

The Planning Board for the Town of Derry held a public meeting on Wednesday, February 18, 2015, at 6:30 p.m., at the Derry Municipal Center (3<sup>rd</sup> Floor Meeting room) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman; John O'Connor, Vice Chairman; Frank Bartkiewicz, Secretary; Michael Fairbanks, Town Council Representative; Randy Chase, Administrative Representative; Jim MacEachern (6:37 p.m.), Darrell Park, Member; Marc Flattes, Lori Davison (6:31 p.m.), Bob Jean, Alternates

Absent: Jan Choiniere

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

Mr. Granese called the meeting to order at 6:30 p.m. The meeting began with a salute to the flag. Mr. Granese noted the emergency exits, the location of meeting materials and introduced the Board members and staff.

*Mr. Flattes was seated for Mrs. Choiniere  
Mr. Jean was seated for Ms. Alongi*

Mr. Granese thanked Ann Alongi for her service on the Planning Board. She has forwarded a letter resigning from the Board. He appreciated that people step forward to volunteer and serve the town.

### **Escrow**

None

### **Minutes**

The Board reviewed the minutes of the February 04, 2015 meeting.

Motion by O'Connor, seconded by Davison to approve the minutes of the February 04, 2015 meeting as written. The motion passed with Park and Granese abstained.
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*Ms. Davison was seated for Mr. MacEachern.*

### **Correspondence**

Mr. Bartkiewicz reported the Board has received a note from Ms. Alongi who advised that as she has moved to California, she must resign from the Planning Board.

The Board has also received a written request from the Zoning Board of Adjustment Chairman, Lynn Perkins, asking the Board to amend Sections 165-45D, 45 I C, and 46 B of the Zoning

Ordinance to remove a provision under special exceptions that requires applicants to be in compliance with any covenants relating to the property. It has been brought to the attention of the Zoning Board that this provision is in direct conflict with a NH RSA. The Board scheduled this matter for a workshop to be held on March 4. Mr. Sioras advised this matter had been before the Board a few years ago, but had been tabled indefinitely by Town Council. The issue is being brought forth again. Mr. Granese confirmed the ZBA will be notified of the workshop.

## **Other Business**

### Presentation of the Capital Improvement Program, Fiscal Year 2016

Mr. Sioras advised the Town Charter provides the Capital Improvement Program shall be presented to the Planning Board each year prior to March 1<sup>st</sup>. The Town Administrator, Galen Stearns and Chief Financial Officer, Susan Hickey, are present this evening to provide the information to the Board.

Ms. Hickey reported the Department heads have submitted their requests along with explanations. They have discussed the proposed CIP and reviewed the capital reserve program to ensure there are enough funds in the capital reserve to fund the projects in the CIP. They prefer to use the funds from the capital reserve program rather than fund through the tax rate. This is consistent with prior years. There will be no taxpayer impact for the proposed 2016 CIP. The proposed projects, less water and sewer projects, equate to about \$707,000 for the general fund. When the water and sewer projects are added in, the total is closer to 1.3 million. This year, the CIP is a bit lower than years past. In fiscal 2018 there will be a spike which will be due to proposed water and sewer improvements. They may bond for those and will try to put other projects with that to obtain the best rate.

*Mr. MacEachern was seated at 6:37 p.m. and Ms. Davison stepped down.*

Ms. Hickey advised there are no projects scheduled for the Police Department in 2016; the Fire Department is requesting \$564,000 and the Department of Public Works is requesting \$143,000.00. There are no other general fund requests for fiscal 2016.

Mr. Granese asked if the Police Department is scheduled to replace the unmarked cruisers. Ms. Hickey said that has been pushed out to Fiscal 2017. Mr. O'Connor had a question with regard to the line item for Exit 4A. That line still shows 5 million. Should that amount show the reductions for what the town has already expended on the environmental impact study? Ms. Hickey said the town has spent 1.7 million so far on the Exit 4A project. That has been funded through the fund balance so that the amount does not need to be bonded. Town Council is making the appropriate motions and reducing the authorized amount of funding as each invoice is presented to the town for payment. The fund balance is currently 13 million. It is unknown how long this project will take and therefore they have put one dollar in as a place holder for the future.

Mr. O'Connor asked what is the status of the environmental study for the I-93 expansion. Mr. Stearns said in 2007 the Impact Statement was drafted. That is now out of date and will need to be redone per the federal government. The state has taken charge of the Exit 4A project; the town is negotiating a contract with the state and will look forward to the Impact Statement beginning to be updated this summer.

Mr. Granese noted the Fire Department has scheduled the replacement of an ambulance; he thought the Department also wanted to replace an engine. Mr. Stearns said the engine would not be replaced this year. Ms. Hickey said the replacement of Engine 3 has been pushed out to Fiscal 2017. Mr. Granese felt it was important to meet the public safety needs; Mr. Stearns agreed but noted that typically engines are replaced every 20 years; the request had been at 17 years. Ms. Hickey said the Fire Department has scheduled the replacement of the ladder truck which is estimated to cost 1.5 million. That is scheduled for Fiscal 2020. They will try to lump that in with other projects to get the best rate.

