agriculture Committee with DES on several bills.} My concern is that the runoff percolating through the asphalt/gravel combination goes into the largest aquifer in the I-93 corridor. This prompted a

question about the asphalt/gravel combination from the Chair, Mr. Granese, to the Town's Engineer, Mr. L'Heureux. Mr. L'Heureux stated that they have outstanding issues as to this location and the materials that are to be used. [Mr. O'Connor explained the Town of Derry is one of about 15 communities with impaired waters in the state that fall under the Federal EPA's MS 4 permit. The highest contaminant right now is Chloride which impacts the I-93 corridor.] Personally, due to the sensitivity of the aquifer below and to the recent draft of the MS 4 permit and mandated monitoring station by the Federal EPA, I would like the board to have the environmental coordinator address these technical issues prior to making any decisions on the site plan. [The aquifer begins on Route 28 and flows down to Hannaford, travels to Hood Pond and then travels to Windham, Salem and Pelham. That is why this aquifer impacts the I-93 corridor.] At the site walk, some of the planning board members heard some of the concerns of the abutters. If the board accepts the site plan those comments should be added as conditions of approval. In addition to those mentioned by the abutters, I would request the following conditions be added: 1. Rodent control – I've noticed that at the Manchester location there are residual materials left in the containers. The proposed location has porcupines and other vermin in the fields. 2. Monitoring wells to be added – due to the sensitivity of the storm runoff and percolation to the aquifer, I would strongly suggest that monitoring wells be added. I would leave the frequency of testing and which contaminants to be analyzed to the town's environmental coordinator consistent with New Hampshire DES and Federal EPA guidelines. 3. Hours of operation – 7:00 a.m. to 6 p.m., Monday through Friday only. 4. Dumpsters permitted – four cubic feet, top load dumpsters – will they be allowed? 5. No power washing of dumpsters. 6. Buffer zone – needs to be acceptable to abutters. 7. Dumpster pad – must be sloped to create drainage of open tops, so that stormwater percolates to the detention ponds.”

Mr. Anderson noted Conservation Commission looked at this plan. Many of the items Mr. O'Connor has mentioned such as the MS 4 permit are within the purview of the Planning Board. Did the Conservation Commission put any conditions on their approval? He did not think they did. Mr. O'Connor said he attended that meeting and they did not hold a public hearing. They did let him speak and he mentioned the three major streams in the area and suggested a site walk. Prior to that, Yvon Cormier performed the timber harvesting, which by the way, the Town had nothing to do with and it was completely legal; he was within his rights. The State Forester was called to the site as well when the harvesting was taking place and the job was shut down twice. The streams that were impacted had to be repaired. The Conservation Commission did not want to hold a site walk. He wished the Board well with its decision.

Michael O'Connell, 18 Donmac Drive, commended his neighbors for speaking this evening. He shares many of the concerns. Moving forward, assuming this is a done deal, the large piece of open property has 30 acres of undeveloped property. Can this Board put a cap on how far this project spreads out on the acreage? Where does the project end? Mr. Anderson stated the parcel is a 62 acre parcel. The minimum lot size in Industrial III is one acre. Conceivable, there could be 60 lots in this area under the existing zoning. Realistically, with the wetlands, there may be 25 to 30 parcels that could be created. Mr. O'Connell asked if there is anything that can be done to make sure the 350 dumpsters does not become 1000 dumpsters. Mr. Granese said with approvals there are conditions. If the applicant says there will be 350 dumpsters and then he puts more than that, he will need to come back to the Board in order to expand the number. If he wanted to add another building, he would need to come back to the Board. Mr. O'Connell asked

that assuming this plan goes forward, hearing the concerns of the neighbors, could the Planning Board say, this is enough? Mr. Granese said they could. He is sure they all have a list of concerns from the site walk. The Board will address concerns and comments once the public hearing portion is closed and the plan comes back to the Board for review.

Richard Saporito, 10 Donmac Drive, said he has been a resident for 24 years. He is opposed to this plan for some of the same reasons. He would like to reiterate this is the wrong business in the wrong location. There must be better places in Derry to locate this business; it does not fit the area. If this is approved he implores the Board to put measures in place to deal with the abatement, whether they are environmental, water, air, noise or whatever it may be. Many times we find out later that various materials used in construction that we thought to be safe are not. No one knows what will come down the road for future generations and he asks the Board to consider all of the comments made tonight. He has been in business for many years and is not opposed to business but it needs to be the right business in the right location. It is the duty of the Board to look at business in a responsible and civic manner.

