

The Planning Board for the Town of Derry held a public meeting on Wednesday, July 17, 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; Frank Bartkiewicz, Secretary; John O'Connor, Vice Chairman; Albert Dimmock, Sr., Town Council Liaison; Darrell Park, Jan Choiniere (7:17 p.m.); Jim MacEachern (7:05 p.m.), Ann Marie Alongi Members; Lori Davison, Frank Mazzuchelli, Alternates

Absent: John Anderson

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk; Mark L'Heureux, Engineering Coordinator; Bob Mackey, Code Enforcement Officer

Mr. Granese called the meeting to order at 7:01 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 Mrs. Choiniere.

Escrow

#13-19

Project Name: Mixed Use Development Site Plan

Developer: Route 28 Custom, LLC

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 03035-001, 230 Rockingham Road

The request is to establish Letter of Credit #06-13, drawn on Lowell Five Cents Savings Bank, in the amount of \$139,894.13 for the above noted project. The expiration date will be June 25, 2014.

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

#13-20

Project Name: Indian Hill Estates

Developer: Brady Sullivan Indian Hill LLC

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 04003, Indian Hill Road/Goodhue Road

The request is to renew Letter of Credit #181, drawn on Centrix Bank, in the amount of \$211,793.75. The new expiration date will be August 2, 2014.

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

Mr. Mazzuchelli was seated for Mr. MacEachern.

#13-21

Project Name: Stage Crossing – Hillside Avenue

Developer: Stage Crossing, LLC

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 26079, 49 Hillside Avenue

The request is approve Release #2 in the amount of \$5378.40 for the above noted project. This is the final release. The amount to retain is zero.

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 June 19, 2013, meeting.

Motion by O'Connor, seconded by Bartkiewicz to accept the minutes of the June 19, 2013, meeting as written. The motion passed with O'Connor abstained.

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

Correspondence

Mr. Bartkiewicz advised the Board is in receipt of a copy of the appeal filed by 22 Lenox Avenue, LLC versus the Town of Derry regarding the denial of its Residential Condominium Site Plan on May 15, 2013. He noted the dates that materials were due to the court and affected parties. He then read a list of the change in use applications received by the Planning Department which do not require review by the Planning Board. The Board has also received the most recent edition of *Town and City*.

Other Business

Summer Schedule

Mr. Sioras advised the next meetings of the Planning Board will be on August 21st and September 18th.

Waiver Request – Granite State Credit Union

Mr. Sioras informed the Board that when the Granite State Credit Union site plan was approved there was one waiver noted by the review engineer that was not taken up by the Board. The parking lot has been constructed; the setback for the parking lot from Pierce Avenue should be 15 feet per the regulations and they are requesting a waiver to allow the distance to be 10 feet. He has no objection to the request and felt it should be in the record as it was an item noted in the review letter. The Department of Public Works and Code Enforcement have no issues with the request.

Motion by O'Connor to approve a waiver from Section 170-63.A.2, to allow the parking area to be a distance of 10 feet from the right of way of Pierce Avenue rather than the required 15 feet; Bartkiewicz seconded the motion.

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

Public Hearing

To discuss proposed amendments to the Town of Derry Zoning Ordinance.

To amend Article II, Word Usage and Definitions, Section 165-5, Definitions, to amend the definitions for Flashing Signs, Projecting Signs and Window Signs and to add definitions to define the following: Advertising Device, Billboard, Marquee, Sign Permit, Abandoned Sign, Awning Sign, Directional Sign, Digital Sign, Electronic Message Center Sign, Government Sign, Ground Sign, Interactive Digital Sign, Non-conforming Sign, Official Sign, Off Premise Sign, Political Sign, Residential Neighborhood Identification Sign, Sandwich Board Sign, Special Event Sign, Temporary Sign, Unsafe Sign, Wall Sign and Warning Sign.

To amend Article VI, District Provisions, to repeal the following sections of the Article and to renumber them accordingly: Section 165-32.2.E, General Commercial III; Section 165-34L, Office Business District; Section 165-37G.3, Neighborhood Commercial District; Section 165-45D.2.f, Medium High Density Residential Special Exceptions; Section 165-45.1.C.2.f, Medium High Density Residential II Special Exceptions; Section 165-46B.2.f, Medium Density Residential Special Exceptions; Section 165-46E.5, Medium Density Residential Campgrounds; and Section 165-49H, Traditional Business Overlay District Signs.