Mr. MacEachern asked what portion of the tax rate is bonded indebtedness and not included in water/wastewater. Ms. Hickey said she would need to get that figure and get back to Mr. MacEachern. Mr. MacEachern stated in past years the Council tried to level fund the bond indebtedness and he wanted to make sure that was continuing. 2020 has a spike which would increase the indebtedness (less the self-funded items); the town normally tries to keep the indebtedness the same so when something came due, it was replaced with something else. He knows the Planning Board has no authority over that, but was curious. Mr. Fairbanks said this is an issue that has been discussed at the Council level the last few years. Ms. Hickey explained their goal is to keep the fund balance at a level that replenishes the capital reserve fund. They try not to bond at all. Mr. MacEachern felt the Town Council should look at that, especially with the widening of I93 and the proposed Exit 4A which may create a growth spurt. He recalls preparing a 20 year CIP that tied into the Growth Management Ordinance.

Mr. Fairbanks asked with regard to water and sewer construction in the remainder of Route 28. Where is that in the CIP; is it out 5-10 years? Mr. MacEachern said he did not see in on the 6 year plan. Mr. Fairbanks noted that would be a bonded project and should be in the CIP. Ms. Hickey said that project is beyond the 6 year CIP; she can speak with DPW and get that information to the Board.

There were no further comments on the CIP. Mr. Granese thanked Mr. Stearns and Ms. Hickey.

### **Public Hearing**

**Public hearing to discuss proposed amendments to Article III, General Provisions, Section 165-22, Building Permit; Construction Requirements; Section 165-26, Modular or Pre-Built Site Housing; Article VI, District Provisions, Section 165-44, Multi-Family Residential District (MFR), and Section 165-45, Medium High Density Residential District (MHDR) to reference the applicable New Hampshire State Building Codes as adopted by the recently updated Chapter § 30 of the Town of Derry Code.**

**The purpose of the amendments is to update the Town of Derry Zoning Ordinance to be in accord with the recently re-adopted Town of Derry Property Maintenance Code.**

Mr. Mackey advised the Board held a workshop in December. Town Council has recently re-adopted the Property Maintenance Code dealing with the maintenance of properties. There had been a concern regarding blighted properties and maintenance of properties. The Council passed the changes to the Property Maintenance Code and there were some local amendments included to make the code more useful. A few of the changes were related to sections in the Zoning Ordinance where the codes are listed out; these sections need to be amended and updated. The Board is not amending sections where the Code is adopted, but where the code is provided for informational purposes. While the Board was working on those, there were a few other sections of the Ordinance to be updated to reflect the current State Code listing.

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 discussion returned to the Board.

Motion by MacEachern to accept the proposed changes to the Town of Derry Zoning Ordinance regarding updates to the references to the Building Code and forward the changes to the Town Council for their consideration.

Chase, Fairbanks, Park, O'Connor, MacEachern, Flattes, Jean, Bartkiewicz and Granese voted in favor and the motion passed.

**Public hearing to discuss amendments to Article II, Section 165-5, Definitions, to ADD definitions for Green Area/Space, Greenway/Greenbelt, Active Recreation, Passive Recreation, and Net Buildable Area, and to amend Article VI, Section 165-44, Multi-Family Residential (MFR), and Section 165-45, Medium High Density Residential District (MHDR) to revise the density calculations, parking calculations, green space and recreational space requirements for multifamily dwellings within the Town of Derry**

**The purpose of the amendments is to address the need for better quality multifamily housing; provide for better lot usage, and to reduce the density requirement by allowing less multifamily units in the Medium High Density Residential District which is comprised of some of the town's oldest, most compact neighborhoods.**

**The Planning Board will also review proposed amendments to the Town of Derry Land Development Control Regulations Article IV, Section 170-63, Parking Requirements, to revise the parking calculations to be more in line with current demands and to enhance access for emergency response vehicles.**

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.

There was no public comment.

Motion by O'Connor, seconded by MacEachern to close the public hearing. The motion passed with all in favor and the discussion returned to the Board.

Mr. Sioras advised there are three major highlights in the proposed changes. The density requirements in the districts with water and sewer will be reduced so those neighborhoods will see a significant reduction in future multifamily units. The only plan in the pipeline currently is that for the former Floyd School; any new application will comply with these changes. Recreational space cannot be used in the open space requirement and wetlands will need to be excluded. They have also revised the parking calculation. All of these changes will equate to less dense multifamily projects and will protect the town against legal challenges.

Mr. Sioras advised that after the last workshop, Mr. Chase noted a change that should be included. Mr. Sioras would recommend discussing the changes and continuing this hearing one more time to March 4<sup>th</sup>; the Board can then vote on that night and forward the changes to Town Council.

Mr. Chase said the additional changes came to light when the Board was looking at the Highland Place plan; that plan is technically in violation of Section 165-8 of the Town of Derry Zoning Ordinance. There are no provisions in the ordinance to allow for more than one dwelling unit on a lot. He suggested amending Section 165-8 to read, “Only one residential building or dwelling unit shall be situated on a lot except as provided elsewhere in the ordinance specifically for permitted multifamily use consisting of at least 3 dwelling units per building.” He said there would need to be three or more units on the land in order to be considered multifamily. There could not be two duplexes on one lot. In addition, Sections 165-44 and 165-45 should be amended to remove the plural from “single family detached dwellings” under Section A, permitted uses.