Bruce Wilson said after hearing the comments this evening, he is asking the board to not approve the plan tonight and to take a closer look at options for approval, restrictions, facades, etc.

Karen Stuthers implored the Board members to consider if they would want this in their backyards. Even if they chose to sell their homes, the value is going to go down and they will still be paying high taxes. Everyone here has been faithfully paying taxes to the town.

Mark Waterhouse, 8 Arrowhead Road, said he agreed with his neighbors. It was difficult to imagine a more detrimental sight than 350 dumpsters which would be such a contrast to what they are used to seeing in their neighborhood. He assumed that Dumpster Depot would have many dumpsters deployed at any given time than what would be on site. Is the 350 a maximum number, a nominal number or an average? Would there be more dumpsters there during the off season? Will it be 100 during the summer and 500 during the winter? What does that 350 number represent?

Mr. Paul said the 350 is the maximum they intend to bring back to the facility. Between November and January is when the maximum number of dumpsters are on site. If someone went to any of their three yards now, there would not be any dumpsters stored. The concept of the business is to keep the dumpsters out, so rarely during March/April through November are there many on site. Typically they go from site to dump, dump to site. Mr. Waterhouse noted during the winter when the leaves are off the trees is when they would see the most dumpsters. Mr. Paul confirmed the most number of dumpsters would be on the site during the winter months.

Sara Parker-Yap, 3 Driftwood Road, is opposed to the project. She thinks for Derry, this would be a blight not just for the neighborhood. She is concerned that Mr. Paul has several times, said "not at this time". What is his plan? Currently he does not have dumpsters going to fast food restaurants and he farms that work out at this time. Two years from now will he have his dumpsters go to fast food places or garbage facilities? She believes there should be some sort of regulation as to what is acceptable to place in the dumpsters.

Ken Berg, 20 Olde Coach Road, said he has had some experience with dumpster people in the past when he worked with the railroad. All the dumpsters take in hazardous materials. People throw in what they want to get rid of. All of the dumpster companies use the dumpsters until they rust out and start to leak. They put the rusted ones in a corner that have been taken out of use. There may be no documentation of the materials that go into the dumpster but people throw away hazardous materials; they always have. This is no different than people throwing hazardous items away at the Derry dump. It happens all the time.

Marin Shovlin does not believe this is an accepted use in this area because it imposes a public health risk and is a public nuisance. There is huge potential to hurt the town not only aesthetically but in prohibiting the ability to attract people to the town. This is a health risk because of the potentially hazardous materials and disease from the influx of mosquitos. She also believes there is a land use ordinance that states that anything that would create a public nuisance can and should be denied. She thinks this should be denied on those grounds.

Dave Mordarski confirmed if Mr. Paul wanted to clean the dumpsters he would have to put the appropriate measures in place. Somehow, he has magically, self cleaning dumpsters. What is cleaning the dumpsters? Mr. Granese said they go 19 feet in the air. Everyone has been asking about it and it is one of the items that will be addressed when the Board has a chance to ask questions. Mr. Mordarski noted that sheetrock and plaster dust stays on clothes when people work with it. He does not believe hoisting the dumpsters in the air will take care of that. In reality, snow and rain will be cleaning the dumpsters and the engineer states his measures will take care of it. In reality, this is all getting flushed into the wetland. That is a big concern because this is a large wetland area. He wanted to make sure the Board took that concern to heart. Mr. Granese said it would be addressed.

There was no further public comment.

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

Mr. Granese asked with regard to Section 165-41, Industrial III, where does the proposed use fit under the list of permitted uses? Mr. Sioras believed that Mr. Mackey, as Zoning Officer, interpreted this as a contractor yard. Mr. Granese commented he appreciated that so many people took time out of their lives to be here this evening. What zone would trash or garbage be allowed in? He could not find it specifically and did not want to spend a lot of time looking as he wanted to pay attention to the comments. Mr. Sioras said the town does not have the heavy industrial zones any longer which predate his time back in the 1970s and 1980s. Mr. Sioras confirmed this plan went to the Technical Review Committee (TRC). Mr. Anderson asked Mr. Sioras to explain how a plan goes through the process to approval. Mr. Sioras explained that when a plan for a residential subdivision, commercial development, or new comes into the Planning Office, the applicant goes through a technical review process with the staff. The Committee is made up of representatives from the Police Department, Fire Department, Code Enforcement, DPW, and Planning staff. They review and provide input on the plans. The TRC signs off on the plan once they are satisfied; this takes place before the plan can be submitted to the Planning Board for public hearing. The plan is also reviewed by the Conservation

Commission who also signs the plan before it can get to the Planning Board. There is a technical review process from each individual department, then the abutters are notified and the questions come up as they did tonight with site issues.

