

TOWN COUNCIL AGENDA

April 7, 2014

7:00 P.M.

The Town Council meeting will be held in the Moose Hill Council Chambers, Town Hall, 268B Mammoth Road, Londonderry, NH. Regular meetings are cablecast live and videotaped for the convenience of our viewers at home. 7:00 PM

A. CALL TO ORDER

B. PUBLIC COMMENT

1. National Public Safety Telecommunicators Week Proclamation
Presented by Chief Bill Hart and Chief Darren O'Brien
2. The resignation of Helen Conti from the Elder Affairs Committee
Presented by the Town Council Members
3. Lazy Dog Beer Shoppe Business Presentation
Presented by Owner Matt Morin

C. PUBLIC HEARING

1. **Resolution # 2013-13** – A Discontinuance and Release from Public Servitude of the Walking Trail Located in the Nevins Cooperative Community and Release of Easement Rights to Said Trail
2. **Ordinance # 2014-01** – An Amendment to the Zoning Ordinance Relating to Rezoning Map 15. Lot 239. 562 Mammoth Rd.

D. OLD BUSINESS

E. NEW BUSINESS

1. **Order # 2014-07** – Expenditure of Maintenance Trust Funds for Various Projects
Presented by Kevin Smith
2. **Order # 2014-08** – Expenditure Maintenance Trust Funds for Various Projects
Presented by Kevin Smith

F. APPROVAL OF MINUTES

Approval of March 20, 2014 Town Council Minutes

G. OTHER BUSINESS

1. Liaison Reports
2. Town Manager Report

~ **FY14 Budget Update**

~ **FY15 Health Care Update**

3. Board/Committee Appointments/Reappointments

1. Appointment of Elizabeth Larocca as a member of the Manchester Airport Authority

H. ADJOURNMENT

I. MEETING SCHEDULE

1. Town Council Meeting – **04/21/14** Moose Hill Council Chambers, 7:00PM
2. Town Council Meeting – **05/05/14** Moose Hill Council Chambers, 7:00PM
3. Town Council Meeting – **05/19/14** Moose Hill Council Chambers, 7:00PM
4. Town Council Meeting – **06/02/14** Moose Hill Council Chambers, 7:00PM



LEGAL NOTICE

The Londonderry Town Council will hold PUBLIC HEARINGS on the following item:

- 1.) A continuation of the March 20, 2014 Public Hearing on the Walking Trail Easement – A Resolution relative to the discontinuance and release from public servitude of the Walking Trail located in the Nevins Cooperative Community and release of easement rights to said trail.
- 2.) Ordinance #2014-01 – An Amendment to the Zoning Ordinance Relating to Rezoning Map 15. Lot 239. 562 Mammoth Rd.

The Public Hearings are scheduled for Monday, April 7, 2014 at 7:00 PM at the Londonderry Town Hall, 268B Mammoth Road, Londonderry, NH 03053. Copies of the proposed amendment for the Walking Trail Easement and Zoning Ordinance may be viewed at the Town Manager's office during regular business hours and online at www.londonderrynh.org.

Londonderry Town Council

RESOLUTION 2013-13

A Resolution Relative to the

DISCONTINUANCE & RELEASE FROM PUBLIC SERVITUDE OF THE WALKING TRAIL LOCATED IN THE NEVINS COOPERATIVE COMMUNITY AND RELEASE OF EASEMENT RIGHTS TO SAID TRAIL

First Reading: 08/19/13

Second Reading/Public Hearing: 09/09/13

Public Hearing Continued to: 10/07/13

Public Hearing Tabled on: 10/07/13

Adopted: xx/xx/14

WHEREAS

the Town Council has received a petition to discharge and release the public rights in and to the walking trail (hereinafter the "Walking Trail") located on Map 7, Lot 122, 2 Wesley Drive, Londonderry, New Hampshire, as described as "Trails Property" in Article VIII of that certain "Open Space/Conservation Easement and Declaration of Restrictive Covenants" (the "Declaration") declared and made by and between Gilcreast Realty Holdings, LLC and Gilcreast Realty Holdings II, LLC as the Declarant, and the Town of Londonderry, dated September 15, 2003, and recorded at Book 4150, Page 0133 of the Rockingham County Registry of Deeds; and

WHEREAS

the Board of Directors of The Nevins Retirement Community ("NRC") Association requested Gilcreast Realty Holdings II, LLC to join with it in application to the Planning Board for an amendment to the Site Plan to remove the Walking Trail from the approved Site Plan. Approval was granted for this action by the Planning Board on June 5, 2013;

WHEREAS

during its consideration of the matter the Town Council became aware that three (3) units within NRC, being Units 22, 23 and 31 have been constructed within the area of the Easement;

WHEREAS

the Town Council, believes it is in the best interest of the Town to allow the site plan for NRC to be amended as approved by the Planning Board, release Gilcreast and the association of unit owners of NRC from any obligation to construct the walking trail within the Easement, to release any and all rights the Town may have to construct any improvements within the Easement and to consent to the existing encroachment by structures within the Easement; however, the Town desires to retain ownership interests in the area of the Easement and seeks compensation for its release of rights and consent to encroachments; and

WHEREAS

Gilcreast is willing to contribute the sum of Thirty-five Thousand and 00/100 Dollars (\$35,000.00) to the Town as full and final consideration for the release by the Town of all obligations of Gilcreast or its successors in interest as the developer of NRC, including the association of homeowners of NRC, release by the Town of the Town's rights to construct such improvements within the Easement and consent by the Town to the encroachments existing within the Easement for Units 22, 23 and 31.

NOW THEREFORE BE IT RESOLVED by the Londonderry Town Council that the Town of Londonderry accept the sum of Thirty-five Thousand and 00/100 Dollars (\$35,000.00) to the Town as full and final consideration for the release by the Town of all obligations of Gilcreast or its successors in interest as the developer of the Nevins Retirement Community, including the association of homeowners of NRC, release by the Town of the Town's rights to construct such improvements within the Easement, including the Walking Trail, and consent by the Town to the encroachments existing within the Easement for Units 22, 23 and 31. These funds shall be placed in an account dedicated to the improvement, construction, and enhancement of new or existing neighborhood trails.

Tom Dolan, Chairman
Town Council

(TOWN SEAL)

Sherry Farrell
Town Clerk

A TRUE COPY ATTEST:
Adopted xx/xx/14

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PUBLIC HEARING

Chairman Farrell made a joke regarding the public audience and the Nevins Trail.

Chairman Farrell stated that the first reading for the Nevins has been completed. Chairman Farrell asked for a motion to wave the meeting and move right into public hearing. Councilor Green motioned, Councilor Freda second. Chair votes 5-0-0.

Chairman Farrell asked the Council if there was any further comment from them before we let the public speak. Chairman Farrell asked the audience if they had a spokesperson.

Attorney Gottesman and Hollis, P.A., an attorney in Nashua, Morgan Hollis spoke on behalf of the people. Hollis stated he represents the association and the developer. Hollis stated that he would lay out the request and why he is there. This matter arises out of a request by residence of the Nevins. Hollis stated that the Nevins is a cooperative and a different type of residential community from a legal structure perspective. The land on which the buildings are located is leased out to owners who than construct a home on the leased land. Hollis stated that the land is owned in a cooperative and that each home owner owns a percentage of interest. In this case there are 128 owners and each owner's percentage interest in the land itself, and that land is leased to them as owners. Hollis stated that at time of approval it was determined that they would have an amenity to the project a walking trail. Hollis stated the walking trail would go around the perimeter of the property. There are several places it cuts into the public roads so people could access the trail. Hollis stated that during eh course of the Planning Board negotiations it was designated on the plan as a Walking Trail Easement and it became public. Hollis stated that there was a Walking Trail Easement deed granted by the developer to the town and recorded in the registry for a 25 ft. wide Walking Trail Easement throughout the project.