To repeal Article XII, Signs and Billboards in its entirety and replace it with the following: Article XII, Signs, Section 165-100, Purpose; Section 165-101, General Provisions; Section 165-101.1, Signs in Residential Districts; Section 165-101.2, Signs in Neighborhood Commercial Districts; Section 165-101.3,

Signs in Business, Commercial and Industrial Districts; Section 165-101.4, Signs in the General Commercial III District; Section 165-101.5, Signs in the Traditional Business Overlay District; Section 165-101.6, Campground Signs; Section 165-101.7, Political Signs; Section 165-101.8, Off Premise Signs; Section 165-101.9, Nuisance Signs; Section 165-101.10, Interactive Digital Signs; Section 165-101.11, Electronic Message Center Signs, Section 165-102, Non-Conforming Use Signs, and Section 165-103, (Reserved for Future Use).

Mr. Granese read the posting into the record. Mr. Sioras advised that Town Council held a public hearing on the proposed changes regarding signs and had support for the changes. However, based on comments from the attorney and suggestions from a local realtor, Town Council asked the Planning Board to incorporate some changes.

Bob Mackey, Director of Code Enforcement, noted this has been a long process over the last year between the various workshops and public hearings. The purpose of the changes is to consolidate the various sections dealing with signs that were scattered through the Zoning Ordinance. The changes make it more user friendly. Definitions have been added to clarify the terms used throughout the Ordinance. "Billboard" has been removed from the Article header as the town does not allow billboards. Regulations with regard to church signs, special event signs, sandwich boards and signs for buildings with multiple tenants have been added to provide guidance. The Ordinance is now more business friendly but it gives Code Enforcement a better way to enforce the Ordinance. The changes will allow electronic message center signs in the General Commercial and Industrial IV zone. The proposed changes went to public hearing previously and there was public input. It was then forwarded to Town Council for approval and a few issues came up. The town attorney asked that the language be tweaked a bit. The changes have been made and he is now back before the Board for another workshop on the proposed changes.

There is one issue to bring up regarding real estate signs. The size allotment had been raised to 18 SF for commercial and for residential signs, the allotment is 4 SF. There have been some dimensional changes as suggested by the attorney. A local real estate agent has expressed concerns over the amount of signs allowed on a lot. The Ordinance now says that only one real estate sign can be on a lot. The agent's concern is that on a larger commercial lot the agency may want to have more than one sign. Mr. Mackey said he is mentioning this now as the realtor will likely bring up the same concern if the document moves as is to Town Council; if Council has concerns as well, it could come back to the Board again. The choices are to allow one real estate sign on commercial lots, 2 on the lots, or eliminate mention of a number all together. Or the Board can vote on the document as is.

Mrs. Choiniere was now seated and Ms. Davison stepped down.

Mr. Granese said he could not think of a large commercial property off the top of his head where there would be a need for more than one sign, unless the property was a corner lot. He would be in favor of adding verbiage that if the lot was a corner lot, there could be two signs – one on each street. Mr. O'Connor asked what was in the regulations now for residential and commercial lots as far as the maximum SF allowed? Mr. Mackey said there is no number. Mr. O'Connor recalled

that originally there had been discussion regarding the size of the signs; commercial lots were to be allowed 18 SF. The immediate surrounding towns allow 6 SF for residential and 12 SF for commercial signs. He would be in favor of standardizing the size so there was more uniformity between communities. It would also keep the clutter to a minimum. Also, at the top of page 11, Section 165-101.7.A, with regard to political signs, he would suggest following the RSA. The attorney presenting at a Law Lecture Series suggested removing political signs by the second Friday following the election, and now the proposal is for five days. This can be problematic for candidates following the Primary. They would have to take the signs down and then put them up again. State wide a candidate can leave them up between September and November if they won the Primary.

Mr. Mackey said with regarding to real estate signs, he did research the issue before suggesting the size. A typical residential real estate sign is 18" x 30", which is about 4 SF. For commercial real estate signs, it is common to have a sign that is 4' x 4'. He had presented 32 SF and at the last workshop they dropped it to 18 SF. Sixteen square feet is the minimum he would like to see as that is the standard.

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

There was no public comment.

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

Mr. Mackey said the Board could remove the 5 day restriction for political signs. The RSA states the signs shall be removed the 2nd Friday following an election with the exception of the Primary. Mr. MacEachern noted the provision followed the RSA, and that phrase was followed by something more restrictive. He was not sure that signs on private property were subject to the 5 day restriction. He did not think the town could tell someone when to take a sign off their own property. Mr. Granese asked if hypothetically he could put a sign on his lawn that met the setbacks and leave it there for a year? Mr. Mackey said so long as the sign was not offensive Mr. Granese would be protected under Freedom of Speech.

Mr. MacEachern thought the real issue with political signs was the littering along the street and the placement on vacant lots. He had no issue with candidates taking them down and putting them back up after the Primary. Sometimes, the candidates forget to pick up the signs after the election. Mr. Mackey advised the town does collect the signs that are placed in the public right of way and bring them back to the Municipal Center to be picked up by the candidates.