Mr. Flattes asked if the issue raised under Section 165-8 could be handled by variance. Mr. Chase said the Zoning Board would decide in that case and the applicant would need to meet the variance criteria. It would be very difficult for an applicant to meet the hardship prong. Mr. Granese thought it would be better to clean up the language in the ordinance. Mr. MacEachern asked if Mr. Chase had cross referenced through the Zoning Ordinance to make sure there were no other sections that needed to be changed. Mr. Chase said he had. Mr. Fairbanks asked if the intent is to make sure an applicant can put more than one multifamily building on a single lot, for example a condominium development. Mr. Chase said it was and these types of developments have been against the ordinance as Section 165-8 stands today.

Mr. Granese recalled one application where there was a plan to add another building to a lot; would that be allowed with this change? Mr. Chase said no because that particular application was not to add multifamily. Mr. Sioras said this change will clean up the ordinance. Mr.

Mackey has reviewed the proposed wording and agrees with it. If the Board agrees with the changes the document can be taken to a second public hearing on March 4<sup>th</sup>.

Mr. MacEachern confirmed one residential building could include three apartments, but to add another two buildings is where the issue comes up. Mr. Chase said without this change, Sunview Condominiums could not exist.

The Board members were in agreement with the proposed changes.

Motion by MacEachern, second by Bartkiewicz to accept the changes to the document and schedule a second public hearing for March 4, 2015.

Chase, Fairbanks, Park, O'Connor, MacEachern, Flattes, Jean, Bartkiewicz and Granese voted in favor and the motion passed.

### **Presentation by Southern New Hampshire Planning Commission – mixed use developments**

David Preece, Executive Director of Southern New Hampshire Planning Commission provided Board members with the following handouts: “Mixed Use Zoning A Planner’s Guide” prepared by the Metropolitan Area Planning Council (Massachusetts) and “Zoning for Mixed Uses” prepared by the American Planning Association. Mr. Sioras stated Mr. Preece has experience with mixed use and will provide the Board with an overview of what it is and how other communities in the region use it.

Mr. Preece advised he had previously forwarded to the Board the 2006 document prepared by Southern New Hampshire Planning Commission titled “Mixed-Use Development Ordinances: A Summary of Mixed-Use Zoning in the SNHPC Region”. The Board was not provided a hard copy of the document and received it via email; the document is over 200 pages long and is available on the SNHPC website.

Mr. Preece advised the southern New Hampshire region is comprised of fifteen communities. The communities varied in population from 110,000 to 1600 residents. Each of the communities are unique and have separate needs, wants, opportunities and challenges. What works in Bedford may not work in Auburn; the same holds true for Deerfield and Londonderry. He will provide information to the Board on mixed use as it relates to the SNHPC region and is not here to discuss the particulars of any zoning issues before the Board at this time.

Mixed use is a blend of residential and non-residential use. There has been a renewed interest in mixed use with the Smart Growth and New Urbanism architectural movements which began in the 1990s. The aim of the planning themes is to go back to more traditional neighborhoods where jobs, housing and services are conveniently located close to each other. There are many barriers to mixed use development, among them the Euclidean zoning codes which separate residential and non-residential uses rather than integrating them. Euclidean zoning was done to separate nuisance that now may not apply. Crafting an ordinance is difficult because standards

need to be compatible and mutually supportive. Many mixed use districts are formed in Central Business Districts allowing residential units above retail. Some are in suburbs which contain new growth centers with a mix of commercial, office and multifamily such as Woodmont Commons. Small towns create mixed use by allowing corner stores in residential neighborhoods. In more rural areas, mixed use is created by allowing home occupations or creating mixed use village centers.

Eleven of the 15 SNHPC region communities have adopted mixed use zoning and those are Manchester, Bedford, Derry, Deerfield, Goffstown, Hooksett, Londonderry, Raymond and Windham. Candia and Auburn are currently considering this option for their village centers. Hooksett has the largest and oldest number of mixed use districts. Their five districts were developed over 20 years ago and are in specific areas of town. They are near CIGNA/Route 3 and Mount St. Mary's, the big box retail centers at Exit 10, the SNHU campus and the land owned by Manchester Sand and Gravel. It is unique in Hooksett because there is a master plan of the area adopted that depicts the permitted uses in each of the zones and they all vary based on the specific needs of each of the areas.

Bedford has a mixed use development district. In their 1990 master plan, Bedford eliminated zoning along Route 3/River Road in favor of one performance zone. This allows all types of land uses and the Planning Board measures the impact of each new use on the existing corridor. There are problems with the proximity and compatibility of industrial and residential uses. Elderly housing has been removed as a use in this area. The Board monitors the balance of residential and commercial development so that one does not dominate the corridor.

Deerfield has performance based mixed use zoning utilizing an overlay that prevents strip developments. There is a three step process to make sure that the uses area compatible with the rural area.

Derry has the Central Business District which was adopted in 2001 which allows office and retail with apartments above. Goffstown has the Residential Small Business and Office District which allows residential, personal service, commercial, office and compatible uses to co-exist in the neighborhood and village square.

Manchester adopted the Amoskeag Mixed Use District to encourage retention and redevelopment of the mill buildings. Uses are allowed by right, conditional use, and by special exception. There is a design review process for exterior architecture and an extensive parking analysis.