Hollis stated that the trail was for both the residence and the public. He stated that the trail doesn't lead to anywhere. It begins at one end and goes around the perimeter and ends at the other end. Hollis shared that in his experience what has happened is that many residence have concern about these Walking Trail Easements in particular if they are open to the public. Hollis stated that people are nervous about the lack of space between the easement and the homes. Hollis stated that the second concern is that when the trail was laid out it was a two dimensional layout. The residence asked the developer if he would consider not building it once the construction of it was final and ready to move forward. Hollis stated the only way to do that is t put together a presentation and go to Planning Board and ask to amend the site plan. Hollis stated that that has been done by the residence. Hollis shared that there were also two informal meetings with the Board of Directors where the vote was unanimous and the second instance was near unanimous. The Board of Directors presented it to the Planning Board and the Planning Board approved it so that the site plan could be amended. Hollis stated that it doesn't resolve the issue. It has been deeded by a Walking Trail Easement deed to the town and referenced in an open space Conservation Easement and Declaration of Restrictive Convenience which is of record. In that particular document the developer granted an open space conservation area Walking Trail Easement. Hollis stated that those are two grants of easement rights to the municipality and if the Walking Trail Easement is to come off the plan the only way to make it

83 meaningful is to have the municipality release its rights so that the public rights in that easement
84 would be released off.

85
86 Hollis stated that he worked with the Town staff to bring forth a petition to bring to the Council for a
87 resolution.

88
89 Hollis stated that there has been discussion at the first reading, Chairman Farrell raised the question is
90 this 'hand in glove' with the acquisition of development rights for the 'Orchard Lot'. Hollis clarified
91 that Chairman Farrell is correct. Hollis stated the Declaration of Convenience and Restrictions which
92 is recorded in 2003 there is a reference to the 'Orchard Lot Development Rights' being sold,
93 reference to open space lots, open space in the Nevins not to be developed but not open to the public
94 and then a reference to the Walking Trail Easement. All three are referenced in there. Hollis stated the
95 best he can determine, while they're 'hand in glove' you can only look at the map and see the
96 walking trail does not connect in any fashion or any remoteness to the Orchard Lot. The trail was
97 never intended to go in that direction. The Orchard Lot, Hollis stated, was a prime development lot
98 and it was high and dry and good soils. Hollis read what the preface is:

99
1 "The Town desires to limit the amount of development that can occur on the property and the
2 developers are willing to restrict their rights to fully develop the property and the town is willing to
3 compensate the developer for their restriction of a portion of such development."

03
4 Hollis stated that is what happened. Hollis stated the development rights were purchased for a set sum
5 of money and that money was paid and the development rights were granted. Hollis stated he found
6 no evidence that either documents were linked or as Chairman Farrell requested that public funds
7 were expended to acquire those. Hollis stated that they appeared to be separate actions. Hollis stated
8 that that is all he can report. Hollis stated that based his experience it tells him that sum of money is
9 based on an appraisal of lost development rights and a Walking Trail Easement has no lost
10 development rights so that would not be in that appraisal process. Hollis did not have the documents
11 present but he had confirmed with the town.

12
13 Hollis stated that in the petition they are here to ask for the town to release its rights on the Walking
14 Trail Easement which is identified in both the Easement Deed at book 4279 page 544 of the registry
15 and to release the public rights of the town as set forth in the Conservation/Open Space Easement for
16 trails on the lot, in article 8 of the Open Space Easement and Declaration of Restrictive Convenience.
17 Hollis stated article 17 section 17.1 which stated in part the town, 'By appropriate town vote may
18 amend or revoke the restrictive convenience in part or in their entirety, which amendment or
19 revocation shall be effective upon recordation in the Rockingham County Registry of Deeds.'

20
21 Hollis stated again that the Councils vote tonight would be to release the rights as the resolution states
22 and that would cause an amendment to be filed with regard to just the walking trail and the public
23 rights in the walking trail. Hollis stated that there is no alternative plan for the use of the property.

24
25 Chairman Farrell stepped in and asked Councilor Freda if he was on Planning Board when this went
26 through. Councilor Freda clarified that he wasn't when the Nevins took place. Councilor Freda stated
27 that he was present when they brought it to the town of a bound for 2.9 million. Chairman Farrell

28 stated that he was present when the Nevins took place. Chairman Farrell stated that it is a different
29 developer now. Chairman Farrell stated that back in the early 2000's a developer by name of Elmer
30 Pease brought a development to the town and was going to build several hundred residential homes.

31 The town said that they would like to work with Elmer Pease on this but they would like to build
32 something smaller, which is the Nevins now, and that there was a town vote for 2.9 million to buy the
33 rest of the land, which the residence now pay for in their taxes. Chairman Farrell stated that the
34 Council wants to make sure they do the right thing. He clarified that the Council does not know what
35 they're going to do. Chairman Farrell stated that the Council is asking a lot of questions so that they
36 can understand what the right thing to do is. The Council opened up for questions.

37
38 Councilor Freda referred to the section that Hollis had read 17.1 and asked if that was a part of the
39 Town Charter. Hollis stated that it is not and that it is 17.1 of the Open Space Conservation Easement
40 document, which is the document in which the Walking Trail is preserved as open space. Councilor
41 Freda stated that Hollis had mentioned that it required a vote of the town. Hollis answered with yes.

42 Councilor Freda stated that he is wondering if it is the Council or the voters at the town meeting.
43 Hollis stated that in his opinion it is the Town Council because under the Town Charter and under the
44 prevision, the Town Council is charged with these duties and responsibly. Councilor Freda stated that
45 it is because its property we own and the Council can dispose of it. Hollis stated that that is correct.

46
47 Councilor Butler asked Hollis that he had mentioned that the trail was close to the buildings and the
48 houses. Councilor Butler asked if it was 60 ft., 10 ft. how much. Cynthia May, the Town Planner
49 stated that it is 15 ft. in some cases.

50
51 Bill Marineau, 41 Morrison Rd. Londonderry stated that he has the complete site plan for an
52 individual home which shows the easement of the walking trail going through two bathrooms and a
53 bedroom. Maranel also stated that it's a 25 foot rite away. The plan shows the trail as 8 ft. wide.
54 Maranel stated that the 8 ft. wide walking trail, which they were going to build with mulch, is actually
55 2 ft. from the side of the house but the easement goes into the house.

56
57 Councilor Green stated to summarize that we had this property come up for development, the
58 Planning Board thought it was a good idea to have an easement through it. Council Green stated that
59 right now it's not being used. Councilor Green stated that the problem he has is that there's different
60 boards making these decisions and the Council is almost asked to say that a board was incorrect given
61 this easement. Councilor Green stated that he would like to know how to do that. The Planning Board
62 of today said that they agree that it should be released. Chairman Farrell stated that the problem with
63 this one is that it has history. The community went through a period of time where they were trying to
64 connect walking trails to everything throughout the entire town. Chairman Farrell said the purpose
65 was for the walking trail to connect to Home Depot so you could walk to the stores. Chairman Farrell
66 stated that the Council has received phone calls and emails that there are people that live in the
67 Nevins that disagree with the position of removing the walking trails.

68
69 Council Green stated that they've heard there are not plans and a little controversy that there are
70 plans.

71
72 Vice Chairman Dolan stated that he has heard feedback from some of the residence in the
73 development that representations were made to them as they were in the process of looking out buy,

74 that the walking trail had been discontinued or had been disapproved. Vice Chairman Dolan asked the
75 residence present at the meeting if those terms were presented to them when buying their homes.

76
77 Bob Maxwell, 25 Morrison Drive, Londonderry, stated that he bought his property in November of
78 2011 and that he was told at that time that yes there were some drawings that showed a walking trail
79 but it would never be built and it was never used as a reason why people should buy. Maxwell stated
80 that he lives in one of the homes where the walking trail would be 18 ft. behind his patio.

81
82 Vice Chairman Dolan asked Maxwell if it was a realtor who made that representation. Maxwell stated
83 that it was the sales office and they said that the trails would never be built.

84
85 Chairman Farrell asked the Council if they had anything further. Chairman Farrell opened up the
86 floor to the public to make a statement.

87
88 Attorney Hollis clarified the question raised by Vice Chairman Dolan stating that he is aware that
89 representatives of the sales staff have made that statement but the process started in 2009 when there
90 was a vote, anonymous vote, there had been actions started before the Planning Board. Hollis stated
91 that it wasn't out of the blue that someone was making those accusations. Hollis clarified that he is
92 not saying it was right or wrong but he wanted to give some background to that information.