Ms. Alongi asked how the town regulated the directional real estate signs that pointed to a house for sale? Would that be considered a second sign and who would be responsible for removal? Mr. Mackey said it would be a second sign and the real estate company would be responsible for removal. If it is not bothering anyone and they are temporary, they are normally left alone; if it becomes too much, they are asked to remove it.

Motion by MacEachern to accept the proposed changes to the sign regulations as written, seconded by Bartkiewicz. Discussion followed.

Ms. Alongi asked if the Board had addressed Mr. Mackey's issues? Mr. Mackey said as the proposal reads now, only one real estate sign is allowed per lot. If the Board votes on the document as written, that issue may be brought up at the Town Council public hearing and if Town Council feels there should be more than one sign allowed on a lot, it may come back to the Board again. Mr. Granese said it would look bad if a residential lot had more than one real estate sign on it. He can see having two signs for a property such as the old Grandview Flea Market; one sign could be on Route 28 and the other on Island Pond Road. Mr. Mackey said that typically, he has not seen problems on residential lots. He could see having a sign on the corner that directs attention to the fact there is a house for sale on a road. It is not common for there to be multiple signs on commercial property. Mr. Granese said he would not like to see the changes bounced back to the Planning Board again. The Board has spent a lot of time on the Ordinance. Mr. MacEachern felt the number of signs should be up to Mr. Mackey's discretion if someone complains. He trusts his judgment. If the Board changes it to two signs per lot, there will be two signs everywhere and that could become a problem. He suggested adding a line that it would be at the discretion of Mr. Mackey's department to add an extra sign on a case by case basis. Mr. Granese asked what happens if the Board adds that language this evening? Mr. Sioras stated that would be a substantive change and would require a second public hearing.

Mr. MacEachern was amenable to amending his motion to include the amendment "Additional signs on commercial lots can be permitted at the discretion of the Code Enforcement Officer on a case by case basis." Mr. Bartkiewicz said he would second that amendment to the language.

Mr. Granese polled the Board to see if the members would agree to such a change in the language. The members were in agreement with Mr. O'Connor adding he would like to see the Board also address the size of commercial signs. It was noted the Board was in the middle of a motion and could come back to that.

Motion by MacEachern to vote on the amendment to the language to Section 165-100.21, General Provisions, such that it will be left to the discretion of the Code Enforcement Office to allow additional signs on a commercial lot; seconded by Park.

Park, Alongi, O'Connor, MacEachern, Dimmock, Choiniere, Bartkiewicz and Granese voted in favor and the amendment passed.

Mr. Granese then asked for a vote on the motion to accept the proposed changes to the sign ordinance as just amended.

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

Mr. Sioras advised the second public hearing should be scheduled. Mr. Granese asked that it be scheduled for the September meeting, which will be September 18, 2013.

**H & B Homes Corporation
PID 03039, 7 Linda Road
Acceptance/Review, 1 lot subdivision**

Mr. Sioras provided the following staff report. This is a unique situation. The property is located on the Windham town line. The purpose of this plan is for an existing 4.83 acre parcel in Derry to have road frontage on a new cul-de-sac (Nathan Road) of which half the cul-de-sac is in Derry and the other half in the Town of Windham. The Public Works and Code Enforcement Departments have not signed the plan. There are staff memos attached to the packets stating the reasons. Police, Fire and the Conservation Commission have signed the plan. Additionally, there is a memo from the Derry School District indicating they have no objection to the plan. There are three waiver requests that are outlined in a letter dated April 26, 2013 from Benchmark Engineering. Two are from road construction guidelines and the other is a request to waive department signatures. The NH DES State Subdivision approval has been obtained and a copy of the approval is in the file. There is also correspondence from the Town of Windham Road Agent regarding winter maintenance of the proposed Nathan Road. Mike Fowler has indicated if the plan is approved there should be a long term solution for maintenance between the towns.

Joe Maynard of Benchmark Engineering presented for the applicant. Attorney Peter Bronstein of Soule, Leslie, Kidder, Sayward & Loughman Law Firm was also present. Mr. Maynard stated that he has been working with this client since 2003 on this project. H & B Homes purchased land totaling between four and five hundred acres, with some residual land in Derry. This is one of those lots. Subsequently, they purchased 9 acres of land off Windham Depot Road and developed the Middleridge Road Subdivision, which gave the Spruce Pond Estates project a third point of access.

Regarding the lot at 7 Linda Road, there is no way to access it in Derry from Linda. The right of way stub left in the 1960s is on a steep grade and they cannot build a road to the lot from Derry. This lot contains almost five acres in the LMDR zone. In the planning stage the location for the cul-de-sac was chosen because of the road design standards.

