

The Planning Board for the Town of Derry held a public meeting on Wednesday, October 02, 2013, at 7:00 p.m., at the Derry Municipal Center (Cable TV Studio) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman; Frank Bartkiewicz, Secretary; John O'Connor, Vice Chairman; Jan Choiniere (7:16 p.m.), Darrell Park, Ann Marie Alongi, Members; Frank Mazzuchelli and Lori Davison, Alternates

Absent: Jim MacEachern, Al Dimmock; Randy Chase

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

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.

*Mr. Mazzuchelli was seated for Mrs. Choiniere
Ms. Davison was seated for Mr. MacEachern*

Escrow

#13-25

Project Name: Proposed Auto Body Shop

Developer: Anthony DeRosa

Escrow Account: Same

Escrow Type: Cash escrow

Parcel ID/Location: 03084, 191 Rockingham Road

The request is to approve Release #1 in the amount of \$15,137.28. The amount to retain is \$8,793.36.

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

#13-26

Project Name: Deer Run

Developer: JEMCO Building and Development

Escrow Account: Same

Escrow Type: Letter of Credit

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

The request is to renew Letter of Credit #20005314 in the amount of \$98,735.76 drawn on TD Bank. The new expiration date will be October 31, 2014.

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

Minutes

The Board reviewed the minutes of the September 18, 2013, meeting.

Motion by O'Connor, seconded by Bartkiewicz to accept the minutes of the September 18, 2013, meeting as written. The motion passed with O'Connor abstained.

Correspondence

None.

Other Business

Request to Extend Approval – Extended Realty, LLC

Mr. Sioras advised this is the first request to extend the conditional approval of the conversion of the Floyd School into apartments. The application was conditionally approved by the Board in April of this year.

Mr. Granese noted he was recusing himself from this matter and Mr. O'Connor was seated as Chair Pro-Temp.

Mr. O'Connor confirmed the extension would be for an additional six months.

Motion by Bartkiewicz, seconded by Park to grant a six month extension of the approval.

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

Mr. O'Connor stepped down as Chair Pro-Temp and Mr. Granese resumed his seat.

Public Hearing

H & B Homes Corporation
PID 03039, 7 Linda Road
Acceptance/Review,
Dedication of public street right of way
(noted by applicant as subdivision to create a cul de sac)

Continued from July 19, 2013

Mr. Sioras provided the following staff report. This is an extension of Spruce Pond Estates and the lot is located on Linda Road in Derry. The Board had seen this application in the spring. The applicant would like to build a road and cul de sac; half of the cul de sac is in Derry, the other half is in Windham. Public Works and Code Enforcement will now sign the plan as an agreement regarding road maintenance has been agreed upon between the two towns. The Conservation Commission, Fire Department and Police Department have already signed the plan. Additionally, there is a memo from the Derry School District indicating they have no objection to the plan. There are waiver requests from the Land Development Control Regulations regarding vertical granite curbing, and one for road construction standards. The third, relative to Town Department signature, is no longer applicable. State subdivision approval has been obtained and a copy is in the file.

Regarding the road agreement, Mike Fowler worked with the Town of Windham Road Agent to determine who would have jurisdiction over road treatment. Attorney Bronstein put together a document that has been reviewed by legal counsel at Attorney Boutin's office and Mr. Fowler is now satisfied with regard to the road. Based on that, he would recommend approval of the plan.

Joe Maynard of Benchmark Engineering presented for the applicant. Attorney Peter Bronstein was also present. Mr. Maynard explained Lot 03039 is a residual piece that was a separate parcel from the piece H&B Homes purchased in the Town of Windham. It has a Linda Road address in Derry. The only reasonable access is from Windham. The cul de sac would be constructed in a flat area and is located on the town line. A 4.83 acre parcel of land will be left after the construction of the cul de sac. There will be no drainage on the Derry portion other than underdrains. All of the drainage improvements will be in Windham and flow to Windham. When the houses are constructed, all the flow will be to Windham. They spoke with Mr. Fowler regarding the Inter-municipal Agreement for winter maintenance. That is being finalized. They have three waiver requests. Since the majority of the road will be in Windham, they would build the road to Windham standards. It made sense to request the waivers for vertical granite curbing and road standards.