93
94 Vice Chairman Dolan asked Hollis how you reconcile that with someone who has laid out their life
95 savings and now have had the misrepresented to them. Hollis stated that he would have to determine
96 what was exactly said. Hollis stated that each case is going to be on its own as to what was said.
97 Hollis stated each case has to sit on its own facts as to what was and wasn't said.

98
99 Councilor Green stated that with developments of this size and magnitude, a lot of the times open
00 space is set aside or a buffer zone. Councilor Green asked if this was any part of the agreement.

01
2 Chairman Farrell stated that he doesn't believe this one did because the 2.9 million had to go to a
3 special election and it was all handled and the other pieces were left out. There are more pieces in
4 regards to sewers and fees, but not about open space.

05
6 Councilor Butler stated that the easement went through a gentlemen's bathroom. Councilor Butler
7 stated that he is curious as to how the banks let that happen and what happens to the gentlemen if this
8 is not reversed and he goes to sell his property knowing that the easement is in his bathroom.

09
10 Hollis stated that it was a hard question for him to answer as a matter of law. Hollis stated there may
11 be consequences to it and the easement might have to be moved. Hollis stated that we might have to
12 lay it out again and come forward with an amendment to the site plan. Again the easement is 25 ft.
13 and you can locate the path from anywhere within the 25 ft. Hollis stated theoretically there's room
14 outside the house where it could be. Hollis stated that he can't explain how or why it happened.
15 Hollis stated in response to the question of Councilor Green, as best as he can describe it the first step
16 is to go to the Planning Board, can the site plan be amended. If the Planning Board believes based on
17 the criteria that it has in front of it and what it views appropriate to allow an amendment. They made

18 it clear in their vote that they have no jurisdiction about giving up the public rights. That is not within
19 their domain. Hollis stated that it's covered under the Charter and the State Statue which says any
20 town in which the legislative authority is given to a Town Council that Town Council has
21 responsibility for all such matters. Hollis stated to the Council that they decide on the giving up of
22 public rights.

23
24 Vice Chairman Dolan stated that the home owner who has the easement through part of his home, he
25 asked Hollis if he agrees that it's the responsibility of the builder not to build homes in the middle of
26 a public easement. Hollis stated no question.

27
28 Councilor Freda stated that there were two votes by the residence and one was anonymous, what was
29 the percentage of participants in that vote. Hollis answered stating it would be better to ask the
30 president of the Board who conducted both of those. Hollis stated that he is present tonight.

31
32 Chairman Farrell called up the representative. John Mitchell, 4 Wesley Drive, Londonderry, stated
33 that he has been on the Residence Advisory Board for three years. He is not the President of the
34 Board. Mitchell stated that when he moved into the community the development was half finished.
35 Mitchell stated that he is now on the board of directors and there are three other members at the
36 meeting tonight. Mitchell shared that a lot of the people that have bought since he has lived there
37 which is half of the residence, were told there would not be a walking trail. There's another element
38 causing confusion and even people who thought there would be a walking trail thought it was going
39 to be a private walking trail, only available to the residence. A lot of the residence said that would be
40 in favor if it was a private trail for the community and not a public trail. Mitchell asked where would
41 people park. Mitchell stated that a major concern was the fact that some residences aren't home for
42 three months out of the year and there would be a trail in their back yard while they're not home.
43 Mitchell stated that once the residence found out it was public, it was presented as a public trail.
44 Chairman Farrell asked how many board members in total. Mitchell stated five. Mitchell said it was a
45 community vote, and a meeting that was attended by 60-70% of the residence. It happens every 2-3
46 months. Mitchell stated the first meeting there was a show of hands and it was unanimous, 100%
47 said they did not want the trail, they asked for a show of hands who would want the hands and no one
48 raised their hands. Mitchell stated at the second meeting there was more discussion about the public
49 vs. private aspect of it. They had a show of hands, three people said they would still like a walking
50 trail and the other 50 people said they still didn't want it.

51
52 Chairman Farrell stated that the Council and Town Managers office received e-mails and phone calls
53 from people who are not present. Chairman Farrell stated he received a phone call from a female who
54 didn't leave her name and that the Council was told there are people in the community who feel they
55 are being intimidated around the walking trail piece. Chairman Farrell stated that the Council takes it
56 very seriously. Chairman Farrell shared that they are getting 30-50 residence who want the walking
57 trail, private and/or public.

58
59 [Crowd discussed among one another]

60
61 Jack O'Connell, 6 Wesley Dr. stated that he moved into the Nevins in 2006 and he is not on the
62 current Board of Directors but up until a month ago he served from 2009-2013 on the Board of
63 Directors and the Residence Board. O'Connell brought his notes from the planning board. He stated

64 that he doesn't understand the intimidation and the meetings they have are very open and people are
65 offered the opportunity to speak. Chairman Farrell stated that the Council only knows what they get.

66 O'Connell stated that in the early days, 2009, there was a lot of early discussion that the trail
67 shouldn't be built, because of how close it is to people's back doors. In 2009 there were regular
68 residence meetings run by the sales team. There was a lot of discussion about the walking trail at
69 those meetings and in 2009 there was a paper ballot vote of all the households, 60-70 homes. The
70 actually vote count as to if the residence want the trail or not it was 42 to nothing out of the 60-70
71 homes at that time. O'Connell stated that they had a special meeting devoted to discussion about the
72 walking trail. There were about 40-50 residence at that meeting. At the time 100 homes. When asked
73 at the end of the meeting who was in favor, not one hand went up. O'Connell stated later on in the
74 month they had a meeting on another option that came up of relocating the trail. O'Connell stated on
75 April 15th there was a second meeting that was open to everybody. At that meeting they invited Joe
76 Maynard from Benchmark Engineering who drew the trail and knew the layout. Maynard was able to
77 show that the trail is 15 ft. from everyone's back door as well as being right up against all the
78 wetlands. O'Connell shared that when it came up about relocating the trail; there are wetlands
79 everywhere so you couldn't relocate the trail. Maynard shared with the residence that relocating
80 wasn't a realistic option. O'Connell shared only 3 out of the 80 people raised their hands in favor of
81 it. He stated again the he doesn't understand the intimidation.

82
83 Chairman Farrell stated the Council represents all people and thanked O'Connell for his statement.

84
85 Councilor Green asked to pull up a subdivision map and pointed out the trail.

86
87 Hollis stated that just so the Council has in its mind, the property is governed by a Board of Directors
88 there are a set of bylaws that each member has to abide by and the typical bylaws provide for
89 management for all of the property by the Board of Directors, as opposed to one vote each person
90 having a right. Hollis stated that he wanted to make sure the Board of Directors had their meetings,
91 conducted their investigation and determine what they felt was appropriate for the association as a
92 whole. Hollis stated that the Council has to look at what the public wants. People who own a 128th
93 interest are governed by the bylaws and that's different than giving up their public rights by
94 becoming a part of this public association.

95
96 William Graser, 3 Bayers Range Rd., stated that he wanted to comment on the access to the trail and
97 where it comes in from. He stated there's another area that impacts the Nevins. [He pointed out the
98 area on the map]...Phase one and the end of the road exits from Capital and Constitution Condos.
99 Graser stated he lives in the third house to the right, right by the guardrail and where the wetlands are.

1 The access point is the other end of the guardrail. Graser stated that his view is that his home is
2 situated in such a way that the sidewalk is on his side of the street. Anyone accessing or exiting the
3 trail has to come by his house. Graser stated he is the senior resident there and that he moved in
4 October of 2005. There were just a handful of homes when he moved in. Graser stated when he first
5 bought there it was a different realtor than the one who sold most of the development. ReMax in
6 Londonderry, with Mark Oswald. Graser stated when he realized there was a trail he was hoping it
7 would never be built.

07
8 Councilor Butler asked Graser if the Nevins roads were private roads. The crowd answered with yes,
9 they are private roads.