The cul-de-sac is located on a flat area so grading will be minimal. If they pulled the cul-de-sac back, it would require a substantial cut to make it work. When this was originally discussed, it was understood that the road frontage in Derry was measured at the 35 foot front setback, which would give them enough frontage for two lots. That apparently has changed and frontage is measured at the street, so they are now shy the frontage required for the second lot. In order to alleviate that, they attempted to change the town line but Derry was not amenable to that suggestion. They have continued with the process. The Town of Windham approved their portion of the project in 2009 which was 95 lots in Windham in a phased development. In Derry, Planning Board approvals are good for six months, and in some cases applicants can obtain extensions on the approval which will move the date out another year. They would then need to reapply. This would not have been enough time for the construction of Nathan Road up to the

town line, so they decided to wait until they were closer to that point to come before the Planning Board. This is the last step in developing the road portion.

Mr. Maynard explained they filed for a variance with the Derry Zoning Board for insufficient frontage in an attempt to gain the second lot. The ZBA would not hear the case until the applicant had obtained approval for a platted street. This plan is a subdivision of the cul-de-sac area off Parcel 03039 for a total area of 10,000 square feet. If granted, they will file for a variance for the required frontage and then come back to the Planning Board for the physical subdivision of this land.

Jack McCartney, the Windham Highway Agent, sent an email in which he indicated Windham would take over winter maintenance because only a couple hundred feet of road are in the Town of Derry.

Ms. Alongi asked if Windham was still only contemplating winter maintenance? Mr. Maynard said yes.

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

Terry and Ruth Robinson, 10 Diana Road, abut the project. Mr. Robinson had questions regarding the plowing of the road during in Windham, which town would respond to residents if there was an emergency, and where would the children attend school? He also had a letter he read into the record. A copy of the letter was placed in the file. "We Terry Robinson and Ruth Robinson are residents of 10 Diana Road Tax/Map 03044 and have been for the past 37 years. Our property abuts the Linda Road property referenced in this subdivision. Our concern is the water drainage consisting of underground water that appears to surface during late winter-spring months and again during any heavy water event. The water runs through the properties between 10 Diana Road and 12 Diana Road. It flows into a dilapidated drain between the two properties that was installed by former property owners over 40 years ago. It goes under the front yard on #12 Diana Road and empties into a vernal pool which starts to form at the end of Diana Road (a dead end street). If the land is disturbed in any way, it is going to make this water issue a bigger problem than it is now, and cause flooding to a greater magnitude, thus causing more water to seep into our basements. (They all get a substantial amount of water in their basements from an underground spring.) We are asking that you place this communication document on file for any future water issues that could arise because of any future disturbance of the land in the Linda Road subdivision."

Joseph Irvin, 2 Linda Road, supports the statements made by Mr. Robinson regarding water flow from Linda. There is sewage between the entrance to 7 Diana that crosses Linda and continues. Construction or disruption of the property will worsen the situation. That is a concern.

There was no further public comment.

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

Mr. Granese asked Mr. L'Heureux if he had comments regarding the road? Mr. L'Heureux said the position of the Department of Public Works is that this road should be entirely situated in Windham, or there should be an inter-municipal agreement between Windham and Derry with full acceptance of the road by Windham. Just performing winter maintenance will eventually be a problem. Who will pay for the overlay, pot holes and other repairs that will be required over time for the portion of the cul-de-sac? That issue would not be addressed by this proposal. Mr. Granese agreed the town could not rely on an email.

Mr. MacEachern said it looks like a small piece of road. Windham is okay with winter maintenance but that is not enough. They should take over the entire road. To answer some of the abutter's questions, if the lot is in Derry, the children would attend the Derry schools. The Derry School Department has no issues with the proposal. Regarding ambulance service and police response, Windham uses Derry's ambulance service.

Mr. L'Heureux noted an inter-municipal agreement would require sign off from the Derry Town Council. Mr. MacEachern added sign off would be required from the Windham Selectmen as well.

Mr. O'Connor recalled that in February of 2009, when the Board approved Middleridge, the Board placed a condition that the Town of Windham sign off on the plan as well. Mr. MacEachern did not feel the Derry should be taking care of a few hundred feet of road. Windham should agree up front to take over the entire road and that should happen first.

Mr. Mackey said that with regard to Code Enforcement, he would need to know what the Planning Board would do and what the lot frontage would be. It would be premature to sign off until it was known where the cul-de-sac would be or what the lot frontage would be. If Public Works is satisfied and there are agreements in place, that would be required and would be satisfactory. It is possible this proposal may go back to the ZBA to divide the lot into two to three lots. The potential is there to have three lots in Derry on the cul-de-sac. Mr. Mackey said Code had no issue with the waiver requests. Mr. L'Heureux noted that with regard to road design, there are subtle variations in the standards for Derry and Windham. The road is mostly in Windham, so DPW would have no issue with the first two waiver requests.