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

Terry and Ruthy Robinson, 10 Diana Road, advised they have no objection to the development and look forward to it. As an abutter, the homes will be on the hill. Water may flow to Windham, but there is an underground spring at the plateau that floods two homes, theirs and the neighbors. Any blasting in either town that disrupts the land may make the flooding more of an issue. How would they handle who has the liability if blasting changes things for the worse? Would H&B Homes have the liability? If so, can they get that in writing? Mr. Robinson presented pictures to the Board that he took in late winter. The water dries up in the summer but it is wet in the winter/spring. A copy was retained for the file. He noted how the water flows down the driveway. The red arrows on the pictures show the location of the water. A pre-blast survey of his home has already been done but they do have concerns if there are issues on the land itself, not just in the home.

Ms. Alongi asked to be shown on the map how the water flows. Mrs. Robinson went to the presentation plan and showed how the water traverses their property from the Linda Road lot. It starts at two points on Lot 04084, traverses south-west and enters their lot in the rear left and crosses their lot to their driveway. Mr. O'Connor asked since the pre-blast survey has been conducted has there been any blasting? Mr. Robinson said it was thought there would be, and it is likely ~~they~~ the firm will come back for another survey. Mr. Maynard advised the Town of Windham has an extensive blasting ordinance. The permits run based on earth movement. When they were constructing Buckland Road and a small portion of Nathan they applied for a blasting permit. They did not find any ledge however. The abutters will be notified again in the future when they start Nathan Road. They will need to obtain another permit.

Mr. O'Connor asked if the applicant would be willing to use a seismographic device. Mr. Maynard said it is part of the Town of Windham process.

Mrs. Choiniere was now seated and Mr. Mazzuchelli stepped down.

Mr. Granese asked if there would be any blasting in Derry? Mr. Maynard thought it would be hard to say. They won't know for sure until they get in and start constructing the road. Buckland had a 20 foot cut with soils 4-6 feet to bedrock, but in that area, they did not have to blast. He feels that since Nathan is an at grade road, they may not need to do a lot of blasting. They have not done the borings yet.

Mr. Granese asked if they would be willing to look at the Robinson's property and the water flow and if issues arise because of the construction, would they make corrections? Mr. Maynard said if they cause an issue they would be happy to rectify it. Mr. Granese felt that could be added as a condition of approval. Mr. O'Connor said if there was blasting in Derry, would they still need a permit in Windham? Mr. Maynard said they would need to comply with both permit processes.

There was no further public comment.

Motion by O'Connor, seconded by Bartkiewicz to close the public hearing. The motion passed and review of the plan returned to the Board.

Mr. L'Heureux said Mr. Fowler met with Windham and resolved the issue regarding road maintenance of Nathan Road. Derry will assume responsibility for repairs and future maintenance and Windham will assume responsibility for annual snow plowing. The Inter-municipal Agreement has been drawn up. The Department of Public Works has no issues with the waivers; Windham's road standards are close to Derry's.

Motion by O'Connor, seconded by Bartkiewicz to accept jurisdiction of the Nathan Road plan application before the Board for H & B Homes Corp., PID 03039, 7 Linda Road.

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

Motion by O'Connor, seconded by Bartkiewicz to grant waivers from the following sections of the LDCR: Section 170-26.A.14, Vertical Granite Curbing, to allow cape cod berm rather than the required vertical granite curbing as after review of the waiver request the Board finds that strict conformity to the regulation would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations; and to LDCR 170-26.A.15, Road Construction Standards, to allow the construction standards to be adjusted to meet the road construction standards of the Town of Windham. 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, Alongi, O'Connor, Davison, Choiniere, Bartkiewicz and Granese voted in favor and the motion passed.

