

The Planning Board for the Town of Derry held a public meeting on Wednesday, February 15, 2017, at 7:00 p.m., at the Derry Municipal Center (3rd Floor Meeting Room) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman; John O'Connor, Vice Chairman; Michael Fairbanks, Secretary; Randy Chase, Town Administrative Representative; Frank Bartkiewicz, Lori Davison, Jim MacEachern (7:03 p.m.), Members; Mark Connors, Marc Flattes, Elizabeth Carver, Alternates

Absent: Charles Foote, Mirjam Ijtsma

Also present: George Sioras, Planning Director, Elizabeth Robidoux, Planning Assistant; Robert Mackey, Code Enforcement Officer; David Caron, Town Administrator, Susan Hickey, Chief Financial Officer.

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

*Mr. Connors was seated for Mr. MacEachern
Mr. Flattes was seated for Ms. Ijtsma*

Escrow

#17-05

Project Name: South Avenue Townhouses

Developer: David Barka

Escrow Account: 17 South Avenue, LLC

Escrow Type: Cash Escrow

Parcel ID/Location: 30012, 17 South Avenue

The request is to establish cash escrow in the amount of \$1069.20 for the above noted project.

Motion by Fairbanks, seconded by Flattes to approve as presented. The motion passed with all in favor.

#17-06**Project Name: South Avenue Townhouses****Developer: David Barka****Escrow Account: 17 South Avenue, LLC****Escrow Type: Letter of Credit****Parcel ID/Location: 30012, 17 South Avenue**

The request is to approve a final release of Letter of Credit 9092230 drawn on Granite Bank in the amount of \$8601.55 for the above noted project. The amount to retain is zero.

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

Minutes

The Board reviewed the minutes of the February 01, 2017, meeting.

Motion by O'Connor, seconded by Flattes to approve the minutes of the February 01, 2017, meeting as amended. The motion passed with all in favor.

Mr. MacEachern entered the meeting. Mr. Connors stepped down.

Correspondence

Mr. Fairbanks reported the Board has been copied on the comments provided by Attorney Boutin's office on the draft amendments proposed for the Zoning Ordinance dealing with Accessory Dwelling Units.

Other Business**Presentation of the Preliminary Six Year Capital Improvement Plan FY2018-2023**

David Caron, Town Administrator, provided an overview of the proposed Capital Improvement Plan (CIP), Fiscal 2018-2023. This is the beginning of the budget process. The department managers submitted their request for projects to be included in FY18-23. The CIP is an important planning tool as it helps him, the staff, and the Town Council to review, formulate and adopt the annual budget. His recommendations will be forwarded to the Town Council at the beginning of April. This plan continues the past procedure of dedicating any reserves left at the close of the fiscal year operating budget to various capital improvement funds. Those funds pay for capital improvement projects. Most of the improvements are proposed by the Fire, Police, Public Works and Information Technology Departments.

The document before the Board this evening is similar to previous formats with a few notable exceptions. The Council will be requested to create an Expendable Maintenance Trust Fund. It would fund improvements or major repairs to buildings, parks, and other facilities from one Trust. In previous years, those requests were scattered throughout the ~~budget~~ based on the departments presenting the request. Senior staff will meet to review and prioritize the various building improvements, which may be presented as part of the operating budget.

Town Council will also be requested to review and amend the Unassigned Fund Balance (UFB) policy to utilize available UFB to fund a number of capital reserve funds. Currently, the funds available from the unallocated fund balance have been used to fund improvements for Fire Police, Public Works, and Information Technology (E-Government). That will continue. Town Council will be asked to add a category of Building and Grounds Expendable Trust. During other years, the Council has funded Earned Time/Compensated Absences. Unlike most towns, Derry is in good shape. Most, if not all compensated absences are currently funded. They don't see the need for the Town to further fund that account. They feel those funds can be better utilized by investing in the Buildings and Grounds and other capital reserves.

Mr. Caron believed most of the Board members were familiar with the CIP format. The one difference this year is that there is a proposal in the budget to essentially replace Public Services Emergency Communications system for 1.6 million dollars. This would replace all the facilities for Police and Fire Departments with the exception of the portable radios used by the employees and the portable radios which are in the vehicles. This will replace all the transmitter and receiver sites, it will deal with all the equipment, and continues the effort to promote interoperability of communications between Police and Fire. If approved, this project would begin with an RFP in the summer of 2018 with a targeted one year completion date. This would replace the old equipment for Fire and Police Dispatch. Both facilities are reaching their end of life. The equipment is very old and it is hard to get parts. The manufacturer advises that in about another year, the vendor will no longer support the two facilities.