Mr. Dimmock thought that Windham's lot requirements called for less acreage than is required in the Town of Derry. If Derry approves this, there would be two lots. The applicant only has enough property for Derry to grant two lots. Mr. Maynard explained this is a conservation subdivision so the lots in Windham have a minimum of 30,000 square feet. Mr. Mackey noted a variance would be required in Derry if the applicant wanted more than two lots; it may be a variance is required for two lots as well, depending upon what the Planning Board approves.

Mrs. Choiniere recalled the Board discussing a request to move the town line but did not recall the outcome. Mr. Sioras advised the Board had received a request from the developer to move the town line, but there was no support from the Planning Board or the Town Assessor. A change of that type requires state legislative action. Mr. O'Connor felt if the developer goes back to Windham to obtain an inter-municipal agreement for Windham to absorb the cul-de-sac,

the granting of the waivers would be moot. The Board would not need to address the waivers until that issue is resolved. Mr. MacEachern felt there needed to be some kind of understanding between the two towns and agreed the Board should not take any action on this application unless Windham agrees to take over the whole road.

Ms. Alongi asked for confirmation that the entire parcel is in Derry and the street is in Windham. Mr. MacEachern said one third of the cul-de-sac is in Derry.

Mr. Dimmock thought he might be missing something. Mr. Maynard had said access cannot be from Linda because of the terrain. He thinks the developer should be able to put the road through from Linda. He is familiar with the area. There is a lot of wetland in the area; cars placed on lawns have sunk because the ground is wet. If the developer blasts on the lot, what happens to the existing properties? Are there any guarantees that the existing properties in Derry won't be affected by flooding? He would want that assurance before voting on this.

Mr. Granese asked if Nathan Road has been constructed yet? Mr. Maynard said they have cleared for the road in Windham and an Intent to Cut has been filed in Derry. The top half of the lot has been cut. Mr. Granese asked if the cul-de-sac can be moved or is it in this location because of cost? Mr. Maynard said this location was chosen because it is impractical because of the slope and grades to make it work. If they try to move it solely in Windham, they can't make it work with the grade in a 75' radius. Mr. Granese thought it was possible if they took out four lots. Mr. Maynard said his client owns land in Derry and has paid taxes on the land; his client should be able to use the land which is large enough to subdivide. Mr. Granese stated there are a lot of issues with putting this cul-de-sac in Derry, he would also want to see an agreement signed by both towns before the Board accepts this application. Ms. Alongi said she would like to see engineering data regarding flooding in the area. Mrs. Choiniere asked if the land has been perc tested and have the homes been constructed on Nathan? Mr. Maynard said the homes will be constructed along Nathan [in Windham]; nothing is constructed yet. All of the land has been perced. They are on the other side of the existing hill on Linda. The Board reviewed the exact location of Linda Road.

Attorney Bronstein noted there had been talk of the memos prepared by Code Enforcement and DPW regarding the wording for an inter-municipal agreement. He asked for a copy of the memos. He also asked permission of the Board to speak directly with Attorney Boutin's office regarding that matter. The Board granted permission. Attorney Bronstein also asked if it was the expectation of Public Works that the taxes for the lots in Derry would be paid to Derry, but that year round road maintenance would fall upon the Town of Windham? Mr. Granese said yes. The plows from Derry would have to go from Mallard to Buckland to Nathan. What happens if the town truck needs to plow the end of the cul-de-sac and Windham has not plowed the other roads yet? Derry would be plowing. Mr. Granese noted there are other issues regarding repair of the cul-de-sac that need to be addressed. Mr. L'Heureux said there would be minimal amounts of curbing and pavement on the Derry portion of the road. It makes no practical sense for Derry to make appropriations and try to coordinate budgets with Windham for a small portion of pavement to gain an extra lot. Mr. MacEachern thought if Windham was ready to repave the road and Derry was not ready, it would leave a portion of the cul-de-sac not done. The Board would like to see a reciprocal agreement, to make it as uniform as Windham did by

asking for waivers from Derry's road standard. If the waivers aren't granted, there could be granite curb in front of the houses in Derry. Mr. Maynard said Windham's road standards are a little more strict than Derry. The only change is the granite curb requirement. Mr. MacEachern said this is one lot. The Board would like to make it easy for the Windham residents, too. The town tries to avoid situations like this where there is only a sliver of road in Derry.

Mr. Maynard said they approached the town to change the town line because they can't get there from here. They were willing to try that option but needed the Board's support.

Mr. MacEachern said there are two options: change the town line, which would take many years, or the easiest option, and he would be sorry for the delay, would be to have Windham take over the entire road. It was thought the cost might be in the vicinity of \$10,000.00 over 60 years. Mr. L'Heureux noted towns have inter-municipal agreements all the time.

Mr. Maynard said he would need to know what standards to apply to an inter-municipal agreement and asked if they could have a continuance until September.