Mr. Granese noted Mrs. Wilson brought four pictures and an article. He assumes the pictures were taken in Manchester. He asked Mr. Paul if they were pictures of his yard? Mr. Paul said not all of them. The two bottom pictures with the fence were taken of his yard. The other two pictures were not of his yard. That is an area leased by someone else. Mr. Granese asked if there was a service truck shown. Mr. Paul said yes and the person working on the truck could have been changing a tire, fixing a mirror or any number of things. He never said there would not be service at the facility. It is not a service station. Mr. Granese confirmed the top left picture was not Dumpster Depot. Mrs. Wilson maintained it was. Mr. Paul said that was not their leased land and it had nothing to do with him. Thibeault Property owns the building and leases to two other tenants. Dumpster Depot has nothing to do with the two top pictures shown on Mrs. Wilson's presentation board.

Mrs. Wilson said those pictures were all taken at the same location and the picture definitely does not show a tire being changed or a mirror being fixed. The truck is open and they saw the mechanic working on the engine of the truck.

Mr. Mazzuchelli felt there needed to be some written environmental control procedures. He would have a hard time voting on this without more information. He thought there is more to be done. If legally the Board can't prevent it, he thinks there needs to be more controls over the project. Mr. Granese said those would be conditions of approval. There is a difference between the Planning and Zoning Boards. The Planning Board is a 'yes' board and the Zoning Board is a 'no' board, but they have to follow the rules and regulations.

Mr. Dimmock asked if the Conservation Commission had weighed in on this plan? Mr. Anderson said they signed off on it with no conditions. They had a plan, but the members did not have individual plans. Mr. Dimmock thought that before this Board took action on the plan, it should contact the Conservation Commission and ask them if they did their due diligence on the plan because the residents don't feel they did. Mr. Anderson noted on the cover page of the plan, Margie Ives as Chairman of the Conservation Commission, signed the plan on April 14, 2013. Mr. Dimmock said he signs a lot of things and that does not mean he is always right. The people are saying they don't feel the Conservation Commission did its due diligence and they want the Commission to look at this again. Mr. Granese said he would hope that Margie Ives would sign the plan after the Conservation Commission had a meeting. He does not sign plans until they are approved. Once his signature is on it, it is approved. If he signs something before the Board has a meeting on it then he would not be doing his job. Mr. Dimmock felt this Board should ask because the residents are asking for it. He went on the site walk. If Margie Ives signed off on it, he is disappointed.

Mr. Tymula said they did meet with the Conservation Commission but there had been a miscommunication with their wetland consultant as to what plans needed to be formally submitted to the Commission. They had the full size plan that everyone has seen tonight. What the Commission was looking for was reduced 11 x 17 size plans so that each member could have

a copy to review while they were discussing the plan. He has since spoken with Margie Ives. They are scheduled for the June 10, 2013 Conservation Commission meeting; he noted they have no wetland impact on site. They are outside the Conservation Commission's jurisdiction because the building is not being constructed within the 75 foot buffer zone. They are not hiding anything. They are doing everything within their legal right to move the plan forward while complying with the regulations of the Conservation Commission and the Planning Board. Mr. Dimmock said he did not state the applicant was trying to do anything wrong, he just thinks the Conservation Commission should take another look at this. Mr. Tymula stated that the way the Conservation Commission works in the TRC process is that they review the plan, then they sign the plans in order for the applicant to come before the Planning Board. They do not take place in the actual TRC meeting, so the applicant goes to a public meeting of the Conservation Commission. They asked the Commission if they wanted to join in on the site walk at their request. Two members made it to the site walk. The applicant said they would come back to the Commission at a later date which has been scheduled for June 10th. The reason for that is to simply provide the smaller copies of the plans. The plans were not originally submitted as 11 x 17s for the first meeting. He was told to just bring them to the meeting. Conservation Commission does not give a formal approval; this is an administrative step in the process. They have no issue with going back to them. Mr. Chase said he watched that Conservation Commission meeting and the Commission did give this plan due diligence. The Commission did not want to hold its own site walk because they said it was out of their jurisdiction because no wetlands were being impacted. They are having another meeting because the Chair chastised the applicant for only bringing one set of master plans to the meeting, rather than also bringing the 11 x 17s like this Board receives. The Chair felt there needed to be plans in front of every member. The Commission did feel this was out of their jurisdiction and there was no need for a site walk. Mrs. Choiniere noted the meeting with the Conservation Commission on June 10th is simply procedural since the Commission has already signed off on the plan.