Mr. O'Connor confirmed Police and Fire will be able to communicate with each other on the new equipment. Mr. Caron said that is the plan. He added there had been a large, nationwide initiative after September 11, 2001 to enhance interoperability between Police and Fire. Mr. Granese asked if there was any grant money available to help offset the cost of this project. He is familiar with this type of project as he just replaced 2500 base stations at his place of employment. Mr. Caron explained as part of the process, they will work with NH Department of Safety and exhaust all possible revenue sources. The equipment is 15-20 years old.

Mr. Granese asked for the current fund balance. Ms. Hickey advised the General Fund Balance for the town is 8.9 million; that total is not shown in the CIP. The expected expenditures from the Capital Reserve Fund are shown on page 13. This page does not show the total balance for the Capital Reserve Fund. She can provide the total balance for the Board.

Mr. O'Connor asked about the category "funding from other funds"; is that the earned time? Ms. Hickey said the Cable Department will use funds from their special revenue fund to purchase their equipment. Mr. O'Connor asked if the entire \$585,000 would be dedicated to Cable. Ms. Hickey said the total amount of \$585,000 is dedicated to Cable, Water and Wastewater. That is

made up of special revenue or enterprise funds. Water and Wastewater are enterprise funds and have projects they will pay for out of their receipts. Cable will pay for their improvements out of their receipts. Mr. O'Connor questioned the legality of taking funds from Cable to pay for other departments. Ms. Hickey advised page 11 shows what Cable intends to pay for with their funds for their department. Wastewater projects are found on pages 8-9, for a total of \$252,000 in FY 18. Water projects are on page 8. Mr. Caron explained those three departments are not funded through property tax; that is why there is a line that says "funding from other funds".

Mr. Fairbanks asked if there is anything the Planning Board should be doing with respect to planning or zoning to facilitate these plans over the next few years. Mr. Sioras said the Board will be working on zoning. Occasionally the Board will offer its support for a project such as Exit 4A or the widening of Route 28 near Applebees. Mr. Fairbanks asked if there is anything the Board should focus on.

Mr. Connors asked with regard to the marked cruiser replacement. How many vehicles are in the fleet? Ms. Hickey stated the Police Department will replace more than one vehicle with the funds listed. They are on a three year replacement program and there are 20 vehicles in the fleet. Mr. Caron added they replace 10-12 vehicles per three year cycle.

Mr. Flattes asked if the vehicles that are being replaced are traded in, or are some of them passed down and used by other departments, for example the SUVs or pickup trucks. Mr. Caron explained for the one ton pickups and smaller vehicles, the departments look at the vehicles and determine which ones can be transferred to another department. This happens occasionally between Highway, Cemetery, Recreation and Water/Wastewater. They look at the transfers annually prior to requests ~~begin~~being placed in the CIP.

Mr. Granese asked for an explanation of the difference in amounts between FY 17 and FY 18. Ms. Hickey explained FY17 has a total of 2.1 million in the CIP. FY 2018 has a total of 3.7 million. They are planning to take more from the Capital Reserve, and some from other funding for Water and Wastewater. Most of the funding is coming from Capital Reserve Funds. A big portion of the difference is the 1.6 million dollar funding for the communication system. They will research federal grants and hope that funding mechanism will change from capital reserve to grant funding. Mr. Granese asked where is the funding coming from for the next year, which is estimated to be 8.5 million.

Ms. Hickey advised in FY 2019, there are some larger projects scheduled. The Fire Department has requested 1 million to replace two of their engines. 1.9 million (page 10) is the set aside for the town's portion of Exit 4A. This was put as a place holder. That is the final amount that will get the town to the five million it has committed for that project. Mr. Caron advised there is also a Fire Department expense for the SCBA apparatus in FY2019. The town has been successful in the past in obtaining grant funding (90/10 split); they will do their best to limit the expense.

Mr. Granese asked if the town is expending 2.7 million in Fiscal 2018, and 6 million in Fiscal 2019 from the Capital Reserve, how does the town get that money back. Mr. Caron said they analyze the last few years. If the town continues its current trend, it would transfer about 1.5 million to the Capital Reserve Fund to sustain the plan. If they hit a revenue short fall, they will

need go back and review the six year plan to prioritize the money. The other issue is the current fund balance of 8.9 million does not include the 2.5 million required to extend the water lines down Route 28 to the south to alleviate pollution concerns with the water in that area. The town is awaiting reimbursement from NH DES for that project. The recommendation is to utilize and apply that to the 1.9 million in FY19 for Exit 4A.