10
11 Dara Lamone, 43 Morrison, stated she represents the other side and she just moved into the Nevins.
12 Lamone believes that one of the accesses is right next to her home. There is 27 ft. between her house
13 and the other house where the access will be and people would be walking right next to her bedroom.
14

15 [Council and audience discussed the map]
16

17 John Finn, 57 Morrison Dr. stated that he thinks that anonymously people portray actions of other
18 residence in a manner that the Council has to say 'anonymously'. Finn stated that he believes it's
19 unfortunate that the Council is in a situation where they get information anonymously. Finn stated
20 that there was a petition that was going around that talked about the developer having built in moneys
21 into the cost of the houses and that the residence would get rebates if the trail was not built. Finn
22 stated it wasn't the sales office or the management of the developer and that it was someone who just
23 showed up at his door. Finn stated where Nevins runs into Morrison, the way the houses are
24 constructed is that the developer took into consideration how various rooms in the houses would be
25 facing. Finn gave a couple of examples. Finn pointed out where the trail goes, around his
26 neighborhood, on the map and stated from his patio to the woods is 20 ft. Finn stated that if the
27 Council walked through the line they would see how devastating it is to the residence.
28

29 Chairman Farrell stated when they get evidence and emails it is circulated around the Council and the
30 Police Chief and the Council asks the Police Chief to pull any records of calls that have been in the
31 Nevins in the past 12 months. Police Chief Bill Hart clarified that it was actually three years.
32

33 Michael Smith, 32 Nevins Rd, stated that when he was present for the Planning Board, trail butters
34 were present at the meeting as well and in the notes the did not want the trail either because it was
35 running along their rock walls.
36

37 Oliver Ducharme, 6 Haley Court, stated he's lived at the Nevins since 2006. Ducharme stated he is
38 not in favor of a public trail. It's private property and the money was raised privately. Ducharme
39 stated that he is one of those people who bought early and was promised a walking trail. Ducharme
40 stated that there was an approved site plan in the sales office. Ducharme stated that he believes the
41 builder got twenty thousand dollars extra per lot because it was wooded lot. Ducharme stated the
42 people who were promised this amenity are in a tough spot because of the builder. Ducharme stated
43 that builder did what he wanted to do. Ducharme asked the Council if this is something they approve
44 of. Chairman Farrell stated that the Council has no jurisdiction on what the builder does with the
45 developer. The land use boards in New Hampshire are designed to be separate from the Town
46 Council. Chairman Farrell stated it came to the Council because it was deeded as public land.
47 Ducharme stated it is no surprise to the people where they were buying. Chairman Farrell stated there
48 are strict laws around real-estate agents in the state of New Hampshire about saying things that aren't
49 true but that is was outside the Town Council. Ducharme asked what is going to be done for the
50 people that put their hard earned money down and paid for the amenity and now it may not happen.
51 Ducharme stated that now that the builder has his money he should correct the situation for all.
52

53 Vice Chairman Dolan stated that it might be good to have a history lesson. Dolan stated back when
54 the development was originally proposed the development was going to be about three times the size
55 as what it is now without any age restriction so there would be a lot of children, which would have

56 flooded the schools and it would have made a bad situation worse. Dolan stated at the time he was on
57 the Town Council and they had went to the developer (who is no longer involved) and told him that
58 the development would put the community under duress. The Council asked the developer how they
59 can turn the dial down on the development and build fewer homes and age restrictions so there will
60 be no school impact. The Council still wanted to make it environmentally friendly with walking trails.

61 Dolan stated that the developer at the time said if he does it he will lose a lot of money that he was
62 going to make on the development. The Council had asked the developer how much. The developer
63 stated 2.9 million. Dolan stated that the Council suggested going to the voters to ask them for 2.9
64 million and they give it to the builder if he makes the community like what the Council suggested.

65 Dolan stated that the Developer agreed and so the Town held a special election. Dolan said it was
66 packaged that 95% of the residence voted for it to spend their 2.9 million to change the development
67 that is there now. Dolan stated one of the issues that the Council has to deal with is how to avoid
68 going back to the citizens who voted for it who paid 2.9 million and didn't get anything. Dolan stated
69 it's not just the residence who live there now who are dealing with this, but also the people who don't
70 live in the Nevins who paid almost three million dollars to get this package that is almost done. The

71 Council has to answer to them as well. Vice Chairman Dolan stated that there is a proposal to the
72 community to rebate back to the community a small portion of the 2.9 million which is about \$20,000
73 worth of construction cost. Vice Chairman Dolan stated that this involved the community as well
74 because they paid for a large part of the development. Dolan asked the people to think about that part
75 of the situation as they make comments.

76
77 Bill Malone, 43 Morrison, stated that he just moved into the Nevins at the end of June. Malone stated
78 one reason why he bought the property was because it backed up to the wood which is supposed to be
79 preserved. Malone never envisioned someone could be walking within 10 ft. of his patio while he is
80 BBQing. Malone was informed that is was a dead issue. Malone stated that he thinks it should be an
81 easy issue because a walking trail is only around nineteen thousand dollars of the 2.9 million. Malone
82 stated what the community got for the 2.9 million is not a walking trail, they got less burden on the
83 schools, fire and police. Malone stated that the walking trail is such a small piece and it should be a
84 no brainer.

85
86 Paul Murphy, 14 Morrison Dr., stated that he had the exact thought as Malone stated. Murphy stated
87 that he would like to ask the Chief of Police and the Fire Chief if they have got other new
88 developments that they want walking trails around. Chairman Farrell stated that it has been going on
89 since the earl 2000's. Murphy asked how is it working out for them, are there other situations where
90 there are walking trails this close to homes. Murphy asked if the Chief of Police had the statistics he
91 was going to share. Chairman Farrell stated that the information that was received form the Chief of
92 Police were call records for about 40 calls in 3 years and none of them have to do with walking trails.
93 Chairman Farrell stated where there's walking trails in the other areas, the analysis hasn't been done
94 yet but there's walking trails throughout Century Village. Farrell stated what they find that the Fire
95 Dept.'s calls continue to go up no matter what happens. Police continues to go up no matter what
96 happens. Farrell stated in some of the areas where there's walking trails, some have been removed
97 and things have to be thought out. Farrell stated that difference between the Nevins and all the other
98 ones is that there was a special election for 2.9 million dollars, and like the Attorney said, it went
99 'hand in glove'. Chairman Farrell stated to Murphy that he knows he pays taxes but the Council is
1 trying to figure it out. Murphy asked Farrell since he's concerned with the 2.9, has he thought back to
2 when they were going to build 200 homes, no age restrictions, what it would have cost for the support
3 of the streets, the fire calls, the more police and so much more. Chairman Farrell stated that they
4 haven't increased the amount of staff on the Police since 1992 and he doesn't know whether they

5 would have increased it or not. Chairman Farrell reminded the audience again that the Council is
6 trying to get to the middle. Murphy asked Chairman Farrell how long it's going to take the Council to
7 take a position. Chairman Farrell stated that the Council may vote tonight and it won't take much
8 longer. Murphy stated that last time he thought the decision was made. Murphy asked if the decision
9 is made against them, if there is an appeal process they can initiate. Chairman Farrell stated that they
10 can always bring it to court, but it's an expensive path. Chairman Farrell stated that it could also be
11 brought back to the Council with new information and ask the Council to look at it again.

12 Chairman Farrell stated that the Council is usually limited on how long they let people speak for at
13 meetings. Farrell stated that there are 128 homes and he knows how much tax revenue that is, that's
14 why the Council is allowing all to speak.

15
16 Vice Chairman Dolan stated that the Council is now deliberating so deliberately now is because when
17 the issues come up it is normally between the Council, the Planning Board and the people who have
18 an issue. Dolan stated that there is always a third party called 'the rest of the tax payers' who are
19 partnering in this decision, which the Council is trying to consider their aspect as well. Dolan stated
20 that the Council wants to be fair to them as well as give the Nevins residence a good solution. Dolan
21 stated that he has heard some bad things. Dolan stated that it's not that a walking trail is being put
22 close to the homes; it's that the homes were put too close to the walking trail. The walking trail on the
23 plan existed long before any homes were built. Dolan stated the builder had a responsibility not to
24 locate the homes too close to that walking trail. Dolan stated that there are probably some legality
25 issues with that. Dolan stated that it seems some residence have questions about misrepresentation by
26 the seller to the residence. Dolan stated that the Council will not handle that, it is a civil issue. Dolan
27 said the Council doesn't like when the developers put private structures on public land, or easement.
28 Dolan stated that it appears to be what happened in the Nevins.