Mixed use can be authorized as an Innovative Land Use technique under RSA 674:21, or as an overlay under RSA 674:17. Common techniques are overlay zones, mixed use development districts, performance zones, and village districts. All are unique and designed for specific town and areas, addressing a specific public purpose while allowing for compatible uses. That is a key component in finding the right balance and mix of mutually supportive uses.

Mr. Granese said he was intrigued by Bedford's example. Mr. Preece said Bedford utilizes an innovative performance zone that allows all uses but they need to meet certain performance

standards with regard to landscape and design to make sure it is compatible. This was designed for the Route 3/River Road area and may not work in other areas. He noted the information provided in the handouts may be helpful to the Board. Windham, Raymond and Londonderry have some examples of mixed use available and he stressed all of the mixed use areas are unique and address a specific need and desire of the individual community.

Mr. O'Connor recalled the CTAP (Community Technical Assistance Program) completed a build out analysis of Derry that showed this particular area (Route 28 south) as commercial. With the new interest in Exit 4A and the continued widening of I-93, will this analysis need to be redone? He is curious given that the Impact Statement will need to be updated. Mr. Preece said the town can look the build out analysis again if it wants. The understanding is that between 2020 and 2030, there will be an Exit 4A. The prior analysis done in 2007 did not take into account the 2008 recession. Once that all settles out, it may be time to go back and look at future growth and development in the affected communities. Mr. Fairbanks asked if this analysis would be for the entire town or a specific area. Mr. O'Connor said the previous build out analysis shows the commercial build out down to the Windham town line; the CTAP analysis was town wide.

Mr. Preece explained CTAP is part of the mitigation effort for the widening of I-93, which was anticipated to have a growth impact on surrounding communities. When the analysis was completed, they were working under the assumption that the growth from the 1980s and 90s would continue. Mr. O'Connor said the 2010 census shows a decrease in populations. Mr. Preece agreed, adding the State of New Hampshire is having a hard time retaining young people; the population is aging. That is a challenge and the state needs multi-generational communities that meet the needs of the entire demographic.

Mrs. Robidoux noted the Regional Comprehensive Plan that was recently completed contains a build out analysis of this area and the build out did not change. This analysis includes the 2010 census data.

The Board thanked Mr. Preece for attending the meeting and providing the information.

Sheldon Wolff asked if Mr. Preece would provide his opinion on whether mixed use would work in this area. Mr. Granese advised Mr. Preece would not be taking questions from the audience as this was a presentation to the Board and he was not here to offer his opinion, but to provide information. Whether or not mixed use will work in this area or be good for Derry is for the Planning Board to figure out. Mr. Preece added his presentation was not meant to be Derry specific but to provide his experience with mixed use region wide.

### **Workshop #5 – Route 28 South – discussion of potential zoning amendments**

Mr. Sioras advised the Board has in its packet a chronological listing of all the workshop dates. The Board is continuing its discussion from the last meeting. The Board has a copy of the proposed zoning amendments with changes highlighted in red. Mr. Granese confirmed the Board is continuing its discussion which involves the creation of a General Commercial IV district. Mr. Sioras said in the handout there is a comparison of what is currently allowed in



General Commercial and list showing what has been proposed for General Commercial IV. The uses proposed at the last meeting have been added to the end of the document and are found on page 15: automobile repair, automobile and similar vehicle sales, automobile service station, agriculture, assisted living facilities, trade school, nursing home, mixed use – commercial with a residential component.

Mr. Flattes asked why agriculture had been added back in as a potential use. Mr. Granese said because it had been requested by one of the residents. Mr. Sioras advised the lot on the corner of Kilrea and Route 28 had agricultural uses previously so it was added back onto the list of potential uses.

Mr. MacEachern said it was nice the Board was considering uses based on the fact that the residents have requested auto uses and agriculture be considered. Is that really what the Board wants in this area? Uses should not be permitted just because someone has a garden or existing auto sales and wants to be a legal use. The Planning Board is supposed to plan for where the town wants to go and needs to look at this strip as a Board and decide what they want there. The existing uses are grandfathered. The purpose of the Board is to look at the Master Plan and see what should be there in a few years. Will the uses be pertinent when water and sewer reach this entire area? Water and sewer will drive the decision making process. If uses are allowed in one spot, they will be allowed in the whole area.

Mr. Granese recalled agriculture was discussed previously. At one time it was a permitted use in the General Commercial zone and then it was taken out; the Board is considering adding it back in. The Board has held multiple discussions with regard to auto uses as a Board and in discussions with the public. It was agreed auto uses would be added back as a permitted use. There are some parcels that will become valuable later for other uses. Mr. MacEachern agreed that might be the case once water and sewer get down Route 28 because the land currently can't handle many uses until then.

Mr. Fairbanks stated the impetus for the zoning change is because water and sewer is halfway to the Windham town line. In the future, water and sewer will go to the town line and that is why the zoning is being contemplated to the town line. Mr. Flattes said the purpose of the changes is to improve the tax base of the community. If agriculture is allowed, what are the possible negative effects? The use was removed in the late 1990s.

Mr. Chase said he had spoken with the Assessor; any land that meet certain criteria can be put in current use until something changes. It does not matter what the land is zoned; it just needs to meet the acreage minimum. There are quite a few properties along this stretch that are in current use. Mr. Flattes said since the agricultural use was removed in the 1990s, he does not see the reasoning to add it back in. Mr. Jean felt it was easy to look at a map and say one thing or the other should be permitted, but he did not feel the Board should handcuff economic development and the Board should allow mixed use in this area, looking at each lot individually.