The town has a 44 million dollar budget. Typically the town spends 98 cents for every dollar. There are many moving parts that contribute to the fund balance. Based on past experience they anticipate about 1.5 million every year that can fund the capital program. They can do two things to fund the capital program: raise the funds required as part the tax rate, or as Derry does, through good management by senior staff and department heads and end up at the end of the year with unanticipated revenue.

Mr. Granese asked if it would be better to not have extra money put aside and give the few million back to the taxpayers so that the taxes don't need to go up each year. Mr. Caron said he did not disagree, but given the overall size of the budget and where the town typically expends 98% of it, the 2% is not a large amount. If the town does not remain disciplined in funding the Capital Reserve programs, it could end up with a string of years where there is a shortfall. The needs are still there and there are only two ways to fund that - through bonds or raised by taxes. They are trying to find the balance of funding the balance appropriately and making good use of any unexpended funds so that the town is not left in a situation where there is no funding for capital reserve projects.

Mr. Connors asked why there are multiple funds set aside for Police and Fire and Communications. Mr. Caron advised that under RSA 35, Capital Reserve Funds, the town needs to designate the purpose of the expense. It used to be that there had to be a capital reserve fund for one fire truck. The law has relaxed in the last year or so. Now the funds can be categorized into items such as equipment and supplies. This is one of the reasons they are requesting the Expendable Maintenance fund. This will allow for better evaluation and prioritization of building needs, town wide. They did not want to separate the expenses out into the various departments. For the communications project, they wanted to be transparent so people understood the scope of the project; they did not want to separate it out as \$800,000 in Police and \$800,000 in Fire; although that is how it will be funded. Mr. Connors asked why is there not one fund for all improvements for each department, rather than spread out, such as Recreation which shows Alexander Carr and then separately, the vehicle expense. Mr. Caron explained Parks and Recreation is part of DPW so their vehicles fall under DPW. As previously stated, they are trying to consolidate the expendable maintenance. The funds are listed in two places because Recreation would have a piece of that fund. Mr. Connors said he was aware the town was waiting to see if the dam at Hood Pond had to be upgraded; he did not see that expense in this report. Mr. Caron said it fits the definition of the public works fund or the building maintenance fund, but the town needs to have a dialogue with DES and obtain an estimated timeframe and project before it can place the project in the CIP and determine the funding for the project.

Mr. O'Connor spoke with regard to Exit 4A. Has CLD been paid as they have been going along with the development of the EIS? They have been. Has the State or CLD submitted documents and updates as to where the town stands? Mr. Caron explained the state has assumed

management of the project and the Town of Derry agreed to contribute five million to the project, as did Londonderry. The state is in charge of the project, but this is a mutual effort between the Towns of Londonderry, Derry, and the State. The State is responsible for oversight of the EIS process, but there is a collaborative effort so the town receives status reports and the timelines. Invoices are reviewed by the State and then forwarded to the town. The town has access to all of the information as the process moves forward to close out the EIS and receive a record of decision from Federal Highway. Mr. Caron can later provide the estimated timeline for completion of the EIS.

Mr. O'Connor asked for an explanation of the \$485,000.00 that is set aside for Cable. What is the total of the Cable reserve fund right now? Ms. Hickey said there is approximately \$650,000 in the Cable unassigned fund balance. She can send firm numbers after the meeting.

Mr. Caron confirmed the town uses the North East CPIU which is 1.9 this year.

Mr. Flattes admitted concern with the bottom line for FY 2019 being 8 million. Is there any way to make that amount more level with other years by moving projects? Mr. Caron said if Exit 4A gets pushed out, that will push almost 2 million out to FY 2020. He encouraged the Board to look not only at the project's bottom line amount, but at the impact to the tax rate. For example, a new police station might be estimated to cost 15 million and there would be a jump in the expenditure for that year (in the CIP). The impact to the taxes might be \$750,000.00 per year, bonded over a certain length of time; the payment would be spread out over the life of the bond. The numbers may seem to jump, but the tax impact is the number they try to keep level from year to year.

Mr. MacEachern confirmed the fund balance is 8.9 million. The state recommended minimum varies, per Ms. Hickey, between 5% and 18%. The town policy is to stay around 10-15%. Currently it is about 11%-13%. Mr. MacEachern asked how much of the tax rate is bonded indebtedness. Ms. Hickey said she would need to get that number. Mr. MacEachern asked if this CIP maps out bonded indebtedness and does it keep that level. Mr. Caron said they are looking at the current level of debt service. The town's debt service is very low compared to that of other communities. The town has a program in place to maintain a level debt.