29
30 Judy Braje, 61 Morrison Dr., stated that she thought it was a done deal as well. Braje referred to when
31 the Council mentioned the 30-50 e-mails that they received for the trail, she stated that the Council
32 needed to clarify that they are all individual people because she doesn't see how that could be
33 possible with all the people she knows, she can't think of more than one or two that have ever felt that
34 it should be done. Chairman Farrell stated that the e-mail and phone calls expressed that there were
35 20-50 people who wanted the trail and that they Council did not get 30-50 e-mails.

36
37 Councilor Green asked Attorney Hollis if anyone has thought about relocating the trail. Green stated
38 that there's a lot of open space to the right [referring to the map]. The audience stated that it's all
39 wetland. Attorney Hollis stated that it was the very first question he asked his client. Hollis stated that
40 at the Planning Board and what was referred to by the residence at a public meeting, there are no
41 places to relocate it due to steepness, wetlands or other unusable area. Councilor Green stated that
42 again, the Council is just trying to find a middle ground. Hollis stated that Councilor Dolan raised the
43 key element of a balance between what the public paid for, what was negotiated and what is now
44 occurring. Hollis stated that the Nevins is a private owned land controlled by a board of directors and
45 they have in the documents the right to more these amenities. Hollis stated that with the public rights
46 you are asking us/we, the board and the developer, are asking the town to give up some public rights,
47 but not for free. Hollis stated that they are willing to pay, whatever the cost that they have reached the
48 determination with the town; it would take to put in the trail, in order to have the town put the trail
49 somewhere else, where it would be more meaningful to the public. Hollis stated that there is no lose
50 to the town but a bargain. Hollis stated that it would cost approximately \$20,000 to contrast the trail.

51 Hollis stated this way the town would be getting more location and more trail and the public would
52 more likely use it since it won't be going through someone's house. Hollis stated that they are not
53 asking the public to wave off, they are asking for a release and exchange.

54
55 Elvio Delise, 6 Morrison Dr., stated that he was going to use that argument to Vice Chairman Dolan
56 they're paying back, a negotiation to pay back a portion of what was originally 2.9 million and that is
57 being negotiated right now. Chairman Farrell stated that there is a deal on the table. Vice Chairman
58 Dolan stated that on the Resolution the Council has before them does have in it \$19,200 to repay the
59 town for forgiveness of the trail.

60
61 Councilor Freda stated that one thing that Vice Chairman Dolan mentioned was that the rest of the
62 voters approved 2.9 million dollars to set this in motion. Freda stated that what is missing is that
63 people present in the room tonight are getting a disproportionate burden placed on them because their
64 homes are being used by members of the public. Councilor Freda stated that he thinks it would be
65 unfair for the Nevins people to deal with the general public walking through their back yards.
66 Councilor Freda said that the Council hasn't seen any members of the public at meetings other than
67 people from the Nevins complaining that their tax dollars were misappropriated.

68
69 Jack O'Connell, 6 Wesley Dr., stated again that within 5 ft. of the drawn trail it is all wetland. He
70 stated that he wished there was a color coated map to show the wetlands. At the open resident
71 meeting that they had the engineer for any of the residents to ask questions, but he indicated that there
72 is no room to relocate the trail and its all wetland and the only place is where it is. O'Connell stated
73 that when he moved in in 2006 a, the lower half was all woods. When they started moving the trees
74 there was a huge mountain of woodchips and he asked the sales office what they were for. The sales
75 office had told him it was for the walking trail. This was the time they started to have the resident
76 meetings on a monthly basis and there were a lot of negative opinions on it. This was back when it
77 was only 50 homes. O'Connell stated, the community didn't want the trail and it was the developer
78 who was listening, realized that the residence didn't want it. O'Connell stated that right now the
79 developer was responding to what the residence were asking back in 2009 and what they are
80 continuing to ask today. Vice Chairman Dolan stated his reference was more to the tax payers back in
81 2003 and the special election. The bait and switch was with them and not the residence. O'Connell
82 stated that he understood and the points the Council made and the people at the meeting is that the
83 vast majority of all the target goals of that site plan have been achieved. Vice Chairman Dolan agreed
84 that the trails are a small portion of the 2.9 million.

85
86 Oliver Ducharme, 6 Haley Court, stated that he wanted to respond to issues but Councilor Green and
87 Vice Chairman Dolan brought up about the trail being relocated and the negligence of the builder.
88 Ducharme stated like it was indicated, the trail was there first. Ducharme stated the builder clearly
89 built the way he wanted to build assuming the trail would go away. Ducharme stated that he agrees
90 that the Council should find middle ground and as indicated, 40 houses at \$20,000 upcharge per
91 house is \$400,000. Home Depot's built on wetlands. Ducharme asked if anyones seen a test and he
92 keeps hearing wetlands and stated that it is not that wet. He stated that maybe the builder should take
93 some of the \$400,000 that he took from people saying that this wouldn't happen and make everyone
94 happy. Ducharme stated no one wants the trail where it is, not even himself. Council Freda asked
95 Ducharme where he gets the \$20,000 per house. Ducharme stated that if the Council asks any of the
96 people present, they were charged \$20,000 per lot to have a wooded lot and were told the trail would
97 not be there.

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Chairman Farrell stated that that was the last speaker on for this subject this evening and that we are at the one hour mark. Chairman Farrell asked the Council what they would like to do. Councilor Butler stated that the Council needs to take a real common sense approach to the problem and he thinks that there are some faults on the developer and there may be some faults on the town side through different boards. Councilor Butler stated that they are private roads and some of the trail goes between houses and on the sidewalks. He's also been told that the trails go nowhere. Councilor Butler stated that there would be a problem with parking and there is no place to park. He stated that it will be a public safety concern if it's not taken in to consideration. Councilor Butler stated that he wouldn't want a trail 15 ft. from his patio. Butler stated to Cynthia May that he knows that we have \$19,000 sitting on the table as a possible resolution to this, but how did we get to the \$19,000. Cynthia May stated that the initial developer, back in 2009, provided, through the department of Public Works, an estimate of what it would cost to build the trail back than but didn't consider the cost of constructing the two bridges and what it would cost to build a somewhat assessable foot bridge over a lesser wetland area. May stated that DPW and herself looked at what the estimates would bring. May stated that she talked to Bob Saur from the Trailways Committee to confirm the cost. May stated that she designed trails for three years so she does have a background and based on the type of trail it is, a clearing in the woods with woodchips, it's an inexpensive trail.

Vice Chairman Dolan stated he had a couple issues and that negotiating should be done in private. Dolan motioned to continue the public hearing to the next Council meeting on October 7th. Councilor Green second. Chair votes 5-0-0.

Chairman Farrell addressed the Proposed Hicks Purchase. Paul Nickerson, 7 Sparhawk stated that he's a member of the Conservation Commission and the recently created Joint Negotiating Committee, which was established by the Council to strengthen the acquisition program in Londonderry. He will be presenting. Nickerson pointed out the map on the screen. Nickerson stated that he came across the Hicks during one of his monitors excursions. Dan Hicks approached the commission and said that he would like to sell Nickerson the land. Nickerson stated it was referred to the Joint Negotiation Council as per the instructions the Council laid down. Nickerson stated that he told Hicks that an appraisal needs to be conducted to make it a legitimate process, and they did. Nickerson stated that the appraisal came back with the value of \$60,000, which is what Hicks had originally quoted to them. Nickerson stated that in August once the appraisal was completed the Joint Negotiating Committee recommended acquisition to the Conservation Commission and that was by unanimous vote by all the members. On September 10th the Conservation Commission held a public hearing and they voted to recommend acquisition to the Town Council and that is why he is present. Nickerson stated that there were no public comments at the meeting. Nickerson stated that the purchase and sales agreement has been signed by all the family members.

