

The Planning Board for the Town of Derry held a public meeting on Wednesday, March 04, 2020, at 7:00 p.m., at the Derry Municipal Center (Third Floor Meeting Room) located at 14 Manning Street in Derry, New Hampshire.

Members present: John O'Connor, Chairman; Lori Davison, Vice Chair; Randy Chase, Town Administrative Representative; Mark Connors, Member; Jim MacEachern, Dave Granese, Alternates

Absent: Mark Grabowski, Maya Levin, David McPherson, Brian Chirichiello

Also present: George Sioras, Planning Director; Robert Mackey, Code Enforcement Director, Robert Wentworth, Jr., Assistant Building Inspector

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

*Mr. Connors was appointed Secretary Pro Temp*

*Mr. MacEachern was seated for Maya Levin*

*Mr. Granese was seated for Mark Grabowski*

## **Escrow**

None.

## **Minutes**

The Board reviewed the minutes of the February 19, 2020, meeting.

Motion by MacEachern, seconded by Chase to approve the minutes of the February 19, 2020, meeting as amended. The motion passed with Chase and Granese abstained.

## **Correspondence**

Mr. Connors advised the Board has received the most recent edition of *Town and City*. The NH DOT has sent notification that the Final Environmental Impact Statement/Record of Decision is available and a copy can be found on the project website [www.i93exit4a.com](http://www.i93exit4a.com). The Salem Planning Board has sent notice that they will review plans submitted by Blue Sky Towers for a 150 foot tall cell phone tower located at 350 North Broadway. Board members should save the date for the 26<sup>th</sup> annual Spring Planning and Zoning Conference. It will be held on May 30, 2020 at the Grappone Conference Center. Registration will open in April for that conference.

Ms. Davison noted she has attended this conference in the past and it is very informative; she recommends attending if schedules allow for it.

### **Other Business**

None.

### **Public Hearing**

**To discuss proposed changes to Article II, Word Uses and Definitions, Section 165-5, Definitions, to ADD definitions for Public Nuisance and Private Nuisance, and to DELETE the definition for Nuisance. The Board will also discuss proposed changes to Article XX, Livestock and Fowl, to AMEND Section 165-55, Nuisances Prohibited.**

Mr. Sioras advised the purpose of the hearing is to amend definitions relative to nuisance. Private Nuisance and Public Nuisance will be added to the definitions. Under the Livestock provisions of the Zoning Ordinance, public nuisances would be prohibited. The Board has held workshops on these changes. Robert Mackey, Code Enforcement Director, is present to provide a brief history of how the changes came about and to answer any questions.

Mr. Mackey noted the Board has discussed the proposed changes. The Town Administrator and Town Council charged staff to look at the Ordinance with the intent of protecting the town from becoming involved in what might be defined as private nuisance. Over the past summer, there were issues that came up, specific to the Livestock ordinance, between neighbors that are very subjective and hard to enforce. Complaints were made to the Town Council by residents, and that is where the charge to look at the Ordinance originated. The definition needed to be broadened so that something would need to rise to the level of a public nuisance before the Town would become involved. With a private nuisance, there would be legal recourse for a resident to take action if they felt it necessary. The Town's Attorney has stated that if a small, discrete number of property owners are complaining, that is likely a private nuisance and the property owners would seek legal redress. If a neighborhood is being adversely affected, that becomes a public nuisance and Code Enforcement would become involved. The purpose of the amendment is to avoid Code Enforcement becoming involved in situations that can be very subjective in nature and not necessarily resolved at the town level. These changes are specific to Article XX, Livestock and Fowl. There is a provision in Article III that deals with offensive nuisances, that still remains in effect. There are other provisions in the Livestock ordinance that deal with manure storage, and setbacks; those are not changing.

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

Debra Garman, 15 Hunter Drive, appreciates the proposed amendment. They had a situation with a single neighbor, not the neighborhood. The way this is written would have stopped their

neighbor for utilizing Code Enforcement as a weapon. She would prefer to have more language in the definition that more clearly defines public versus ~~public~~private, but this is beneficial.

There was no further public comment.

Motion by MacEachern, seconded by ~~McPherson~~Granese to close the public hearing. The motion passed with all in favor and review of the plan returned to the Board.

Mr. Connors said general public/general community may have legal definitions that cover “neighborhood” rather than the Board having to state a specific number of affected people. He believed Ms. Garman’s concern is addressed in the proposed language. Mr. Mackey said the term “general public” would infer that it is the neighborhood affected rather than one individual.

Mr. MacEachern said the wording is very generic. Are there RSAs that tie to this wording? The definition for Private Nuisance reads [in part], “An activity must cause harm that exceeds customary interferences and be an appreciable and tangible interference with a property interest.” What would that encompass? He wants to make sure that activity X at 5:00 a.m. could be prohibited.

Mr. Mackey explained there were a number of complaints this summer. It can be very difficult when the Department is dealing with neighbor to neighbor complaints where one neighbor has done things to mitigate the complaint (for example crowing roosters) and the other neighbor is still not satisfied. It is subjective as to what is a nuisance. To one individual, it might still be a nuisance, but with these amendments, it would be up to that individual to pursue that privately as a private nuisance. A large accumulation of manure on a property that is affecting the entire neighborhood with odor, public health issues, etc.; that could rise to the level where the town would be involved as a public nuisance. Mr. Mackey said he was comfortable with the proposed language so that his department does not have to get involved with neighbor versus neighbor complaints. With regard to roosters specifically, unless the town decides to regulate them with specific rules such as lot sizes and hours, etc., those complaints are difficult to enforce.

Mr. O’Connor noted the language has been reviewed by legal counsel. There had been discussion about adding the word “continually”; the attorney said that was inferred and did not need to be in the definition.

Ms. Davison confirmed this amendment was structured to keep Code Enforcement from getting involved in private nuisance complaints. Would the Police Department be involved in those? Mr. Mackey said there is an ability to take people to court over issues; there are specific State RSAs that deal with barking dogs. There are some situations that can be addressed by the Police Department. People can take their complaints to civil court.

Mr. Connors understood that a burden has been lifted from Code Enforcement, in that if there is a private complaint, the department can say unless it is affecting a whole neighborhood, they don’t have to spend a significant amount of time investigating it. The complaint can still be made to Code Enforcement, but that department only gets involved if it affects the neighborhood.

Mr. Mackey agreed, if his department gets multiple calls from different people in the neighborhood, then it might be a public nuisance.

Motion by MacEachern, seconded by Granese to accept an amendment to the Town of Derry Zoning Ordinance, Article II, Word Usage and Definitions, Section 165-5, Definitions, to DELETE the definition for Nuisance and ADD definitions for Private Nuisance and Public Nuisance; amend Article XX, Livestock and Fowl, Section 165-155, Nuisances Prohibited, and to forward the amendments to Town Council for their consideration and approval.

Chase, Davison, Connors, MacEachern, Granese and O'Connor voted in favor and the motion passed.

There was no further business before the Board.

Motion by MacEachern, seconded by Davison to adjourn. The motion passed with all in favor and the meeting stood adjourned at 7:20 p.m.

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

\_\_\_\_\_  
Secretary

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