Mr. Chase said the Board needs to be wary of spot zoning and look at what is best for the whole town. The Board needs to consider the landowner, but look at the whole. There have been many zoning changes made over the last few years and the Board has taken residential use out of zones

where it does not belong. SNHPC mentioned the Woodmont project in Londonderry – that is on 800 acres of land. It is easy to put mixed use on that amount of land; but not as easy on 20 acres. He acknowledged he misspoke at a previous meeting when he stated that the cost per student was about \$5,000.00. Information from the school district indicates the cost is closer to \$15,000.00 annually per student. The town can't revitalize the tax base with residential uses. The town has a 14% commercial tax assessment; Londonderry's commercial tax base is 35%. That is why Derry's municipal tax rate is so high. Additionally, in order to keep or draw young people to our community, we need to provide them with a place to work. All zoning handcuffs the landowner but it is done for the benefit of the whole community. Linlew Drive is still zoned industrial and it has 700 residential units. This has happened in this community for decades and it has to be changed. This is the last viable commercial zone in town to be developed.

Mr. Fairbanks said the infrastructure was put in this area to drive economic development, to lower the tax base and for the good of the town. Mr. Jean did not believe major corporations would look to locate in this area because of the lack of highway access. Mr. Fairbanks said that might be true, but other business will locate here. Derry does have the disadvantage of being landlocked but the town needs to make the best of it. The impetus was to get residential out of the zone. Mr. Jean said he would like to see mixed use in an overlay; each parcel in this area is a tax paying parcel.

Mr. Granese said he has researched mixed use and is not in favor of it in this area. Many of the lots are too small and he agrees with previous statements that land will be developed residentially first and drive the NIMBY syndrome. The town has approved commercial developments that abut residential and the residents appeal the decision and tie it up in court for years, costing the town money. That will happen here too if the Board allows mixed use. There are some good sized lots but not enough to separate the uses.

Mr. O'Connor said he respected what Mr. Jean was saying but he is on record that he is not in favor of mixed use in this area. The Board is doing its due diligence. Downtown is a good area for mixed use. This area needs to be developed per the Master Plan. In the preparation of the 2010 Master Plan, the Board conducted surveys and held community meetings. The public said with regard to residential single family, the amount in town was just right; there was too much multifamily, 61% said there was not enough commercial/business/office; 50% said there was not enough commercial/retail and 64% said there are not enough industrial uses in town. The Town of Windham would look forward to tying into water and sewer at the town line and their Planning Board is looking at that for the future. Any property owners with water and sewer will have increased property values. He believes this discussion has been well vetted and the Board should be able to move on at this point with finalizing the document.

Ms. Davison recognized that each parcel is someone's real estate and investment but if the Board does not present a comprehensive plan, it runs the risk of not treating all landowners fairly. The Board needs to consider one global, overall plan so that all are treated fairly.

Mr. Granese opened the floor to the public and asked that only new input be provided.

Melissa Polk, 2 Kilrea Road, said originally she was going to thank the Board but now is distressed. It seems like some members of the Town Council and Board members have made up their minds. The residents want mixed use so that they can possibly have residential use on some of the large lots. She understands the need for commercial development but wants the Board to work with them. There has been discussion that mixed use only works on large acres. How many acres of land make up the proposed GCIV area? The Board did not have that information. Mr. Chase noted the Woodmont project is one square, not many individual lots. Stiles Road in Salem is a good example of commercial development on a large lot that used the majority of the lot commercially. It is not just one building on the front of the lot. The Board is looking for something similar for the lots in this area so that the whole parcel can develop commercially to its full potential.

Ms. Polk said those commercial uses would then abut the residential to the rear. Mr. Chase said the vision was more for commercial development with an interface to the rear to buffer the uses. Ms. Polk said the residents did not want apartments. Mr. Chase maintained even one commercial acre lost to residential use was one acre too many. Ms. Polk asked Mr. Granese if he had looked at the tax revenue generated with mixed use. Her research shows that a three story, mixed use building generates more tax revenue for the town than Walmart. If mixed use creates more tax revenue, why not put it in this area? Mr. Granese said he was not in favor of mixed use in this area of town. There are other factors and the whole picture needs to be considered. If the tax revenue added annually from mixed use was a million dollars, that might be something to consider; it would have to have a substantial impact. He felt the residential would be constructed first and then the commercial would not go in.

Ms. Polk did not feel this was a good excuse because the parcels abut residential areas now. She would like a study done to see if mixed use in this area would generate significant income for the town. Mr. O'Connor said commercial property is more valuable to the town; that has been proven. Ms. Polk did not believe those studies considered mixed use. Mr. O'Connor did not believe mixed use would generate the same value as commercial use. If the town had a large land area (100 to 200 acres) or something like Woodmont that would be different. The way the land is configured in this area, in his opinion, does not make that type of development feasible and would not fit into the area. Ms. Polk requested that SNHPC be hired to conduct a study to look at this specific area in Derry. Mr. O'Connor said SNHPC has looked at this area when it developed the Comprehensive Plan and he did not see the necessity. Ms. Polk countered that the Board members did not own the land. Mr. O'Connor said the Board does not have the authority to request such a study. Mr. Sioras said that would need to be requested through the Town Administration and would require budgeting and funding. He believed Mr. Preece had stated the CTAP report was set up for mitigation of the Route I-93 widening. In 2007, a build out analysis was performed showing different build out scenarios for the towns if the highway was widened. Derry's analysis looked at commercial growth from the Windham town line, up Route 28 to Webster's Corner, down Rockingham Road to Shute's Corner. That was in 2007. The recession took everyone off guard in 2008. That study and analysis was not town funded. As part of the Impact Study, Mr. Preece was suggesting that might be looked at again. The commercial build out is what was considered under the CTAP analysis as the widening of I-93 would make it easier for businesses to gain access to Derry and come here. This was not connected with Exit 4A. They looked at the future growth areas in Derry. The town does not have exits off the