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 July 15, 2013; subject to owner's signature, subject to on site inspection by the Town's Engineer; establish escrow for the setting of bounds or certify the bounds are set; establish appropriate escrow to complete the project; obtain written approval from the IT Director that the GIS disk is received and is operable; recording of an executed inter-municipal agreement between the Town of Windham and the Town of Derry such that winter maintenance of Nathan Road will be assumed by the Town of Windham to include snow plowing and road treatment of the portion of Nathan Road located in the Town of Derry; note approved waivers on the plan; applicant is responsible for construction monitoring fees incurred for the project charged by the Town of Derry and the Town of Windham's consulting engineer; pursuant to RSA 674:53, IV, approval from the Town of Windham Planning Board; subject to receipt of state and local permits relating to the project; the above conditions must be met within 6 months; improvements to be completed by October 31, 2015; a \$25.00 check, payable to Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirement, along with the appropriate recording fees; any deviation of the current water flow to the Robinson's property, will be corrected by the developer. Bartkiewicz seconded the motion and discussion followed.

Attorney Bronstein noted the last condition should state "deviation caused by the developer". Mr. Bartkiewicz said the motion should mention blasting. Mr. Granese would like to see a pre and post inspection of the site so that there is a baseline that protects everyone involved. Mr. Park noted that the spring is currently dried up so there is no flow now. Mr. Granese suggested the developer/applicant could go out to the property and mark out where the normal flow is to be used as a baseline. The pictures provided were taken in the spring of 2013 and show snow on the ground. Mr. L'Heureux suggested seasonal observations of the area during construction and towards completion of the project by the applicant and the property owner. DPW could also take part.

Mr. L'Heureux asked with regard to the proposed construction schedule? Mr. Maynard said as soon as they resolve any outstanding issues, they plan to get the road to gravel. The intent is to do this before the applicant shuts down for the winter. They would like to pave in the spring.

Mr. L'Heureux noted they would need to ask for inspection of the site prior to earthwork or blasting. The majority of the work will be done in the next three months. Any blasting or excavating will improve hydraulics in the area. There are no guarantees but this is normally what happens.

O'Connor amended the last condition to read "Any deviation of current water flow to the Robinson's property will be corrected by the developer. The applicant, property owner, and DPW will meet periodically during construction for seasonal observation of the property. Pre-Inspection is required prior to construction.

Mr. L'Heureux noted the construction will be done in two phases. The first will be the road and the second one would be construction of homes which may require more blasting.

Mr. Park asked if the Board was looking at "deviation" or "increase" in the water flow? If the water flow is lessened that should not be fixed. Mr. Granese noted the Board now has photos of the Robinson's property on file. Mr. O'Connor commented they would be phasing the construction. Mr. L'Heureux noted construction of the homes would take place over the next few years. Mrs. Choiniere asked if Mr. L'Heureux thought that getting the road to gravel will alter the amount of water flowing? Mr. L'Heureux stated he has walked the site and can't foresee any activity that will increase water in that direction; it will decrease it. Mrs. Choiniere asked for confirmation that there will likely be an improvement. Mr. L'Heureux said he would say there would likely be less water than more water over time. The improvements will provide other areas to which the water can flow.

O'Connor amended the last condition again to read "Any deviation in the water flow to the Robinson's property will be corrected by the developer. The applicant, property owner and DPW will conduct pre-inspections and inspections during the two phases of construction".

Attorney Bronstein said the issue of concern is increased flow rather than a deviation in flow. A deviation may be good. Any increase in flow should be addressed.

O'Connor amended the last condition again to read, "Any increases in water flow to the Robinson's property will be corrected by the developer. The property owner, applicant and DPW will meet for pre inspection and periodically during the two phases of development."

Bartkiewicz seconded the amendments. More discussion followed.

Mrs. Choiniere asked for a definition of "periodically". Mr. Granese noted there will be two phases on development. The Robinson's will show them the flow and they can see if there have been any changes over time. Mr. O'Connor also noted there would be a pre blast survey and the seismographic device to protect them.