Mr. Park said he did not have anything against a Dumpster Depot, but he does not feel this is the best location for it. This was one lot when the TIF district was created. As far as allowable uses, the uses are very general and this does not fall specifically under any allowable use. The prohibited use clause provides the Board with quite a degree of latitude and he thinks a strong case can be made this falls under prohibited uses. Mr. Granese stated Mr. Mackey made the determination this was an allowable use. Mr. Sioras advised Mr. Mackey wears two hats: Code Enforcement Officer and Building Inspector. As the Zoning Administrator, he makes the determination on zoning and he is the one who signed off on this. Mr. Granese noted the Zoning Ordinance is reviewed by the Board and amended. The Board has to follow what is in the Ordinance.

Mr. Anderson wanted to correct the impression that the town was out there encouraging this project for tax revenue. The TIF district is paid for by the taxes generated off the new Walmart. There are no additional needs for taxes to pay off the TIF district; the taxes from Walmart alone will pay it off. Any additional tax revenue generated in the TIF district will go to pay it off earlier than anticipated for the 20 year bond. One third of each resident's tax bill comes to the Town of Derry. Two thirds of the tax bill goes to the Derry Cooperative School District. The town is merely passing the funds through on the tax bill. There had been a suggestion made about placing berms. 900 feet away from a six foot berm translates to about an inch per foot. He

would like to see that addressed. The monitoring well condition should be explored a bit more. He also heard “at this time”. In looking at the TIF district, the town put a lot of energy and time into creating the district. The underlying zoning up there has always been the industrial commercial zone for the Town of Derry. The plan since the TIF district was created has moved toward a more retail oriented component which is certainly where the town wants to go. From his perspective it is not his desire to have this type of business in the TIF district, but the underlying zoning allows it. The question becomes how is it controlled and what conditions are placed if the plan is approved.

Mr. Mazzuchelli asked if Public Health can trump the legal right to put this project forward. They cannot.

Mrs. Choiniere asked Mr. L’Heureux if anything had been discussed regarding all of the tractor trailers going up by the movie theater and Walmart? There will be a lot of regular traffic and then this will add 18 wheelers. Mr. L’Heureux said the road is capable of handling truck traffic in the way it was constructed. It is actually wider than a typical town road. Mrs. Choiniere felt it was out of place to have tractor trailers running up there with all the retail.

Mr. Dimmock asked what kind of restrictions could be placed if this was approved. The owner has said that full dumpsters may be coming back at the end of the day and stored under the canopy. The material in the dumpster may have vermin in them brought in from the construction site and they would be introduced to the area via the dumpster. He does not think they should be brought back with anything in them. If they can’t be picked up by close of business; leave them at the site until the next day.

Mr. L’Heureux said the only outstanding issue for DPW is the area where the containers would be sitting on a surface. There will still be a discussion at some point. He has heard a lot about the contaminants. The town regulations require post versus pre conditions for drainage which means the applicant cannot exceed the way water was flowing prior to construction on the site. That is why there are detention ponds or basins. They hold the water back from going into the wetlands when flow is running and prevents scouring and erosion. The basin holds the water back on the site before it goes onto the adjacent property. The other function of a detention basin is that it allows sediment to settle to the bottom of the pond. All the contaminants stay within the pond and do not go out into the wetlands. DES still has to approve this water runoff situation. Even if the Board approved it conditionally tonight, they still need to wait for the permit from DES. DES has more stringent requirements regarding contaminants and how the storm drainage runoff is set up to clarify the contaminants. The town’s regulations are just post versus pre. DES will oftentimes require modifications to the plan, and can require the applicant add features to the site. That is typical for all sites. Whether it is reclaimed gravel or pavement, it will still go to the detention pond. He is hearing concerns regarding leaching. The sediment will be contained in the pond and water will leach back into the aquifer just as well as it would on the gravel surface. Gravel is not as permeable and once that material is packed, stormwater would run off the surface to the detention pond.