highway. The growth areas are in the downtown, on Route 28 north near Walmart, and in this corridor of Route 28 south. The town wanted to make this commercial area more attractive by adding water and sewer. Ms. Polk did not see why, if things such as water and sewer to the town line were not in place now, why the Board would want to change this area to commercial zoning. Mr. Fairbanks noted the area is zoned commercial now and does not include residential use; the plan is to continue the water and sewer improvements to the town line sometime within the next ten years or so, so the Planning Board is looking ahead. Ms. Polk said in the meantime, the Board could look at alternatives such as mixed use that will bring in revenue. It seems like no one is interested in finding out if mixed use would be of more benefit than commercial. She did not feel this was 'residential' use. Mr. Fairbanks indicated it was a form of residential use.

Mr. MacEachern cautioned people should be careful when they say "tax revenue". What they are really talking about is "tax neutral" development. The input and output needs to be looked at. Mixed use may bring in money but it will cost the town the service expense and to educate children living in the residential portions; it would need to be the right type of mixed use development. He asked Ms. Polk what she considered "mixed use". She said it could be a three story building with retail on the bottom and an office above. Mr. MacEachern said that is commercial use and that is what is allowed right now. Ms. Polk said they would like to add residential to the rear of the properties. Mr. MacEachern said in that case, Ms. Polk is talking about a different type of development which turns the discussion to non-revenue neutrality. That is the problem. Ms. Polk did not feel it was unreasonable to ask for a split zone that allowed the landowners to do what they want on the backside of the property.

Dr. Tim Butterfield, 2 Humphrey Road, advised some residents were unable to attend and he read a letter from the Siragusa family. The letter has been placed in the file. In summary, the Siragusa family advised they have voiced their strong opposition to any changes to this area that would not allow mixed use as an allowed use in the areas that impact their two properties. They urged the Board to request SNHPC conduct a study of the area that affects their two properties, specifically looking at the pluses and minuses of including mixed use in this zone and that the Board should be looking at all options for the area that would benefit the Town of Derry.

Mr. Butterfield also read a letter he prepared that was not presented for the record which represented some of the collective thinking of the residents who could not attend this evening. He requested SNHPC conduct an evaluation of the position taken by the Town Council for this area of town, specifically that more commercial property in this area of town will generate tax revenue, and to provide development options to the Planning Board for these parcels. The residents recognize the need to develop more revenue sources in town but feel restricting the properties to strictly commercial uses does not treat the property owners fairly. This area may not be ripe for some time for the type of commercial growth anticipated by the Town Council. He asked the Board to reconsider allowing residential as a permitted use in this zone. He felt the Board should consider performance based zoning for this area of town. It would give the Board complete authority to make a decision on a case by case basis. As landowners and taxpayers, they know the taxes are out of control. He has empathy for the Town Council as they try to get a handle on it. However, the wrongs of the past should not be balanced on the landowners in this corridor. The Planning Board and Town Council have different charges based on the RSAs. The

Planning Board should look at the area from a planning perspective and not a tax perspective. The landowners are looking for fairness.

Marjorie Palmer, 91 Warner Hill Road, thanked Mr. Fairbanks for inviting SNHPC to attend this evening. Their property has been in the family for hundreds of years and they have held on to the land. She is disappointed in the Town Council because of their stance on mixed use development in this area. Mr. Granese advised the recent Town Council discussion has no relevance as the Board works on this area; the Board has not received anything in writing from the Town Council. The Town Council does not influence the Board in its decisions in any way. The Board has a Town Council liaison that provides information between the two. Mrs. Palmer said the public sees it and is interested in what will happen in this corridor. Where will the people come from who will purchase their land? If water and sewer are not going to be put in this area in the next ten years, what is the hurry to change the zoning? Mr. Granese said the Board is not rushing; it has been looking at the zoning. He personally is not in favor of residential or mixed use in this area. Mrs. Palmer said the Planning Board and Town Council have different responsibilities and she hopes the Board is not influenced by the Council and also hopes the Board does not act prematurely and that it will take some of the suggestions from the residents under consideration.

Mr. O'Connor believed the Town Council began discussions regarding water and sewer expansion to this area prior to 2011. Mr. MacEachern said the discussions began in the late 1990s. In the 2000s it had always been the goal to expand the commercial tax base and to bring water and sewer to the town line. Mr. Sioras recalled discussions as early as 1984 to bring water and sewer to this area for commercial development. It will take years to finalize. Mrs. Palmer commented there are projects that were in the Master Plan and CIP over the years that have not found fruition.