Chairman Farrell said looking at the contract there are some changes that need to be made to the contract. Vice Chairman Dolan stated to Kevin Smith that on page 2 of 5, paragraph five, the words 'purchase the easement interest' should be changed to 'purchase the property interest' [referring to the contract]. Dolan stated on page 5, one on the signature pages, Dolan stated he would like to take the Conservation Commission off the signature page and put the Town Manager in place of them. Vice Chairman Dolan stated that the Council was advised that only the Town Manager and Council can sign contracts like that. The end results the same. Vice Chairman Dolan stated after the changes are made, he is in favor of it. Councilor Green stated that as was promised, a couple years ago to be a

92 elected the Planning Board as the determining body, including the Zoning decisions. In the
93 agreement it says the 5 points of law the Zoning Board uses will be utilized by the
94 Planning Board. Freda told Speltz that he needs to be accurate with his comments. Freda
95 stated that if Speltz wants to amend the Charter about contracts over 3 years he can. Freda
96 stated GMO is still in effect in the Development Agreement. Chairman Farrell and
97 Councilor Green stated that at the last meeting the Town Manager was given direction to
98 look into amending the Charter with the Planning Board.
99

- 00 • Kent Allen gave a presentation about the cleanup of the town forest. Allen stated that he
01 made a presentation to the Heritage Commission and it was accepted by the group. Two
02 weeks later it was presented to the Conservation Commission which took exception to
03 everything except cleaning up a 2 ft. apron on the existing trail that was just put in. Kent
04 asked the Council who was in charge of this. Vice Chairman Dolan, liaison to the
05 Conservation Commission stated that they wanted to preserve the habitat of the species
06 that live in the fallen timbers.
07
- 08 • Chairman Farrell asked if an arborist look at it for an onion. Allen stated it would be a
09 good idea. Gene Harrington, V. Chair of the Conservation Commission, stated that there
10 was a tree stand analysis and a thinning cut a few years ago. Allen wanted to clear
11 everything under 3 inches in diameter out, which would take out future timber growth.
12 Conservation Commission told Allen he could clean up the new trail already created by
13 Trail Ways and along the roadway. Harrington stated Town Forester Charlie Moreno had
14 the same opinion. Harrington stated the difference between an arborist and a forester. An
15 arborist manages individual trees healthiness and a forester manages a forest. Councilor
16 Butler asked if Charlie has seen what Kent wants to propose. Allen stated that he hasn't.
17 Councilor Butler and Chairman Farrell both stated that they would like Kent and Charlie
18 to get together and come to an agreement.
19
- 20 • Councilor Butler stated it is unsure who has control over the town forest. Harrington
21 referred to the vote from the 1984 town meeting they gave it to the Conservation
22 Commission. The Heritage Commission gets to oversee what happens but the management
23 is Conservation Commission
24

25 PUBLIC HEARING

26 None
27

28 OLD BUSINESS

- 29 • The Council requested a continuation, at the request of the Nevins Attorney, of the Walking
30 Trail Easement, Nevins Trail. Attorney Hollis was present. Chairman Farrell stated that the
31 Planning Board extended agenda to January 31st and the groups are working behind the scenes
32 to get the answers to the questions the Council had. Vice Chairman Dolan motioned to table it
33 until a later meeting. Councilor Butler Second. Chair votes 5-0-0. Chairman Farrell stated to
34 Hollis that the Council will wait to hear from him.
35
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Introduced: 03/20/14
Second Reading/Public Hearing: 04/07/14
Adopted: XX/XX/14

ORDINANCE #2014-01
AN AMENDMENT TO THE ZONING ORDINANCE
RELATING TO REZONING MAP 15, LOT 239
562 MAMMOTH ROAD

WHEREAS the Planning Board has conditionally approved a Lot Line Relocation plan on March 5, 2014 appending a portion of Map 15 Lot 235, zoned Commercial II (C-II) to Map 15 Lot 239, zoned Industrial II (I-II); and

WHEREAS the Planning Board has received a request to rezone a portion of the above-referenced parcel from Commercial II (C-II) to Industrial II (I-II); and

WHEREAS the Planning Board has recommended that the Town Council act favorably upon the request; and

WHEREAS the requested rezoning will make this portion of the site consistent with the remainder of the lot; and

WHEREAS the rezoning will not take effect until such time that the Lot Line Adjustment Plan, approved by the Planning Board on March 5, 2014, is recorded at the Rockingham County Registry of Deeds;

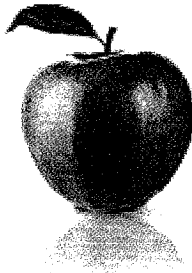
NOW THEREFORE BE IT ORDAINED by the Town Council of the Town of Londonderry that the Town Zoning Ordinance be amended to reflect the rezoning of Map 15 Lot 239, to become effective upon passage by the Town Council, conditioned on recording of the Lot Line Adjustment Plan approved by the Planning Board on March 5, 2014 at the Rockingham County Registry of Deeds.

Tom Dolan
Chairman Londonderry Town Council

A TRUE COPY ATTEST:

Sherry Farrell - Town Clerk
XX/XX/14

Town Seal



Town of Londonderry

Planning & Economic Development Department

268B Mammoth Road
Londonderry, New Hampshire 03053
Phone (603) 432-1100 x134
www.londonderrynh.org



To: Town Council
CC: Building Department
From: Cynthia A. May, ASLA
Date: March 6, 2014
Subject: **Rezoning Recommendation from the Planning Board
Map 15 Proposed Lot 239**

On March 5, 2014, the Planning Board held a public hearing relative to the Zoning Ordinance and Zoning Map.

Workplace Systems, Inc., owner of Lots 235 and 239 on Map 15, was granted conditional approval by the Planning Board to perform a lot line adjustment between the aforementioned parcels in order to expand their current industrial business operation on Lot 239. An associated request to rezone the newly added portion of lot 239 from Commercial II zoning to Industrial II was then considered by the Board. Section 2.1.2.3 of the Londonderry Zoning Ordinance would require the more restrictive zoning district, C-II, to prevail, however this would make the industrial use non-conforming. The Applicant therefore sought to have the C-II portion of the lot rezoned to I-II so as not to frustrate the intent of the lot line adjustment.

The Planning Board, by unanimous vote, recommends the Town Council approve rezoning the portion of Map 15 Lot 239 currently zoned C-II (Commercial II) to match the I-II (Industrial-II) zoning classification of the remainder of the parcel as discussed at the March 5, 2014 Planning Board meeting.

A copy of the application, staff recommendation to the Planning Board, and the Planning Board minutes are attached.

Staff will be in attendance at the public hearing to present the proposed zoning change. Please feel free to contact me if you have any questions.

MEMORANDUM

To: Planning Board

Date: March 5, 2014

From: Cynthia A. May, ASLA
Town Planner

Re: Rezoning Request: Map 15 Proposed Lot 239 (From C-II to I-II)

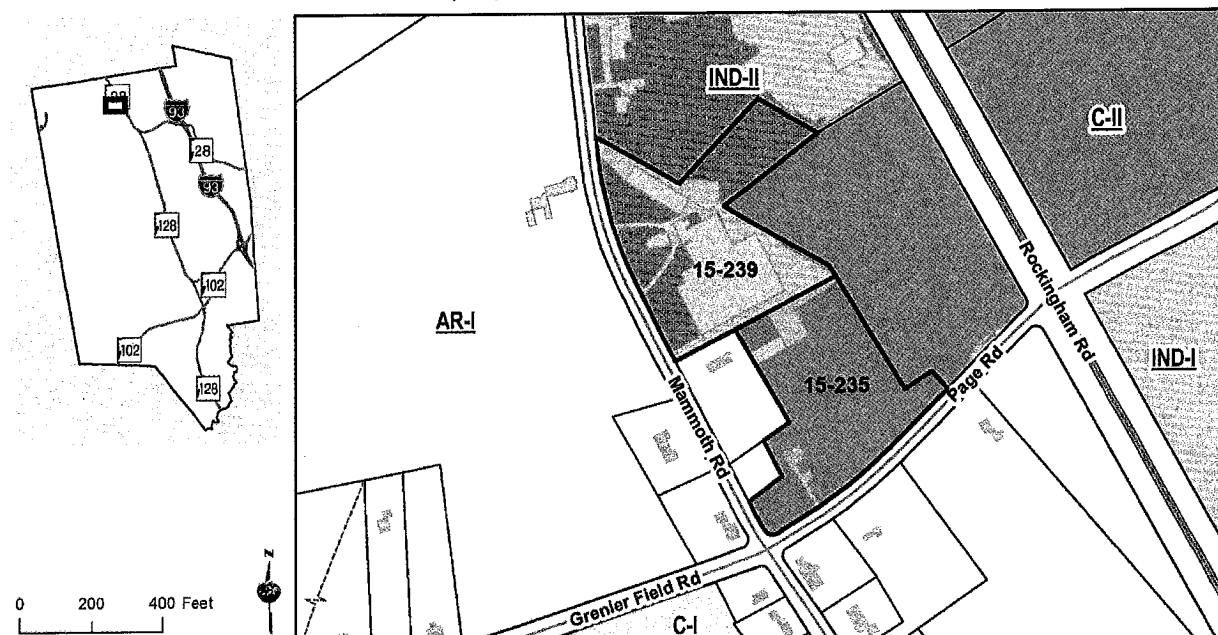
The Planning & Economic Development Division has reviewed the above referenced rezoning request and we offer the following comments:

Review Comments:

The applicant requests the rezoning of the above referenced lots from C-II to I-II. The parcels are located on Mammoth Road and Page Road (Please see the map and aerial image below).