Mr. Granese asked if the state or local regulations required that it needs to be concrete under the dumpsters. Mr. L’Heureux was not aware of any regulations. The only regulation the town has

is that if there is a parking surface, they require a 3" layer of pavement (1" top, 2" base and 12" gravel below). There is no specialized regulation for something of this magnitude. That is why he brought it up; it was discussed at length during the TRC meetings.

Mr. Dimmock said no one knows where the material that is in the dumpsters is coming from. He said if this should be approved there should be nothing in the containers. The applicant is asking for a storage yard, not a transfer station. That is the point he is trying to make.

Mr. Chase asked Mr. Paul to clarify if there will be any repair of vehicles on site? If there are repairs, what type of repairs will they do? Mr. Paul said the building is designed to house trucks. Repairs are done on the trucks in the normal course of business. Mr. Chase asked if they will be changing rear differentials, transmissions and engines, or is it more if a light is out or mirror broken. Mr. Paul said at this time they do not do major repairs at their facility. He also wanted to state that he is running a business. He needs to make sure he can run his business and grow. He understands many people do not want a Dumpster Depot in their back yard. No one wants a trucking company, or a police station in their back yard. Fortunately there are rules and regulations. One of those regulations is that this land is zoned Industrial III which allows recycling facilities, service stations, trucking companies, and contractors yards. At this point, what he is planning on doing is exactly what he is doing now.

Mr. Bartkiewicz is still confused over the maintenance issue. How much maintenance will they do? Mr. Paul said he has five trucks right now. Mr. Bartkiewicz asked if they would do full maintenance? He thought Mr. Paul said he would be sending the trucks out. Mr. Paul said he is not looking to deceive anyone. He never said there would not be maintenance at this facility. He said it was not a service station. At one of the meetings he had with staff, they tried to declare them a service station. A service station is someone who deals with retail repairs coming in and out. He does not deal in that. They take care of their own equipment whether it is a flat tire, windshield wiper or a mirror or anything else that may need to be done to the vehicle. They might add a gallon of oil if they need it. They do not change the oil right now. They don't have their own mechanics on staff. They have representatives from out of town, one of which was shown in the pictures. The gentleman from Bow does all of their repairs right now. They do not fuel on site. Mr. Tymula noted the fueling component was discussed at the Conservation Commission. This is not a fueling facility. Inside the building, initially he was looking at traps and separators for repairs. The Fire Department told him to take that out of the design and they have done that. Mr. Paul said before he purchases the land or constructs the building, they will need to construct the road; with all of the treatment areas, he will have spent over \$750,000.00. He is a five truck company; this is unheard of. Before they even talked to anyone, they planned to do everything the correct way. Before he can do anything, he still needs to go to the state. This is a very intelligent board. Everyone they have dealt with so far has been very intelligent and asked the right questions and had the right concerns.

Mr. Chase understood that Mr. Paul was running a business and understood that there may need to be repairs conducted on site. He just wants to make sure if the repairs do occur, the proper precautions are in place. There is a difference between changing a mirror or drive belt and an engine. The way the inside of the building looks will be dependent upon what the company plans to do for maintenance and how containment will be set up. The Board needs an accurate

account of what will happen now or in the future so that it can be set up properly. Mr. Paul agreed and has set forth to put water separators in the building in the event they sold the building or decided to start doing heavy maintenance. He had asked if that would be required because they would have done it, and he was told no. He is basing his plans on what might happen in the future. If he sold the building to a construction company, he wanted to make sure the right things were in place. They don't have the capability to change a transmission, an axle or an engine. He restated he does not have any mechanics employed.

Mr. Anderson asked Mr. L'Heureux if the owner wanted to sell the building to run a mechanical operation or freight or truck terminal and that is where they would service their vehicles, why would the town not have him put in proper separation. Why was that not required in the bays? If he offered it why did they not do it? Mr. Paul said he had stated he could plan on doing that and was told it caused more issues with the water as it drains out of the building. He was told the best thing to do if he was going to do that, was to contain it on the concrete floor, and deal with it that way. Mr. L'Heureux thought he was talking about connecting to the drains and having floor drains. The TRC advised Mr. Paul he does not want to have floor drains. The town has had to go through all of its facilities and remove the floor drains. Mr. Paul noted they had multiple TRC meetings.