Mrs. Choiniere asked if when Windham planned the road, was there any discussion about the water table and its effects on the homes on the other side of the line? Mr. Maynard said the drainage was analyzed for Windham and the Derry portion. The development has a closed drainage system that exits into the Town of Windham, so they will be taking all of the drainage, including the drainage from the Derry lots. One thousand feet of drainage coming down from the portion in Derry is sent to the treatment system. It takes all of the water away from the Town of Derry. This was reviewed by Keach Nordstrom Associates, who also handled the review of the plan for this Board.

Mrs. Choiniere asked Mr. L'Heureux if there were any water issues created by the addition of two lots? Mr. L'Heureux said this is a new site. The top of the terrain is above the cul-de-sac. Everything on Nathan will drain to its own side of the knoll. It should not affect the residents on Diana. The high point of the property is along the boundary with Diana Road. Mr. Maynard added their water will mostly drain towards Route 28 in Windham. The back side of Linda will drain toward Diana, but all of their work will be done toward Route 28. They used aerial photography and analyzed it in the drainage study; this information was also included in the Alteration of Terrain application.

Mr. Dimmock asked if it was true that there was a lot of blasting in the area and that might have affected the direction of the underground springs? Mr. Maynard said there was minimal blasting for this portion of the project. When they did the 20' cut for Buckland Road there was no blasting. They will need to install under drains in the roadway. Three and one half miles of roadway has under drain which drops the water table in the area. He does not feel anything they are doing will affect the water in Derry at this time.

Mrs. Choiniere asked where is the water coming from that goes to Diana? Mr. Maynard said he was not sure. The residents are saying there are springs in the area; there is no wetland on their property. There is a vernal pool at the end of Diana Road which has a buffer. He asked if this hearing could be continued to a date certain so that he can prepare an inter-municipal agreement

and go before the Windham Planning Board and Board of Selectmen to discuss the request for the agreement.

Mr. Sioras said given the schedule, it might be best to put this matter on the October agenda.

Motion by MacEachern, seconded by Bartkiewicz to continue the hearing for H&B Homes to October 2, 2013.

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

**Rollins Street Associates
PID 29169, 29 Maple Street
Acceptance/Review, Site Plan Determination
2932 square foot addition**

Mr. Sioras provided the following staff report. The purpose of this plan is for a 2932 square foot addition. The addition is for a mechanic shop to the existing lumber yard/hardware business. The property is located in the Central Business District on the corner of Rollins and Maple. All town departments have reviewed and signed the plan. There are no waiver requests or state permits. He would recommend approval of the site plan determination application.

Tim Peloquin, Promised Land Survey, presented for the applicant. The corporation is a function of Benson's Lumber and Hardware. They have property that fronts on Rollins Street behind the lumber yard where they store cord wood, vehicles and lumber. Grant Benson III, was present in the audience. The intent is to add on to the existing building for the purpose of general servicing of the equipment which is something they are already doing outside the building. They want to bring this component inside which is cleaner, and less obtrusive. No outside work would be contemplated, meaning they would not perform work on vehicles that did not belong to the business. The Technical Review Committee seemed fine with the proposal. His company performed a survey of the property to demonstrate that they meet all of the zoning requirements. The addition will be just over 2900 square feet, one story.

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

There was no public comment.

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

Mr. MacEachern felt this was a straight forward application. The TRC has signed off on it and this is a minor addition to an existing facility. This is a good project as it is moving the operations inside the building.

Motion by MacEachern to accept jurisdiction of the site plan determination application before the Board for Rollins Street Associates, PID 29169, 29 Maple Street, seconded by O'Connor.

Park, Alongi, O'Connor, MacEachern, Choiniere, Bartkiewicz and Granese voted yes; Dimmock voted no; the motion passed.

Motion by MacEachern, seconded by Bartkiewicz to approve pursuant to LDCR Section 170-51, Site Plan Determination, with the following conditions: subject to owner's signature; obtain written approval from the IT Director that the GIS disk is received and is operable; subject to receipt of local permits relating to the project; that the above conditions be met within 6 months and improvements shall be completed by December 31, 2014.

Park, Alongi, O'Connor, MacEachern, Dimmock, Choiniere, Bartkiewicz and Granese all voted in favor and the motion passed unanimously.

Richard Murdoch
PID 05074, 23 Lane Road
Acceptance/Review, 2 lot subdivision

Mr. Sioras provided the following staff report. The purpose of the plan is for a two lot subdivision located in the Low Medium Density Residential District, which has a two acre minimum. One new building lot is being created. All town departments have reviewed and signed the plan. There are no waiver requests. NHDES state subdivision approval is pending. He would recommend approval of the subdivision plan. One abutter had questions regarding the drainage from the lot. He added that Bob Mackey did go out to the property and perform a site walk.