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

BR-10, LLC
PID 04084, 1 Bartlett Road
Acceptance/Review
11 lot subdivision

Mr. Sioras provided the following staff report. The purpose of the plan is for an 11-lot subdivision of a parcel located in the Low Density Residential District. The Planning Board originally approved this plan on September 14, 2011. That approval has expired and the applicant is resubmitting a new application. All town departments have reviewed and signed the plan. There are two waiver requests, one for slopes, one for grades and another should be requested for the amount of cover over a culvert. NH DES state subdivision, Alteration of Terrain and NH Wetlands permits have been obtained and copies are in the file. He would like to let Mr. Lavelle speak regarding the plan and would like the Board to hear from Mr. L'Heureux as there have been some issues at the site. He would recommend the plan be continued and the Board hold a site walk.

Jim Lavelle, of James Lavelle Associates presented for the applicant. This is a subdivision of 37.94 acres located within the LDR zone. The zoning requires 3 acre lots, 200 feet of frontage, and setbacks of 35 feet to the front, and 15 feet to the side and rear. Setbacks to wetlands are 30 feet to wetlands of less than one acre and 75 feet to wetlands larger than an acre. The developer is proposing a subdivision of 11 lots ranging between 3 acres and 5.18 acres. The development will be served by the proposed Steele Road which is 1600 feet to the cul de sac. All lots meet or exceed the soil requirement. Housing numbers and addresses have been reviewed and approved by the Assessing and Fire Departments. This plan was conditionally approved in 2011 but the conditions were not met. They are hopeful to acquire a second approval from the Board. All state permits are in hand. Mr. Lavelle went through the various plan sheets.

The sheet shown on the easel encompasses plan notes and shows the parent parcel. Following that are 50 scale sheets with the lot area, dimensions, setbacks, topography and soil data, as well as test pit and septic locations. The remainder of the plan set was prepared by Gregsak Engineering. The plan has been reviewed by Keach Nordstrom Associates and Mr. L'Heureux's office. They did receive the letter from Keach Nordstrom late yesterday. They have answered their portion of the comments relating to the survey and subdivision work. Gregsak Engineering has not yet received a copy of the review but they appear to be housekeeping items. They feel Gregsak has finally answered Mr. L'Heureux's comments. There had been questions regarding the drainage under Bartlett Road.

Motion by O'Connor, seconded by Choiniere to open the public hearing. The motion passed unanimously and the floor was open to the public.

Wayne Burrington, 3 Bartlett Road, advised he lives adjacent to the new road. He has no objection to the project. He does have a shallow, dug well located 30 feet from the stone wall with a three foot case. His concern is that road salt/treatments may affect his water. He does not want a new well as he has the best quality drinking water on the street. He would just like to see

his well protected. Mr. Granese asked if this had been a condition the last time the Board saw this plan? Mr. Sioras said it had not.

Mr. O'Connor asked if during heavy rains and street floods, does water get close to the well? Mr. Burrington said a lot of water goes over the stone wall and there are some springs. There is no standing water; the concern is subterranean. Mr. Lavelle confirmed the location of the well with Mr. Burrington. He stated there is water that flows from Mr. Burrington's lot that very well may be subterranean during parts of the year. That was noted as well as the icing that occurs across the street. Construction of the road should take care of that. The road will be down stream from the flow that supplies his well. Mr. Burrington said he was not sure if his well should be tested before and after construction to make sure there are no changes to his water quality. Mr. Granese said when it came time to look at conditions of approval, the board could make a note to protect him.

Mrs. Choiniere recalled there had been a lot of abutters with concerns about the amount of water on the road. Has that issue been mitigated? Mr. L'Heureux said there is a wetland at the base of the entrance to the road. The applicant will make improvements and add a culvert, as well as additional drainage. It will improve the character and allow more water to flow during peak seasons. The wetland will not be drained. There is minor cover over the culvert because it needs to be a concrete pipe. That is why they need the waiver for the cover over the culvert. They will need to add that waiver request. Mrs. Choiniere recalled there had been concerns regarding ice on Bartlett Road. Mr. L'Heureux said that should improve once all of the off road improvements are complete.

Mr. Burrington shared that several years ago the basement of 5 Bartlett used to flood. Drainage was put in that caused water to run down across his property, join water on his property, and ice would form that was 2-3" thick. This originally came from 5 Bartlett.