Web Palmer, 91 Warner Hill Road said he will not sell his farm (on Rockingham Road) or put commercial buildings on his property. He will keep the family tradition. Agriculture is not just a little garden. His property produces hay and he should be able to sell it. He does not understand the Board's reasoning; he is a former Planning Board member. His daughter wants to build a home on the land his grandfather owned. Mr. Palmer maintains the property with his daughter and if he had wanted to subdivide the land for a bunch of houses in the 1980s he would have done that and made a lot of money. He does not understand how the Board can say his daughter cannot build a house on her great-grandfather's land. He is a retired Lieutenant Colonel, US Army, and thought during all his years of service that his children would be able to build on his family land. He is very unhappy with what the Board is trying to do.

James Zaniboni, 34 Stark Road, is a ten year resident. He respects what the other landowners are saying and has sympathy for them. His land abuts Dunkin Donuts and Ace Paving. He hopes to retire here but the tax base needs to be addressed or they won't be able to live here much longer. This is not an uncommon story. He does not know what the answer is, but he knows the town needs to build the commercial base. Can there be multiuse without the residential component? Is there a compromise? He feels there needs to be something to bring business to town and if the business comes to this corridor that is okay.

Sheldon Wolff, 242 Rockingham Road, had questions about specific uses listed for the General Commercial IV. What is “television broadcasting”? It could be something similar to TV 50. Attorney Hollis was very eloquent at the last meeting but Mr. Wolff sees no reason to change the zone. Personally, he feels the Board should plan and he would like to see more uses in the zone because it will increase the potential for the lots. Mr. Granese asked if there is any particular use Mr. Wolff would like to see added. Mr. Wolff said mixed use could be elderly housing. Research and Development and Conference Centers were good uses to have in the zone. He would want as much as possible. Where did the list of uses come from? He agrees commercial is important. Mr. Granese explained the list was compiled from the discussions held over the last few months. Some of the uses are already allowed in the General Commercial zone. The Board is reconsidering automotive uses in the General Commercial IV zone; they listened to what the landowners had to say.

Mr. Wolff felt the uses could encompass any commercial entity so long as it is a legal use. He was not sure why the Board had to create a new zone. Mr. Granese asked if Mr. Wolff liked the General Commercial zone as it is today. Mr. Wolff said what is there now (Route 28 south) may be an eyesore but it is the highest and best use for what it is. It is providing income for the landowners. If water and sewer area were added to this area, the value of the land will increase and the area will flourish like Route 28 north. Eventually, someone will come in and want to build on the Palmer’s lot. The area will change and he does not feel the town will have much of an issue because the value of the land will increase. The Planning Board does a good job in listening to people but the people here tonight have a vested interest. The Board should do some sort of study so they can say the decision was an informed decision. Previous studies are not available to everyone or known to the general public. The Board has information the public does not have. He would leave this area as General Commercial and add in the fourteen new uses.

Mr. Granese said the Board needed to be careful when it compiled the list of uses. There are some uses that are currently allowed in the General Commercial zone that might not be a good fit for this particular area and vice versa, for example nursing homes or conference centers. On Route 28 there is less congestion but a conference center would not fit in the downtown commercial area. Warehouses and trucking should not be on Crystal Avenue. This area would be a great area for a strip mall that has some retail businesses and maybe a restaurant. Route 28 north flourished when water and sewer went there. Once water and sewer is to the south, people will want to go there. It does not happen overnight. Route 28 north is still being developed.

Mr. Sioras noted the Planning Office receives inquiries. The lack of water and sewer prohibits some landowners from expanding their business, in particular two good businesses. This is a combination of what is there and other issues. Infrastructure improvements will benefit the town and the landowner. He provided the example of what happened in north Salem when water and sewer was put in place and Walmart located there; this is a gradual process.

Mr. Wolff said commercial use is the best and highest use but he still feels there should be a study on the mixed use concept. Changing a zone just to change it is not right. The Board should not shoot from the hip; there should be some guidance. He would like to see automotive uses stay in this area and retain the existing uses.

Mr. Fairbanks asked Mr. Wolff to clarify a statement he made earlier in the evening when he said “the town attorney agreed with Attorney Hollis’ letter”. He does not recall that to be the case. Mr. Sioras agreed with Mr. Fairbanks. The town attorney did not state he was in agreement with Attorney Hollis’ letter. Mr. Wolff said he may have misquoted.

Jim Smith, 208 Rockingham Road, still had concerns that automobile vehicle sales would not be allowed in GC IV. Mr. Sioras directed him to page 15 of the handout where 8 additional items had been proposed as permitted uses for the GC IV zone. This still needs to be voted upon by the Board; this document is a workshop draft. Mr. Chase stated that even if Mr. Smith’s type of business was not being contemplated as a permitted use, it would currently be considered a legal, permitted use and he could expand without having to get a variance. These changes would not affect him. That is why the Board in Section 165-32.3.A.3 added the language “shall be considered legal, permitted uses”.

Ms. Polk asked what can the residents expect moving forward. Will all of those 8 suggested uses be added to the proposed uses? Mr. Granese said he will ask the Board what they want to add as permitted uses so that the Board will have a clean draft to work from at the next workshop. If the Board gains consensus on the draft at the workshop, it can move forward with a public hearing. The Board will move forward with changes to the proposed GC IV district. Once this document goes to a public hearing it will not come back to workshop.