Tim Peloquin of Promised Land Survey presented for the applicant. The parcel contains 4.7 acres and they are proposing a two lot subdivision. This is a lot of record that used to be two lots, but was merged at some time in the past. The zoning has changed, but they meet the requirements. He received a phone call from Mr. Mackey alerting him to the concerns of the abutter. He met with the abutter this evening prior to the meeting. Generally, a number of years ago, the previous owner of 23 Lane Road piped water and rechanneled it through his lot and this increased the wet on 19 Lane Road. There are wetlands on both properties. 23 Lane Road got less saturated and 19 Lane Road go more saturated. Mrs. Rendo corresponded with the owner of 23 Lane Road who agreed to fix the issue. Unfortunately, he passed away before he could do that. Tonight, Mr. Peloquin discussed several options with Mrs. Rendo but they are not ready to finalize those tonight. They may need to have a discussion with the Department of Public Works or find ways to mitigate the issue. Some choices might affect where the building area will be located for the new lot. Mr. Peloquin noted that Mr. Murdoch apologized for not being available to attend this evening. Mr. Granese confirmed the exact location of the lot on Lane Road.

Mr. O'Connor asked Mr. Peloquin to show where the water is flowing on the plan. Mr. Peloquin explained 19 Lane Road is the property that is reported to have received the redirection of flow. The flow goes from left to right as one looks at the plan as shown on Sheet 3. It is a gentle flow, but does flow to Mrs. Rendo's property. Her land to the rear is now more saturated than it has ever been. Now she has water in her basement which she did not have before. She has lived on this property for fifty years. Mr. Peloquin felt they should seek a solution and mitigate the issues.

Mr. Mackey stated he did go out and view the property. There is an old 12" metal corrugated pipe that it appears has always been there. The previous owner of 23 Lane Road redirected more water to that pipe. It seems to be located between the two wetlands. Mr. Peloquin did not believe the previous owner filled any wetlands but rather regraded areas that redirected the flow, from what he is being told. They want to work with the abutter.

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

Patricia Norton, spoke on behalf of her mother, Mrs. Rendo. She said they are happy they had the opportunity to speak with Mr. Peloquin and he is willing to work with them. They have no objection to the subdivision of the lot but did explain that her mother has lived at this address for 50 years. The former neighbor worked for a local excavation firm. The side of the property that is closest to her mother has always been wet. A few years ago, the water was redirected. When he did the work, they found that the water began to flow through the pipe onto her lot. Prior to that, it used to flow gently. They met with the former owner about 2 ½ years ago, and he explained he had redirected the water into the old pipe. They tried to work with him and he was to put the land back the way it was. He then got sick. His estate sold the property. The new owner has inherited the problem. The subdivision will add a building, septic and well and the associated grading may create a greater impact. She feels they will work together to mitigate the issue.

Mr. MacEachern thought it was good the neighbors are working together on this. Perhaps the plan should be delayed as suggested by Mr. Peloquin to the next meeting to allow them time to work this out. He thanked the abutter for working with the engineering firm. Mrs. Choiniere asked if the water is redirected, what will that do to 23 Lane Road? Mr. Peloquin said it will make the front of the proposed new lot wet. They may need to redirect the flow and create wetland storage. His client would rather build to the rear and there is no disturbance back there. It abuts the Cemetery. Building to the rear would also be better for Mrs. Rendo because she won't see the house. There is a field to the front of the property. With regard to creating wetland storage, if they regrade and redirect the water, he might be able to get it to the town's system, but he will need to speak with Mr. L'Heureux.

Mrs. Choiniere asked if they could get a permit for a wetland crossing? Mr. Peloquin said the Wetland Board will generally allow for a reasonable solution if the filling of wetlands can be avoided. He believes DES will work with his client to get a small wetland crossing and allow them to regrade the area. He will need to perform more wetland and topographical mapping on Mrs. Rendo's property to get a better picture.

There were no issues from the Code or Department of Public Works related to this plan.

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

Motion by MacEachern to continue review of the plan to August 21, 2013 to allow the applicant time to speak with the Conservation Commission regarding a potential wetland crossing. Bartkiewicz seconded the motion. Discussion followed.

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

Mr. Granese said he appreciated the applicant working with the abutter to address her concerns.

The Board entered workshops which were not televised.

Workshop

Planning Board discussion regarding changes to the Livestock Ordinance

Mr. Granese thought that when the Board first drafted this ordinance, they beat it to death trying to settle on the acreage requirement. The suggested change is to add a 3 acre minimum for roosters.