Mr. Anderson noted that it was now closer to 10:00 p.m. and there was another hearing to follow this one. The Board has heard a lot of information tonight and thought it might be prudent to table this to the next meeting to consider what has been said and to get answers to some of the questions.

Motion by Bartkiewicz, seconded by Dimmock to table the hearing for Accurate Transport to June 05, 2013. Discussion followed.

Mr. Paul noted this is his second time here and has spent thousands of dollars. He wondered if he had any rights as an applicant as all the department heads signed off on the plan. People have spoken and repeated what others had to say. He has done everything appropriately and everything he has been asked to do by the Board. He added rows of trees, and hired an agricultural architect to go out to the site and develop the landscape plan. At this point, when does the town say it has a certain responsibility? Mr. Granese said there have been a lot of questions asked. It is up to the Board to decide to continue this or not. The Board has not accepted jurisdiction yet, so the clock has not started yet. Mr. Paul thanked the Board for their time, but he is a law abiding businessman trying to do the right thing. He would love to move his home to Derry and continue to employ Derry residents.

Park, Anderson, Mazzuchelli, Davison, Dimmock, Choiniere, and Bartkiewicz voted yes. Chase and Granese voted no and the motion passed.

Mr. Granese noted there will be no further notification of the continuance. At the next hearing, the Board will not hear a repetition of the comments stated this evening. There is no sense in reiterating what has already been said. Mr. Anderson felt the Board was continuing its deliberation and not the public hearing. Mr. Granese note the Board typically will open a continuance to new comment. Mr. Sioras stated the Board does not have to take public comment

as it has closed the public hearing. This is the Board's deliberation. This plan will come back for discussion among the Board members; if the Board wants to re-open the public hearing it can do so. It is up to the Board.

The Board recessed for five minutes.

Mr. Granese noted Mr. O'Connor was resuming his seat and Mr. Mazzuchelli would step down.

The Board set a time limit for the remainder of the meeting to 10:30 p.m. as it was so late in the evening.

**22 Lenox Road, LLC
PID 32040, 22 Lenox Road
Acceptance/Review, Site Plan – Multi-Family Residential
Addition of a two family dwelling on the existing parcel at 22 Lenox Road
Continued from April 03, 2013**

Mr. Sioras provided the following staff report. This plan was continued and the Board held a site walk a few weeks ago. The purpose of the plan is for the addition of a town house duplex. All town departments have reviewed and signed the plan initially. There is a waiver for underground utilities attached to the staff report. The technical part of the plan was reviewed by staff and they signed off on it, the surveyor made the changes the staff and outside engineer wanted. The Board has a copy of plan stamped in dated May 14, 2013. From a technical point, all the corrections have been made. He has had discussions with Public Works. He also spoke briefly with Attorney Panciocco who is in the process of obtaining the condominium documents the Board had requested. Those documents would be reviewed by the town's attorney. He is aware that out in the field at the site walk some of the Board members had questions.

Tim Winings, TJW Survey, represented the applicant. Also present was Attorney Patricia Panciocco and the applicant. Mr. Winings thought it was a good site walk and there were good questions. He had made some minor changes to the plan prior to that date and explained them extensively at that time. He has since made a few minor changes to the plan detailing more of the landscaping and in the grading of the site. It will comply with the grading requirement for the driveway and with a little additional work, will meet the sight distance requirements required for the driveway. He changed the title on the plan to clarify it is for a condominium approval. He put together a conceptual as built plan so that the Board could see what would get recorded for the condominium after the structures were constructed. Mr. Winings handed that out to the Board and a copy was retained in the file.

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

There was no public comment.

Motion by Anderson, seconded by O'Connor to close the public hearing. The motion passed with all in favor and the plan came back to the Board for review and comment.

Mr. O'Connor stated he did attend the site walk and recalled the condominium documents were to be submitted to the town's legal counsel for review. Has that been done? Attorney Panciacco advised she has not prepared the condominium documents yet because she has to work from the condominium site plan and define things in accordance with that plan. They can be submitted within a very short time. They are driven by what is on the plan. Now that the plan has been created she can work on the Declaration.

Mr. O'Connor asked if the curve to the berm noted on the site walk had been leveled? Mr. Winings stated it had been addressed as part of the grading plan. It will lower that part for turning radius and assists with the sight distance.