There was no further public input.

Motion by O'Connor, 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. L'Heureux said a few years ago, the contractor roughed in the first part of Steele Road, which should not have been done. The area is stable now but the engineer will need to look at the grades and note the existing grades that are shown on the current plan to ensure the cuts and fills have not changed. The contractor has performed excavations on the property for which he had permits. However, they needed fill for an adjacent subdivision. They dug into the area of the proposed road. Mr. L'Heureux recommends the surveyor survey the area and note the areas on the print. The contractor did stop excavating when he was asked to and has not filled in the pit. Going forward, the town will need to make sure that any replacement material is to industry approved construction standards. He recommends the Board perform a site walk so that the Board members are familiar with the project.

Mr. Granese said there should be a site walk and the plan continued. Mr. O'Connor concurred with the need for a site walk. He asked if procedurally the Board needed to accept jurisdiction of

the plan prior to holding a site walk. Mr. Sioras said there is no issue with accepting jurisdiction. Changes have been made to the plan since the last time the Board saw the plan. Mr. Lavelle stated he had no issue with the clock starting and if necessary, they would grant an extension to the time frame.

Motion by O'Connor to accept jurisdiction of the 11 lot subdivision plan before the Board for BR-10, LLC, located on Parcel ID 04048, 1 Bartlett Road, seconded by Bartkiewicz.

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

The Board discussed times and dates for the site walk and settled on October 26, 2013 as the members who were sitting and the Clerk could attend on that date.

Mr. Burrington advised the only concern he has is with his well; he has no issues with the subdivision. Mr. L'Heureux asked Mr. Lavelle to mark the centerline of the road for the site walk. Mr. Lavelle said he was on site yesterday and saw the excavation site. The erosion stone is on the first part of it. They will have the centerline marked and next week will have new profile prepared that includes the details of the erosion stone.

Motion by O'Connor, seconded by Bartkiewicz to hold a site walk on Saturday, October 26, 2013, beginning at 9:00 a.m. at 1 Bartlett Road. The centerline of the proposed road shall be marked for the site walk. All voted in favor and the motion passed.

Mr. Granese noted the public is welcome to attend the site walk and confirmed the same with Mr. Lavelle.

Motion by Park, seconded by Bartkiewicz to continue the public hearing to November 6, 2013.

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

Mr. Granese noted there will be no further notice of continuation.

A SECOND 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 ADD definitions for 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.

and to AMEND the definitions for Flashing Sign, Projecting Sign, and Window 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. Sioras advised Bob Mackey, the Code Enforcement Officer is still out of the office attending to a family matter. Mr. Mackey had asked if the Board would consider continuing the hearing to another ~~next~~ meeting so that he could attend. Board members noted their thoughts were with Mr. Mackey and his family.

Motion by Davison, seconded by Choiniere to continue the public hearing to November 20, 2013.

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

Workshop

Livestock Ordinance

Mr. Sioras said there have been changes made to the draft since the last workshop. Marlene Bishop, the Animal Control Officer is here this evening and can provide input. There is also an email that was received today from Ann Evans. Ms. Evans was unable to attend tonight, but wanted her comments read into the record. Mr. Granese read the following:

“October 2, 2013

To the Town of Derry Planning Board re Pending re-write of the Livestock Ordinance

It has been a few years since I have sat on the Derry Planning Board. One of the last things I worked on was the Livestock Ordinance. I am sorry to see the Livestock Ordinance come before the planning board again because of citizen Phillip Bruno and a couple of others. I fear the Planning Board has opened up a can of worms unnecessarily.

At the time the original ordinance was written there were several people who were supporting an elaborate ordinance of 4 pages or more in length. Animal control wanted a bigger ordinance. They wanted more rules to enforce. The Planning Board (including myself) felt "less is better than more". It was a battle to write a "short and meaningful" ordinance which allowed the home farming folks of Derry to continue enjoying the raising of small farm animals with their children. After all this time the ordinance has worked well with few complaints.