3/5/14: New Plans

Map 15 Lots 235 and 239. Request to rezone a portion of proposed lot 239 from Commercial-II (C-II) to Industrial-II (I-II) at 562 Mammoth Road

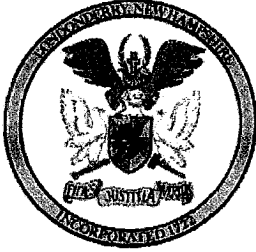


Workplace Systems is seeking to expand their current business operation at 562 Mammoth Road, Map 15 Lot 239, which has existed in that location since 1971 on a parcel zoned I-II (Industrial II). A portion of the adjacent Lot 15-235, also owned by Workplace Systems, has been utilized by this business for a number of years, and is zoned C-II (Commercial II). This portion of Lot 15-235 is the subject of a Lot Line Adjustment request to the Planning Board, to be incorporated into Lot 15-239. Preceding the rezoning item, the Planning Board will have acted on the Lot Line Adjustment application.

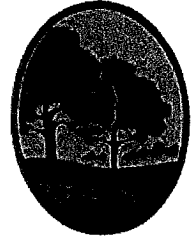
Through approval of the lot line adjustment application, Lot 15-239 will be increased by 64,408 square feet, but will then have a zoning district boundary running through the lot. Section 2.1.2.3 of the Londonderry Zoning Ordinance would require the more restricted district to prevail, which in this case would be C-II; however, the existing industrial operation would then become non-conforming. This would be in conflict with intent of the lot line adjustment request, which is to make the industrial parcel a more viable business site.

Staff Recommendation:

The proposed rezoning is consistent with the intent of zoning in that area, and would create a more regularly shaped zoning district, as well as to make Lot 15-239 a single zoning classification. As such, staff recommends that the Planning Board **RECOMMEND** to the Town Council that they approve rezoning the portion of Map 15 Lot 239, currently zoned C-II (Commercial II), to match the I-II (Industrial-II) zoning classification of the remainder of the parcel as discussed at the March 5, 2014 Planning Board meeting.



TOWN OF LONDONDERRY
Community Development Department
 Planning & Economic Development Division



268B Mammoth Road
 Londonderry, New Hampshire 03053
 Phone: (603) 432-1100, x134 Fax: (603) 432-1128

REZONING APPLICATION

Name of Applicant: Workplace Systems, Inc.

JAN 16 2014

Name of Lot Owner: _____
 (If different)

Address: 562 Mammoth Road, Londonderry, NH

Telephone #: 603-622-3727

Date Submitted: _____

Tax Map # 15-235 Lot # 15-239
 (Please list all if multiple lots are involved)

Current Zoning: Commercial - II

Proposed Zoning: Industrial - II

Please explain the purpose and justification for your rezoning request (attach additional sheets if necessary):

Workplace Systems, Inc. is the owner of two contiguous lots in north Londonderry in the vicinity of the junction of Mammoth and Page Roads. The lot with frontage on Mammoth Road is 5.65 acres and is zoned Industrial-II (Lot 15-239). The lot with frontage on Page Road is 4.138 acres and is zoned Commercial-II (Lot 15-235). Workplace Systems is seeking a zoning change with a corresponding lot line adjustment, application to follow to the Planning Board, which would expand the industrial lot and reduce the commercial lot by approximately 1.5 acres. A more detailed description of basis for this application as well as details regarding the meets and bounds of the proposed change are included in the attached pages.

Planning Department Comments (to be filled in by Town Staff):

BOUTIN ALTIERI, P.L.L.C.
Attorneys At Law

Jonathan M. Boutin

Also admitted in MA

January 16, 2014

Londonderry Planning Board
268B Mammoth Road
Londonderry, New Hampshire 03053

Dear Board Members,

Enclosed, please find the application submitted by Workplace Systems, Inc. pertaining to a requested zoning amendment for its property at Mammoth and Page Roads. Pursuant to Section 4.6.2 ("Submission to the Planning Board"), please refer this request to the Planning Board for its consideration at your earliest convenience.

Workplace Systems has been operating in Londonderry since 1971 and currently employs 38 people. It owns two contiguous lots in the area of the intersection of Mammoth and Page Roads. The Mammoth Road lot on which the business operates, Lot 15-239, is zoned Industrial-II ("Industrial Lot"). The lot on Page Road, Lot 15-235, is zoned Commercial-II ("Commercial Lot"). Workplace Systems seeks to amend the zoning ordinance and apply for a lot line adjustment, which would result in the Industrial Lot being increased by 64,408 square feet, as described in the meets and bounds and depicted on the attached map.

The request for the zoning change is necessitated by the Town's interpretation of Section 2.1.2.3 of the Londonderry Zoning Ordinance. Section 2.1.2.3 provides that

If a zoning district boundary line runs through any lot and the lot is not of sufficient size and configuration to permit conforming lots in each district, the lot

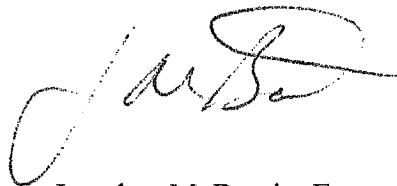
BOUTIN  ALTIERI, P.L.L.C.
Attorneys At Law

cannot be subdivided and the entire lot is deemed to be in the more restricted district. For purposes of this section, the order of most restrictive to least restrictive is as follows: CO, AR-1, R-111, C-IV, POD, C-III, C-I, C-II, IND-I and IND-II, AD.

The Town has notified Workplace Systems that a lot line adjustment between the two properties without an accompanying zoning change would trigger this provision and render the Industrial-II lot, a Commercial-II lot. Workplace Systems has filed a separate application for a lot line adjustment with the Planning Board, which would be contingent upon the zoning change.

If you have any questions or require any additional information or materials to support this request, please feel free to contact me at (603)432-9566 or jboutin@boutinlaw.com.

Regards,



Jonathan M. Boutin, Esq.

This District shall include the additional land lying within the area described as follows:

Beginning at a granite bound at the Northwest corner of said Tax Map 15 Lot 235, said point also being the Northeast corner of Tax Map 15 Lot 238 and on the common lot line of Tax Map 15 Lot 239, being $N76^{\circ} 05' 01'' E$ 177.06 feet from the east sideline of Mammoth Road, Thence By Tax Map 15 Lot 239

$N76^{\circ} 05' 01'' E$ for a distance of 326.12 feet to the Southeast corner of Tax Map 15 Lot 239 said corner is also on the common lot line of Tax Map 17 Lot 25, Thence By Tax Map 17 Lot 25

$S44^{\circ} 28' 35'' E$ for a distance of 36.92 feet to a drill hole in a stone wall, And

$S16^{\circ} 37' 03'' E$ by a stone wall for a distance of 155.12 feet to a monument to be set, Thence Through Tax Map 15 Lot 235

$S76^{\circ} 24' 57'' W$ for a distance of 353.27 feet to monument to be set on the common lot line of Tax Map Parcel 15 Lot 238, Thence by Tax Map Parcel 15 Lot 238

$N13^{\circ} 35' 03'' W$ for a distance of 184.69 feet to the **POINT OF BEGINNING.**

The total additional area is 64,408 square feet more or less

2 ZONING DISTRICTS

2.1 DISTRICTS AND USES

2.1.1 Districts

For the purpose of this Ordinance, the Town of Londonderry is divided into seventeen (17) districts and sub-districts as follows:

<u>Full Name</u>	<u>Short Name</u>
Agricultural-Residential	AR-I
Multi-family Residential	R-III
Commercial-I	C-I
Commercial-II	C-II
Commercial-III	C-III
Commercial – IV	C-IV
Mixed Use Commercial	MUC
Industrial-I	IND-I
Industrial-II	IND-II
Gateway Business	GB
Planned Unit Development	PUD
Airport District	AD
Conservation Overlay	CO
Performance Overlay District	POD
Flood Plain Development	FP
Airport Approach Height Overlay	AH
Airport Approach Noise Overlay	AN
Historic District	H

2.1.2 District Boundaries & Zoning Maps

- 2.1.2.1 The location and boundaries of the Londonderry zoning districts are shown on the "Zoning Map of the Town of Londonderry, New Hampshire" dated June 9, 1994 or as most recently updated and signed and certified by the Town Clerk, which is part of this Ordinance. Where any uncertainty exists with respect to the boundary of any District as shown on the Zoning Map, the following rules shall apply:
- 2.1.2.1.1 Where a boundary is indicated as a highway, street, railroad, watercourse or Town boundary, it shall be construed to be the centerline thereof or such Town boundary.
 - 2.1.2.1.2 Where a boundary is indicated as approximately parallel to a highway, street, railroad, watercourse, or Town boundary, it shall be construed to be parallel to the centerline thereof or such Town Boundary.
 - 2.1.2.1.3 Where a boundary coincides within ten (10) feet or less with a lot line, the boundary shall be construed to be the lot line.
 - 2.1.2.1.4 If no natural boundary is given, the location of any boundary shall be determined by use of coordinates identified by permanent bounds.
- 2.1.2.2 If a zoning district boundary line runs through any lot and the lot is of sufficient size and configuration to permit conforming lots in each district, the lot may be subdivided along the zoning district boundary line resulting in conforming lots. The subdivision shall be subject to Planning Board approval in accordance with the Subdivision Regulations.
- 2.1.2.3 If a zoning district boundary line runs through any lot and the lot is not of sufficient size and configuration to permit conforming lots in each district, the lot cannot be subdivided and the entire lot is deemed to be in the more restricted district. For purposes of this

section, the order of most restrictive to least restrictive is as follows: CO, AR-I, R-III, C-IV, POD, C-III, C-I, C-II, IND-I and IND-II, AD."

- 2.1.2.4 If a zoning district boundary line runs through a lot and one of the zoning districts within the lot is the Conservation Overlay District, Section 2.6.3 applies.

2.2 USE TABLE

2.2.1 Accessory Uses

With the exception of residential district, all uses permitted for each district shall be permitted as accessory uses within that district provided the combination of uses shall meet all other provisions of this Zoning Ordinance.

2.2.2 GB District Services Table (Follows Use Table below)

ORDER #2014-07

An Order Relative to

EXPENDITURE OF MAINTENANCE TRUST FUNDS FOR VARIOUS PROJECTS

Reading: 04/07/2014

Adopted: 04/07/2014

WHEREAS voters since 2003 have approved funding for the maintenance and repair of public buildings and grounds in the town; and

WHEREAS by the Town Council of the Town of Londonderry that the Town Treasurer is hereby ordered to expend \$3,577.53 from the Expendable Maintenance Trust Fund for the aforementioned repairs and improvements.

NOW THEREFORE BE IT ORDERED by the Town Council of the Town of Londonderry that the Town Treasurer is hereby ordered to expend \$3,577.53 from the Expendable Maintenance Trust Fund for the aforementioned repairs and improvements.

Tom Dolan, Chairman
Town Council

Sherry Farrell
Acting Town Clerk/Tax Collector

A TRUE COPY ATTEST:

04/07/2014

**Expendable Maintenance Trust TC Order Request
for Town Council Meeting *4/07/14***

Description	Vendor	Amount
<u>Winter Maintenance - TH/PPD/Library/Cable Access</u> Shoveling/Plowing/Treatment of parking lots, walkways and fire lanes at TH/PPD/Library/Cable Access on 3/13/14 & 3/14/14. This EMTF request is for the labor/materials for snow & ice treatment at our various town buildings.	Trimmers Invoice # 40383	\$ 650.00
	Trimmers Invoice # 40384	\$ 200.00
	EMTF Request Amount	\$ 850.00
<u>Winter Maintenance - Senior Center</u> Shoveling/Plowing/Treatment of parking lot, walkways & fire exists at the Senior Center on 3/10, 3/13 and 3/14/14. This EMTF request if for the labor/materials for snow & ice treatment at the Senior Center.	Green Magic Landscaping #1367	\$ 225.00
	EMTF Request Amount	\$ 225.00
<u>Garage Bay Walls - DPW Garage</u> The garage bay walls in the bay area are in need of general maintenance, this EMTF request is for the purchase of the paint to paint the top sections of the interior side of the bay walls. The DPW employees supplied the labor to apply the paint to the walls.	Am San Invoice # 307750570	\$ 288.03
	EMTF Request Amount	\$ 288.03
<u>Mezzanine Lights & Oil Burner - DPW Garage</u> Add lighting over the two mezzanine storage/work areas along with moving the furnace shut off switch to met fire code. This EMTF request is for the purchase of the materials and labor to install 4 LED fixtures in the mezzanine area, and, move the oil burner switch to the entrance door to met fire code.	Stephens-Marquis Invoice # 17315	\$ 1,054.50
	EMTF Request Amount	\$ 1,054.50
<u>Add Outlets for IT Department - Town Hall</u> The IT Department needed additional outlets in their work area. This EMTF is for the labor and materials to add 2 new circuits to support 2 quad outlets in the IT Department at Town Hall.	Stephens-Marquis Invoice # 17272	\$ 600.00
	EMTF Request Amount	\$ 600.00
<u>Stair Tread Repairs - Town Hall</u> Three of the stair treads in the front and rear stair well had started to split and causing a safety hazard. This EMTF is for the labor and materials to remove the defective treads and replace them with new treads at Town Hall.	Drouin Construction Invoice # 0160HC	\$ 560.00
	EMTF Request Amount	\$ 560.00
Total Town Council EMTF Order		\$ 3,577.53

ORDER #2014-08

An Order Relative to

EXPENDITURE OF MAINTENANCE TRUST FUNDS FOR VARIOUS PROJECTS

Reading: 04/07/2014

Adopted: 04/07/2014

WHEREAS voters since 2003 have approved funding for the maintenance and repair of public buildings and grounds in the town; and

WHEREAS by the Town Council of the Town of Londonderry that the Town Treasurer is hereby ordered to expend \$47,487.00 from the Expendable Maintenance Trust Fund for the aforementioned repairs and improvements.

NOW THEREFORE BE IT ORDERED by the Town Council of the Town of Londonderry that the Town Treasurer is hereby ordered to expend \$47,487.00 from the Expendable Maintenance Trust Fund for the aforementioned repairs and improvements.

Tom Dolan, Chairman
Town Council

Sherry Farrell
Town Clerk

A TRUE COPY ATTEST:
04/07/2014

**Expendable Maintenance Trust TC Order Request
for Town Council Meeting "4/07/14"**

Description	Vendor	Amount
<u>Main Hall Floor Initial Partial Tear Out - Lions Hall</u>	Commercial Quote	\$ 2,260.00
In order for the Structural Engineer to perform his evaluation, we had to remove 2/3rds of the flooring to gain access. This EMTF request is for the labor to remove the 3 layers of existing floor, and, two dumpsters to remove the debris.		\$ 2,260.00
<u>Main Hall Floor Restructure - Lions Hall</u>	Commercial Quote	\$ 45,227.00
After being notified to perform an inspection on the Lions Hall Main Floor, our Building Inspector has determined the floor is unsafe. At this time, the building has been closed and can not reopen until the floor has been rebuilt.	EMTF Request Amount	\$ 45,227.00
<u>This EMTF request is for the labor and materials:</u>		
1 Additional tear out of flooring and framing per Engineer.		
2 Frame and poor footings - Qty. 24		
3 Install blocks to support existing beams.		
4 Frame new floor system according to engineers plans.		
5 Install floor sheathing according to engineers plans.		
6 Install hardwood flooring.		
7 Complete any transitions and baseboard impacted by tear out.		
 Note: These prices <u>do not</u> include the Structural Engineers time (on-site & office) to evaluate and create the set of engineering plans.		
Total Town Council EMTF Order		\$ 47,487.00