Mrs. Choiniere thought the site walk was a big help because walking the property presents a different picture than looking at the plan. She thought that the site was too tight, but once she saw the markings for the placement of the building in the field it looked much better than it did on paper. The wider driveway also makes a difference.

Mr. L'Heureux did not have any issues to report from Public Works.

Mr. O'Connor asked if the Board was satisfied with the re-positioning of the pole for the overhead utilities for the new structure. Mrs. Choiniere did not think there was much of an alternative for its location. That had been discussed previously. Mr. Granese noted the applicant is asking for a waiver.

Motion by O'Connor to accept jurisdiction of the multi-family site plan application before the Board for 22 Lenox Road, LLC, PID 32040, 22 Lenox Road, seconded by Davison. Discussion followed.

Mr. Chase thought the motion should be to accept a Condominium Site Plan rather than a multi-family site plan.

O'Connor amended his motion to state move to accept jurisdiction of the Residential Condominium Site Plan revised 3/28/2013, Davison accepted the amendment.

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

Motion by O'Connor, seconded by Park to grant a waiver from LDCR Section 170-66.C, Utilities, to allow overhead utilities rather than the required underground utilities. After review of the waiver request the Board finds that specific circumstances relative to the plan, or conditions of the land in such plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

Park, O'Connor, Davison, Dimmock and Choiniere voted in favor, Chase, Anderson, Bartkiewicz and Granese voted no. The motion passed in the affirmative.

Motion by O'Connor to approve pursuant to RSA 676:4, I, Completed Application, with the following conditions: Comply with the Keach Nordstrom report dated April 02, 2013. Condominium documents to be reviewed by Derry Town Counsel (fees to be paid by the applicant). The Condominium documents shall be recorded prior to final signatures on the plan. 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. Note approved waiver on the plan. That the above conditions be met within 6 months. Improvements shall be completed by October 03, 2014. Discussion followed without a second on the motion.

Ms. Davison confirmed the October, 2014 date was correct. Mr. Anderson restated his opposition to the plan. There was a lot of conversation earlier about how much people pay in taxes in the Town of Derry. He knows it costs a little over \$14,000.00 per year to educate a child in the Town of Derry. This will put two more housing units on a small lot with the potential of five or six kids at a cost of \$70,000 to 80,000.00 per year. The tax revenue from this new building could be \$10,000.00, which is a losing proposition. He does not believe the density needs to be increased in the town; there is enough already. He will vote no.

Mr. Granese noted there is no second and discussion cannot continue without one.

Davison seconded the motion. Discussion continued.

Mrs. Choiniere did not realize the utilities vote was for a waiver. Is it possible to modify that? Mr. Granese stated the Board would need to vote to reconsider its motion. Mr. Sioras reminded the Board that someone on the prevailing side of the motion would need to make the motion to reconsider. Mr. O'Connor noted she voted in the affirmative.

Choiniere moved to reconsider the vote on the waiver.

Mr. Sioras noted there is a motion on the table. Mr. Sioras advised the current motion on the table needs to be withdrawn in order to reconsider. Mr. Granese asked Mr. O'Connor to withdraw his motion to approve.

O'Connor withdrew his motion to approve and Davison withdrew her second. The motion died.

Anderson seconded Choiniere's motion to reconsider the waiver request.

Chase, Park, Anderson, Davison, Dimmock, Choiniere, Bartkiewicz, and Granese voted yes and O'Connor voted no. The motion passed to reconsider the vote.

Attorney Panciocco called Point of Order. When voting on a waiver, the legal test is hardship to the applicant and how it changes the nature and character of the neighborhood, or how the public

purpose is frustrated by not granting the waiver. When voting if the reasoning could be provided that would be appreciated.

Motion by Anderson to grant a waiver from LDCR Section 170-66.C, Utilities, to allow overhead utilities rather than the required underground utilities. After review of the waiver request the Board finds that specific circumstances relative to the plan, or conditions of the land in such plan, indicate that the waiver will properly carry out the spirit and intent of the regulations. O'Connor seconded the motion.

Chase voted no as there is extensive site work to be done for both water and sewer and driveway, he does not feel it is a hardship to run the utilities underground at the same time. Park voted yes. Anderson voted no for the reason stated by Chase. O'Connor voted yes. Davison voted yes. Dimmock voted no because he does not think it is a hardship to put the utilities underground. Choiniere voted no for the reasons stated by Chase. That is what she originally wanted and did not realize this was a waiver. Bartkiewicz voted no for the reasons stated by Chase. Granese voted no for the same reason. The motion to grant the waiver failed by a vote of 3-6-0.