FYI – Derry Feed and Blue Seal sell chicks that are "pullets (hen)" unless a customer orders Cornish Cross Broiler Males which are dressed out at 8-10 weeks of age. Tractor Supply sells straight run birds. (Straight run bird lots contain an abundance of (male) rooster chicks). Tractors customers may or may not be aware of what they are buying. I mention meat birds because I feel folks in Derry should be able to raise broiler/roaster males for meat. This could be an essential food supply for a family....plus they are only kept for 10 weeks maximum. This should be of no problem.

For your consideration: I suggest that if a family has a rooster (over 10 weeks of age and not intended for meat) and there are no crowing complaints that the rooster owner be given a 10 day notice to re-home the rooster. If there are no complaints from neighbors the farm family should be allowed to keep the rooster. If after a 10 day notice a family fails to re-home a rooster Animal Control should pick up the rooster and dispose of/rehome it in some fashion. Animal Control may charge a fee of \$15.00 for disposal/re-homing services and there should be no additional fine imposed. Roosters on lots over 2 acres should be exempt from this regulation.

I would also suggest that further changes to the ordinance "not involving roosters" be avoided. Do only what is absolutely necessary. There is wisdom in knowing when to stop.

Please give a copy of this letter to the six Planning Board members I did not have an email address for. Thanks.

Ann Evans, Derry Feed & Supply, Co., Inc."

Ms. Bishop said she disagreed with Ms. Evans who she felt had a business interest in keeping certain parts of the ordinance intact. Ms. Bishop reported she ran into problems with roosters and chickens and the Ordinance has helped somewhat, but there is no enforcement power. There are no stipulations or regulations regarding grandfathered horses or farm animals on small lots ~~or farm animals that are grandfathered~~ to prohibit replacement. She has tried to incorporate that information into the draft without going to extremes. She has covered it pretty well without stepping on toes. She thinks the town should allow people to raise animals that are intended for their freezers.

Regarding straight run chicks, these things will happen and the Board should be able to make provisions so that when the roosters come of age, they can be taken or disposed of in the freezer. This is all part of farming and children will learn from it.

There is a place in town where there are 2 horses on 1/3 of an acre which also encompasses a home, well and driveway on it. There is not a lot of room for these horses. There had been people who kept swine near the traffic circle that were not properly fenced. As the swine grew, they learned to root under the fence and escape. She has provided photos of the lot containing the horses. The owner has been given 30 days to fix the issue. The photos show that the horses are standing in wet straw and manure. Mrs. Bishop advised of another situation where she received a complaint that there were chickens on a duplex property. The Board has photos of that lot also. She found no problems with the animals. They are covered, contained properly and can't get out. The owner has stated he will dispose of the roosters. She also had issues where she has asked people to keep the roosters housed until a reasonable hour. Some people comply, some do not. She has tried to put reasonable wording into the ordinance that the town can live with. This ordinance is intended to protect the rights of people and animals. The animals have the right to be kept in decent conditions and in a reasonable space.

The Board reviewed the changes provided by Ms. Bishop this afternoon. Mr. O'Connor advised there is a new state regulation making its way through the process that involves large animals such as horses. If the state veterinarian is notified, he can get involved. He believes it is an amendment to RSA 438. The Legislature in January will also review laws regarding animal cruelty. These laws will give Animal Control Officers more weight. They are not approved yet but are just out of Committee.

Ms. Alongi asked Ms. Bishop if she felt that rooster complaints should be dealt with by disposing of the roosters ~~of or~~ having them sent away? Ms. Bishop said the new ordinance proposes that roosters are allowed in certain areas but not in others. If someone had 6 eggs, and realized there were two to three roosters in the batch, they would be allowed to raise the roosters to a certain weight; it would be reasonable to find the animal a new home at that point. She noted she can't charge people to re-home a rooster.

Ms. Alongi asked if there was a third option that if roosters were allowed could they could be kept in the dark between the hours of 8:00 p.m. and 6:00 a.m.? Ms. Bishop said that is why she added the provision that the roosters be kept in until 8:00 a.m. Each situation needs to be taken on a case by case basis; she needs to be fair to everyone.