Mr. MacEachern asked if this CIP had been compared to the 30 year CIP the Planning Board prepared when it was creating the Growth Management Ordinance. Mr. Sioras felt this CIP was consistent with that; the 1.6 million for the communications equipment is not. Mr. MacEachern said the Board went through that exercise during the GMO and tried to keep the bonded indebtedness low. He would like to see how close this CIP matches against the 30 year CIP (FY1998-2028) to see how close they were in mapping the original plan. Mr. Sioras said they could look at that and speak with Ms. Hickey; nothing jumps out at him. It seems to be consistent. Mr. MacEachern said he understood some years may have a jump and many of the water projects got pushed out. He is curious to see if the town is on target with regard to the timing. Normally the town times its bonds so that when one retires, it enters into another bond agreement.

Mr. Granese asked when will the CIP go to the Town Council. Mr. Caron explained the preliminary CIP will be integrated with the operating budget next week. The priority is to get this into the budget which will be presented to the Town Council. Based on the capital projects approved by Town Council, a revised CIP will be submitted showing the items approved for FY 2018. Ms. Hickey said she will forward the revised CIP to the Board. Mr. MacEachern stated he understood this presentation was a courtesy extended to the Board and that the Board has no direct authority over the CIP; it can only make suggestions. By statute, under the GMO the Board had input, but not on any plan subsequent.

Mr. Caron said the overall budget is due on April 2, 2017. He will be submitting the CIP to the Council on Tuesday. Past practice has been that the Council accepts the plan at that meeting but does not act on it. He would request that any comments from the Board be received by March 1, 2017; they can be forwarded to the Planning office.

Workshop

Workshop #1 – Sign Ordinance

Mr. Sioras advised suggestions from Attorney Boutin's office have been incorporated into the document before the Board. The ordinance had been forwarded to the Town Attorney for review. He confirmed the letter from Attorney Boutin had been released by the Board and made public at the February 01, 2017 meeting.

Mr. Connors noted there were a few requests for input from the Board in the draft before it tonight.

Robert Mackey, Code Enforcement Officer noted that Attorney Boutin's letter explains what precipitated some of the proposed changes. The Court, based on *Reed v Gilbert*, says that towns can't regulate signs based on content. He feels the Town of Derry Ordinance is in good shape. Staff reviewed the existing ordinance against Attorney Boutin's comments. Residential zones are the most affected. In the commercial and industrial zones, signs are all treated the same. In the residential zones there were different size requirements. For existing homes, residents are allowed a 3 square foot sign, but churches are allowed 24 square feet. That was done on purpose to allow a church to have a larger sign. There are other issues in the residential zone with regard to the size of signs. Staff took a look at those and made the size uniform at 24 square feet. Mr. Mackey said he believes that change will take care of the majority of Attorney Boutin's concerns.

Mr. Granese suggested the Board add the same size as allowed in the General Commercial zone to the General Commercial III. Mr. Mackey said around the Robert Frost Farm there are limited uses which were put into place specifically to protect the character of the Farm. Mr. Connors asked if the size could be lower. Mr. Granese felt it could be left at 100 square feet; if someone

feels they need something larger, they can apply to the ZBA. Mr. Mackey noted the more consistent the regulation is, the less of a chance that the regulation will be challenged.

The Board agreed to add a size limit of 100 square feet to the General Commercial III zone.

Mr. Mackey asked the Board to review the wording for political signs. He is not sure why the Board had established a five day limit. The state has clear regulations as to when signs should be removed, depending on the type of election. The Board elected to remove the last two sentences from Section 165-101.7.

With regard to electronic signs, when the Board first amended the sign ordinance, there was no General Commercial IV zone. The General Commercial zone included the Ryan's Hill area. Does the Board want to allow electronic message center signs in the General Commercial IV zone? He is not sure the Board would want that type of sign in the General Commercial III as that area was specifically established to protect the Robert Frost Farm and that type of sign might detract from the historic site or GCII which is the Tsienneto Road area. The Board agreed to allow electronic message center signs in the General Commercial IV zone.