Motion by O'Connor to approve pursuant to RSA 676:4, I, Completed Application, with the following conditions: Comply with the Keach Nordstrom report dated April 02, 2013. Condominium documents to be reviewed by Derry Town Counsel (fees to be paid by the applicant). The Condominium documents shall be recorded prior to final signatures on the plan. 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. The above conditions be met within 6 months. Improvements shall be completed by October 03, 2014. Overhead utilities shall be placed underground as per the Town Engineer. Discussion followed.

Mr. O'Connor asked if that was acceptable to Mr. L'Heureux? Mr. L'Heureux asked if "utilities" meant the extension of the utilities from the existing home to the new structure? Mr. O'Connor felt if there was existing electric to the existing home and it was functional then the Board was just talking about the extension of the electric to the new structure. Mr. L'Heureux said currently there are overhead utilities to the existing structure. Does the Board want utilities to be placed underground from the existing structure to the new structure? Mr. Anderson felt it had to be a whole new service from the street to the new structure; power lines could not be run from the existing structure. Mr. L'Heureux noted the pole is on that side of the road. The plan would need to be re-drawn and he was curious as to where it would be placed.

O'Connor continued his motion to state regarding the underground utilities going to the new structure that drawings be provided to the Town's Engineer for approval. Bartkiewicz seconded the motion. Discussion followed.

Mr. Park stated that what has been done to the existing house is terrific and adds positive value to the neighborhood. He does feel that what is being proposed detracts from the history, character and integrity of the neighborhood, even though the abutters do not object. He hopes the applicant will reconsider and not move forward with the plan even if it is approved.

Chase stated although the developer has made quite a few changes to the plan to accommodate the Board, he is still troubled by the entire plan as a whole, for maybe different reasons than Mr. Anderson. This has put him in the difficult position of being at odds with the Code Enforcement Officer. For those reasons he will vote no.

Attorney Panciocco asked if she could address the Board on the zoning issue? Mr. Granese said she could speak after the vote.

Park voted no as he is not convinced this is allowable under the existing zoning. Anderson agreed with Chase and Park and voted no. O'Connor and Davison voted yes. Dimmock agreed with Park and Chase and voted no. Choiniere voted yes. Bartkiewicz voted no as he agreed with Chase and Park. Granese voted no as he agrees with the comments made by Chase, Park and Anderson. The motion failed 3-6-0.

Attorney Panciocco felt she had a right to address the Board. This issue [of zoning] was brought up to Mr. Sioras earlier today. She has written to Code Enforcement on the zoning issue and discussed it with him [Mr. Mackey]. She understands the questions the Board had was the condo issue and the zoning issue. When the Board opened the hearing, the only thing brought up was the condo issue. She did not feel the need to bring up an issue that appeared to be resolved since it was not mentioned. She has not been given an opportunity to explain to the Board why this is what it is, and that this interpretation has been made on a number of different sites in Derry. Mr. Granese explained he stopped her from speaking because the vote was in process and this is not the time to allow the applicant to speak. There is an appeal process, and the applicant has 30 days to appeal the Board's decision. Attorney Panciocco respectfully requested the Board reconsider its decision and hear them out on this issue. There is a legal theory that applies and she can give the Board the addresses of the sites where these uses have already been approved in this town. There is an administrative gloss as she has previously explained to the Board.

Mr. Granese asked if any of the Board members wanted to reconsider their no vote? No one responded. Given that, Mr. Granese stated there is the 30 day appeal process.

Other

Mr. Granese asked Mr. Sioras to move the mixed use workshop discussion because of scheduling issues on June 5th to Wednesday, July 17th. Mr. Sioras noted that there will be plans to review and the sign discussion to be dealt with on the 5th. He added that in the Board member packets there is a copy of Mr. Mackey's decision and that is what Mr. Chase based his vote on. Attorney Panciocco stated they have expended quite a bit of time and discussion with Mr. Mackey on this issue and it is in the Board's record. Mr. O'Connor noted an appeal would need to go to Superior Court.

Motion by Anderson seconded by Bartkiewicz to adjourn. The motion passed with all in favor and the meeting stood adjourned at 10:27 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____