Al Dimmock, District IV Councilor, commended the Board. No one has said the Planning Board has to move forward with what the Town Council agreed is the way to develop the area. If the landowners want to do something with their land, why have they not already done so? Landowners who don’t live in the area with water and sewer are not responsible for the cost of water and sewer; that burden is paid by the water and sewer users. Where can the town get the most value for water and sewer? It is not from a home; water and sewer fees are paid per what is used. Water and sewer creates a plus for businesses that use it. The Board is doing a good job and it is time to do this once and for all, not years from now.

Mr. Granese asked the Board to review the list of proposed permitted uses; are there any the Board would like to see removed? The list of additional uses included: automobile repair, automotive and similar vehicle sales, automobile service station, agriculture, assisted living facilities, trade school, nursing home, and mixed use – commercial with a residential component.

Mr. Fairbanks and Mr. O’Connor would like to see mixed use removed; Mr. Flattes would like to see mixed use and agriculture removed. Mr. MacEachern and Mr. Jean thought mixed use could be retained. Mr. MacEachern said mixed use depends on how it is defined. Some lots in this area can’t be divided any more than they are; some lots already have homes. He sees no harm in keeping mixed use in as a permitted use. Mr. Chase noted the current landowners can put additions on their homes. Mr. MacEachern said he had no issue with adding mixed use, depending on what it is. An analysis was performed when preparing the Growth Management Ordinance (GMO). If all the land is built out in Derry, there is minor effect on the tax rate. Two to three acre zoning had a larger impact. The Board would need to determine the number of units allowed and make sure it is revenue neutral. There is more positive revenue from commercial development and more negative revenue from a housing development. It all

depends on the type of residential development; there is less impact with elderly housing but the offset is the cost for emergency response services. Mr. Fairbanks said originally, the Board was only looking at changing the zoning to where the infrastructure improvements stop. Then Town Council suggested, based on the Master Plan and future infrastructure improvements, that the Board do it all at once. Mr. MacEachern did not feel it would help anything until water and sewer expands past Ryan's Hill. Any development on Pete's Scoop south won't have a positive impact until water and sewer get to that area. Mr. Fairbanks said the Board is planning ahead. Mr. MacEachern said it was way ahead. If water and sewer were in the six year CIP it would make sense. He has no real issue with mixed use but it needs to be the right thing. It should not be a strip mall with a large apartment complex behind it. He could envision a nice medical office building to the front and a townhouse development such as that proposed for Highland Place to the rear, but the residential units would need to be limited.

Mr. Chase said he wanted to see tax positive, not tax neutral development. Why put in commercial uses and then put in residential - it negates the positive commercial impact. Mr. Fairbanks commented he did not want the Board to wake up one day and see a 50-100 unit apartment building and have people wonder how it got there. Mr. MacEachern said the Board needs to limit the number and type of mixed use residential development. No one has defined what mixed use is now. If it is not defined then it should not be put in. He would like to hear more about it before making a decision. Mr. Granese said there should be a separate workshop, defining mixed use, held on an off night that does not contain plans or other business. Mr. MacEachern thought the Board could keep it in as use and make an attempt to define it. He understands where everyone is coming from.

Mr. Flattes said he had the same concerns regarding mixed use, because it is not defined. He felt it was important to look at it but did not agree multifamily residential should be in this zone at all. He would like to remove agriculture because it was not a permitted use to start. Mr. Jean felt all the proposed uses should be kept in and mixed use should be defined. Ms. Davison asked if the Board was taking out agriculture, would that eliminate a farm stand. It would be okay to leave in agriculture. She is not opposed to mixed use but it does need to be defined and a policy or protocol for assessing mixed use applications should be put in place. She would need a clear understanding of what mixed use is and of how the Board would review mixed use applications and felt that the Board should take it out for now and add it back in later. Mr. Bartkiewicz said he would remove mixed use as he needed more information on it. Mr. O'Connor said he would eliminate assisted living facilities, nursing homes and mixed use. Mr. Park said he was hesitant to leave mixed use in. He would need more information. He is against residential in this zone. With regard to agriculture, if no one is farming the land now, no one is going to come to farm it; agricultural can be left. Mr. Fairbanks said he would remove agriculture, mixed use and assisted living. Mr. Chase said he would remove mixed use, nursing homes, assisted living facilities and noted that agriculture is defined in our ordinances under three separate agricultural definitions. Ms. Davison wondered what the objections would be for the nursing home use.

Mr. Granese said the majority would rule on the list of permitted uses. Based on the comments just made by the Board, mixed use would be the only item removed from the list of potential permitted uses. If the Board members would like, they can form a subcommittee to look at mixed use and bring information to the Board at its next workshop on this matter which will be



April 1<sup>st</sup>. The workshop will follow the regular business meeting of the Board. Mr. Sioras noted that is the Board's annual meeting at which it elects its officers for the year.

Mr. Fairbanks noted a comment on page 5 of the draft document relating to the zoning demarcation. Mr. Granese said those comments can remain and be discussed at the April 1<sup>st</sup> workshop.

There was no further business before the Board.

Motion by Davison, seconded by Park to adjourn. The motion passed with all in favor and the meeting stood adjourned at 9:24 p.m.

Approved by: \_\_\_\_\_  
Chairman/Vice Chairman

\_\_\_\_\_  
Secretary

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