Mr. O'Connor asked if the Board could discuss permits for rabbits and slaughter. Ms. Bishop said there was no permit required at this time. This was an idea she had to help keep track of animals. They could be kept for a certain amount of time then frozen. Permits allow the town to keep track. She does not foresee a big rush of people running out to get permits to grow animals for their freezer. Mr. O'Connor disagreed stating there is a large statewide push for homegrown, made in New Hampshire.

Ms. Bishop related an issue she had with a homeowner on Matthew Drive who kept a rabbitry. There were issues with the odor. It was a tough situation for the neighbors. Five to six rabbits is not an issue; 25 rabbits is an issue. Mr. O'Connor asked if there was a nuisance law on the books, would it help? Ms. Bishop said "nuisance" is a vague term. She did find a definition which read "In law, an act, object, or practice that interferes with another's rights or interests by being offensive, annoying, dangerous, obstructive, or unhealthful. Such activities as obstructing

a public road, polluting air and water, operating a house of prostitution, or keeping explosives are public nuisances and constitute criminal violations. A private nuisance is an activity or condition (e.g., excessive noise, disagreeable odor) that interferes with the use and enjoyment of one's property and that may be a cause of action in a civil litigation. An attractive nuisance is something on one's property that poses a risk to children or others who may be attracted to it." The definition comes from the Concise Encyclopedia. This is a good definition but what may be a nuisance to one person is not a nuisance to another. Who decides it is a nuisance? She and Mr. Mackey discuss this a lot.

Mr. O'Connor asked with regard to dogs? Ms. Bishop said state law has specific rules to follow. Mr. O'Connor asked if we referenced state law anywhere? Ms. Bishop said they practice under state law for vicious, run at large, or barking dogs.

Mrs. Choiniere asked how does one re-home a rooster? Ms. Bishop explained the bird can go to the NSPCA or to a farm. Some people will take them to put in their freezer. Keeping them indoors is fair and reasonable, especially if they are on a large piece of property.

Mr. Park said he would prefer to keep it simple. He would like to go with what is in place now with a few changes. He has concerns about what is proposed, specifically keeping rabbits on land under 2 acres in size. What is a rabbitry? Is it five, 20 or 50 rabbits? Someone could have ten acres of land and be next door to a half acre lot and there would still be the same problems. The acreage minimum does not help. Ms. Bishop said there were setbacks in place that people need to abide by and they must also follow best management practices. Some farms will take rabbit manure. Mr. Park said he does not like the idea of issuing a permit for slaughter. Ms. Bishop said the intent would be to permit half acre lots. It could be allowed if people want to raise animals for food for a year. She wants to be able to prevent continuing problems. Mr. Park felt there were still too many rules. Ms. Bishop agreed but she sees horses being kept in areas that are not cleaned up for them and chickens that run all over the place. Mr. Park felt that preventing someone from having a chicken because someone else can't take care of their chickens is not right. Ms. Bishop said the Blackberry Road situation is an example of a good one. A few hens for eggs is not an issue, but two dozen chickens flying out of pens and running all over the place is an issue. Mr. Park did not feel one could regulate common sense. There will always be someone who ignores the law. Ms. Bishop said there is nothing in the ordinance currently to help with that. Once an animal is removed from a property she would like to be able to say it cannot be replaced. That would take care of the lady with horses on 1/3 of an acre. Her well serviced her home as well as two other homes and the well is located in the middle of the corral. The corral area was also providing runoff to Beaver Lake. She would like to see animals treated fairly and fenced properly.