Mr. Connors asked with regard to Section 165-101.3A.1. Should the Board keep the wording that states 'signs as permitted in the residential districts'? Mr. Sioras recalled the Board had included that wording to allow signs for permitted home occupations in the existing, single family homes in the commercial districts. Mr. Mackey suggested the Board may not want to allow a 100 square foot sign for a home occupation in the General Commercial district. The Board decided to change the wording to "signs are permitted for residential uses subject to residential district requirements."

Mr. Sioras said the changes would be incorporated and the document brought back to the Board for a final review so that this could move forward to the public hearing process.

Workshop #3a – Review of the proposed amendments to the Zoning Ordinance, Article II, Word Usage and Definitions, Section 165-5, Definitions

The Board reviewed the draft definitions, and where there were multiple options for a definition, selected the one they felt most appropriate. A summary of the changes is as follows.

Add a definition for **agritourism**.

Abattoir (Slaughterhouse) – option four.

Animal Hospital (Veterinary Clinic) – option one, adding the phrase "by a licensed veterinarian".

Artist/Artisan/Craftsman – option two

Attached: option two, amending to read "... there is a **common wall or habitable** space between..."

Brewer – option two.

Breweries and Bottling Facilities – **on hold for further review and discussion, State RSA should be researched**, although the Board had a preference for option two

Brewer – option two.

Buffer – option two, adding the last sentence of option one to the end of the description.

Building material storage yard – option two

Commercial – option two

Commercial Service Establishment – amend existing definition to option two

It was noted the Board does define “contractor” in the existing ordinance.

Contractors Yard – Mr. Fairbanks noted this is similar to Building Material Storage Yard, **placed on hold for further review by the Board**

Farm – added the following sentence to the end of the paragraph “A farm may also include retail sale of products/livestock that are raised/grown on the property.”

Forestry – option one.

Foundry – option one.

Freight/Trucking Terminal – option two.

Fuel & Storage Tanks – option two

Industrial Supply – option one.

Kennel – Board discussed the options provided and considered adding the following to option four “...where dogs, cats or other domesticated animals are boarded....” **Placed on hold for further review and discussion.**

Machinery Transportation Equipment – typo will be corrected; **Placed on hold for further consideration. A definition needs to be formulated.**

Mixed Use – option one.

Modular Housing – option three, adding “...factory built structure **constructed in accordance with State of NH and Town of Derry Codes**, which is manufactured.....”

Non Profit – Option one

Nursery – **Placed on hold for further discussion. Noted State RSA 433**

Nursing Home – Option one.

Product Assembly – Option two

Pharmacy – the Board considered option three. **Placed on hold for further discussion**

Recycling Facility – option two.

Riding School – option one. Separate out and create a new definition as provided for Equestrian Facilities

Boarding House – **remove after verifying this is not still listed as a use in one of the zones. The Board thought it had been removed.**

Sand/Gravel Pit – option two.

Semi Public Agency – Option one

Sewage – **Placed on hold for further review and discussion**

Site – option three

Smelting (of Ore) – **Remove**

Stockyard – option two

Tanning/Japanning (of Hides) **Remove**

Television Broadcasting – option two

Tradesman/Repairman – keep the proposed definition but **remove “Tradesman”**

Wood/Metal Craft – change to See Artist

The Board also discussed the need to add a definition for Rehabilitative Services and whether that term would also include “sober living facility”. Mr. O’Connor noted these types of uses are defined Federally and include uses such as “long term care”. Mr. Mackey noted the Building Code also comes into consideration as the use code is determined by the number of people being treated. The Board considered establishing a term called “Recovery Facilities”. Reference was made to RSA 151-E:2, VIII, Long Term Care.

The definitions will be revised and brought back to the Board for another workshop.

Other – discussion of proposed legislative changes to Accessory Dwelling Units

Mr. O'Connor advised there are proposed amendments before the House having to do with Accessory Dwelling Units. (HB 265). Representative Tripp has provided a copy of the draft changes. This was before the House yesterday. The changes related to condominiums, etc. Once this is through the legislative process, it may modify what the Board has been working on. Before the proposed amendments are brought to Town Council, the Board will need to review the final draft versus the final legislation. The Board has until June of 2017 to put the changes into effect. The proposed changes at the State level would take effect immediately, and the intent is to have the vote finalized by April, which leaves the Board some time. Mr. Flattes asked if towns would be granted an extension since the State is working on amendments. Mr. O'Connor explained the towns would not get extensions, and would have to be in compliance with current state law by June of this year.

There was no further business before the Board.

Motion by Fairbanks, seconded by Bartkiewicz to adjourn. The motion passed unanimously and the meeting stood adjourned at 8:52 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____