Mr. Mackey said that previously, the Board drafted a livestock ordinance and specifically put in the language that stated no public nuisance shall be created. The Board felt that would allow Code Enforcement to deal with anything that became a nuisance. His office does get fowl complaints, but they are mostly regarding loose chickens. Rooster crowing has become an issue. Normally the neighbors can resolve the issue. He did consult with the town attorney and asked if Code Enforcement can rely on the general nuisance provision (Section 165-15, Offensive Uses), but the attorney said no and that roosters crowing did not constitute a public nuisance. The Town Administrator asked that Mr. Mackey go back to the Planning Board and try to come up with something such as an acreage restriction that would apply to roosters.

Section 165-154 has the proposed amendment "Roosters shall be permitted on lots containing a minimum of three acres" as a talking point. If the Board chooses to do something, maybe they can add a distance restriction so that a rooster is not next to the property line. Derry is still fairly agricultural. The Board went through this exercise when it crafted this ordinance. He has had complaints regarding animals who are properly housed and contained. He is looking for input from the Board.

Mr. Granese said in looking back at the old issues, anyone who is now creating a problem would be grandfathered unless the Board added something regarding nuisances. Perhaps there could be a three acre, 100 foot restriction.

Mr. Mackey agreed the ordinance cannot be applied retroactively but a more specific nuisance provision might be able to be applied to existing conditions. Mr. Granese noted Derry does not have a noise ordinance. Why can't these types of complaints fall under "disturbing the peace"? Mr. MacEachern felt this will open the whole issue back up and the Board will hear from people who have issues with other animals.

Mr. O'Connor felt the Board should look at the real issue with is the nuisance issue. Mr. MacEachern suggested a generic town ordinance for nuisance. Mr. Mackey said there are a few places in the Zoning Ordinance that speak to general nuisance. Mr. MacEachern said maybe the Board should redefine nuisance. There should be a definition for it.

Mr. Park felt that a three acre requirement did no good. On a ten acre parcel, the rooster will still crow. The Board could say that there will be no crowing between certain hours. The roosters need to be in a dark place so that they don't crow. They only crow when they see light. Another alternative is to lower the roof of the cage.

Mr. Mackey thought the hourly restriction was clean and puts the onus back on the individual to control their animal. The Board reviewed Section 165-15, Offensive Uses. Mr. Park felt it was subject to interpretation. Mr. Mackey noted that is what the attorney said. Mr. MacEachern felt that Section 165-155 did not have enough language to help. Mr. Park suggested restricting crowing between the hours of 8:00 p.m. and 6:00 a.m. Mr. MacEachern noted the Board can't appear to be prejudiced. There must be other towns that have dealt with this same issue and have used a noise ordinance. Mr. Sioras said the Board tried to give Code Enforcement some teeth to enforce the livestock ordinance. Mr. Mackey said they had thought so, but legal said otherwise.

Mr. MacEachern suggested extending the nuisance provision to livestock in general. Perhaps Mr. Mackey can look around and see if there are other ordinances in other towns the Board can reference. He does not want to open this up to anything other than the issue at hand. The Board needs to be sensitive to the needs of the public.

Ms. Alongi suggested taking a look at other towns that have grown from a purely agricultural setting. She would think that in some towns, residents are not allowed to have these types of animals within a certain radius. Mr. Mackey agreed some towns only allow roosters in Agricultural zones.

Mrs. Choiniere noted that during the workshop on October 1, 2008, the Board had suggested changing the nuisance provision to read, "At no time shall a nuisance be created that would interfere with nearby property owner's rights." That did not get into the final draft of the ordinance. Mr. Mackey said he will talk to the attorney and other towns and will come back to the Board once he has a draft ready.

Mr. Dimmock did not think the town could blame the rooster, the problem is the person who owns the rooster. All roosters should be housed in a place that is dark at night. The housing of the rooster has a lot to do with it. Other animals can make as much noise as a rooster can, so this

should apply to all livestock and poultry. Mr. O'Connor noted the State provides fact sheets on how to raise livestock.

Mr. Sioras thought Mr. Dimmock had a point; that is why the Board called this the "Livestock Ordinance". Mr. MacEachern suggested adding wording so that the ordinance focuses less on noise and more on the appropriate housing of animals so as to mitigate the noise. Then the Board could define noise and set limits on when the noise can occur. The ordinance does deal with the issue of obnoxious odors.

Mr. Granese confirmed Mr. Mackey will let the Board know when another draft is ready to be reviewed in workshop.

Mixed Use Developments

Mr. Granese noted staff prepared a four page document for the Board to review. He would like the Board to look this document over and discuss it at a workshop on November 6th. Mr. O'Connor noted the town already allows mixed use in the CBD and the TBOD. Mr. Sioras said this came up as a suggestion to allow it in the General Commercial zone; the town does allow it in the downtown.

There was no further business before the Board.

A motion was made and seconded to adjourn. The motion passed with all in favor and the meeting stood adjourned at 9:06 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____