Mr. Granese noted Section 165-57 which speaks to enclosures. He is aware of complaints on Floyd Road involving unruly chickens. Can Ms. Bishop enforce with the existing ordinance with regard to enclosures? Ms. Bishop said she can give people a warning but can't fine them. Mr. Granese advised he was on the Board in 2009 when this ordinance was developed. It went from a huge document to this. The Board missed granting Ms. Bishop the authority to enforce. There should be consequences for people who do not comply. The Board needs to come up with something so that she can enforce the ordinance and apply fines and penalties. If the landowner

is non compliant after so many days, there should be court action. Will that help her? Ms. Bishop said it absolutely will. Mr. Granese felt the Board missed the boat on that in 2009. He knows the rules for dogs and may have thought that the Board had covered that. Ms. Bishop stressed there needs to be something so that once an animal is removed from an undersized lot, it cannot be replaced. Sometimes, people listen. There are animals that are constantly loose on Hampstead Road and she had a loose horse call today. Mr. Granese noted on Walnut Hill there are all kinds of animals but he has never seen an animal loose; that is the right way to do it. Ms. Bishop agreed and said she tries to educate on a regular basis but she can't dictate fines. Mr. Granese thought the Board could come up with something in the ordinance.

Mr. Sioras noted the Board has now had input from Ms. Bishop and Ms. Evans. Mr. Mackey will be back next week and can also provide input. Mr. Sioras felt there should be a few more workshops; Mr. Granese suggested December 4th as the next workshop date.

A member of the audience requested permission to speak. Mr. Granese noted that normally during workshops the public does not provide input; that is saved for the public hearing, but he would allow her to speak since she had been under the impression from staff that she could. He asked her to come back to the public hearing to get her comments into the record.

Eunice Giles, 19 Sheldon Road, said she has had multiple roosters on her property for sixteen and a half years and has not had an issue with the birds. She breeds them and has eight generations. She needs the roosters for breeding. There are people who have a healthy hobby and she does not want roosters to be banned. Mr. Granese reiterated he felt the Board missed the boat in 2009 by not giving enforcement power to the Animal Control and Code Enforcement Officers. He does not want to restrict anyone. Mrs. Giles said no one should have a rooster under someone else's window. That is rude. She did want the Board to consider that in order to breed birds effectively, the birds need 14 hours of daylight to lay eggs. Ms. Bishop thought that generally, roosters don't crow in the afternoon. Mr. Granese asked what size lot does Mrs. Giles live on? She said it was almost 10 acres. If she was on a one acre lot surrounded by Conservation Land, that might be the same thing. She has a lot invested in her flock and does not want to be penalized. She has had one complaint and the birds were placed in the barn until she got a slaughter date. She wanted the Board to take into account those who enjoy their birds.

Mr. O'Connor asked if the dog ordinance gave Ms. Bishop enough teeth that the Board might be able to use wording from that ordinance? He assumes she gives people verbal warnings, written notice and then fines them. He had spoken with Chief Ed Garone in 2009 the last time the Board looked at this and the Chief had said that enforcement letters could come from the Police Department rather than Code Enforcement; that way the town Prosecutors could follow up with the court actions.

Ms. Bishop said she is not hard to get along with. She treats all people the same. There are other areas in town with complaints. Windham Road is not a good situation, given the way the lots are set up. Right now, there is nothing she can do. On Beaver Lake, she sent a letter and gave the homeowner 30 days to clean up the property. Cruelty to animals will cover some of it. This is not a good situation for the animals. Mr. Park felt the Board could add more regulations with clout or keep things simple and add clout. He feels that option would be of more help. Ms.

Bishop said she would like some of her suggested changes in the ordinance. Mr. Park asked what was most important to her? Ms. Bishop said she would look at it.

Mr. Sioras reminded the Board of the process which was to final the draft in workshop, hold a public hearing and then bring the document to Town Council for final approval.

Mr. Granese said the Board would hold another workshop on December 4, 2013. The Board has suggestions from Ms. Bishop. If she can't make the next workshop, he asked if she could send an email and advise the Board as to what she would like to see in the Ordinance. The board can come up with a fee structure. Mr. Sioras can speak with legal counsel. He likes where Mr. Park is going; there needs to be enforcement.

Ms. Bishop understood what he was saying but there also needs to be protection for people who don't from the people who do. The general public wants to know why she can't do anything. She noted she is always available for questions. She is sure she will be speaking with staff.

Mr. Granese said they will come up with a new draft for the next workshop.

There was no further business before the Board.

Motion by Park, seconded by Bartkiewicz to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:44 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____