

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

Members present: David Granese, Chairman; Michael Fairbanks, Vice Chairman; Charles Foote, Town Council Liaison; Randy Chase, Town Administrative Representative; Frank Bartkiewicz, John O'Connor, Lori Davison, Members; Mark Connors, Marc Flattes, Elizabeth Carver, Alternates

Absent: Jim MacEachern, Mirjam Ijtsma

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

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

### **Escrow**

None.

### **Minutes**

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

Motion by Fairbanks, seconded by Bartkiewicz to approve the minutes of the March 01, 2017, meeting as written. The motion passed with Granese and O'Connor abstained.
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### **Correspondence**

Mr. Fairbanks advised the Board has received copies of three reminder letters for escrows that will expire in May.

**Other Business****Voluntary Merger – Parcels 05091-001 and 05087, 57 Island Pond Road and 1 Featherbed Lane**

Mr. Sioras stated the two lots are owned by Harvey and Kay Feinauer. The lots are located on the corner of Island Pond and Featherbed Lane. Staff recommends approval of the voluntary merger.

Motion by Fairbanks to approve, pursuant to RSA 674:39-a, a voluntary merger of Parcel 05091-001 (57 Island Pond Road) with Parcel 05087 (1 Featherbed Lane). Parcel 05091-001 will be deleted and Parcel 05087 will be retained. Bartkiewicz seconded the motion.

Chase, Carver, Foote, O'Connor, Flattes, Davison, Bartkiewicz, Fairbanks and Granese voted in favor and the motion passed.

**Public Hearing****New Wave Diversified, LLC  
PID 09081, 154 Hampstead Road  
Review, 2 Lot Subdivision  
Continued from February 01, 2017**

Mr. Sioras advised this plan was continued from February 01, 2017.

*Mr. O'Connor recused himself from the discussion. Mr. Connors was seated in his place.*

Tim Peloquin of Promised Land Survey and Attorney John Cronin represented the applicant. Attorney Cronin noted he cannot request the Board to reconsider its vote on the waiver decision. The Board had asked at the last meeting that the plan be revised to show the water main extension and that has been provided to the Board. He requested a moment to discuss the request for findings at the end of the discussion of this plan.

Mr. Peloquin stated he submitted a revised hydrant exhibit which consists of two sheets; those two sheets can be incorporated into the original plan set. The revised exhibit shows the extension of the water line for approximately 68 feet. He provided the plan details, working in unison with Pennichuck Water Works and Mr. L'Heureux in the Derry Public Works Department. Mr. L'Heureux has asked for a few small changes that have yet to be incorporated into the plan. There has also been discussion of a small redesign which would have the construction occurring in the shoulder of Hampstead Road rather than placing a cut across Hampstead Road. DPW said that option is feasible and can be addressed after further discussion with Pennichuck Water Works.

Mr. Granese confirmed the plan before the Board this evening proposed to run the water to a new hydrant that will be within 500 feet of the proposed lot. Mr. Peloquin remarked if this revision is approved, Note 9 on the original plan set will need to be removed. That particular note indicates the applicant's willingness to install a residential sprinkler system in the new home. That note would be omitted as sprinklers would not be required if the water line is extended. The cost for this small extension of the water line and a new hydrant is \$31,000.00. The new hydrant would be diagonally across the street from an existing hydrant.

Mr. Connors confirmed a new hydrant will be added and the plan does not call for the movement of an existing hydrant. Mr. Connors asked for clarification of this section of the LDCR. He thought the intent of the regulation was to not just extend Pennichuck Water 60 feet to end in a stub. If they are within 500-1000 feet of water, they have to run the water line to the new lot. Is that correct? Mr. L'Heureux explained this section of the LDCR deals with Fire Protection. The fire hydrant has to be within 500 feet of the property. This section of the LDCR does not require the applicant to make a domestic connection; it is strictly for fire protection.

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

There was no public comment.

Motion by Flattes, seconded by Bartkiewicz to close the public hearing. The motion passed with all in favor and review of the plan returned to the Board.

Attorney Cronin requested the Board complete its deliberations on the plan and then he would request the Board to provide its findings of facts.

Motion by Fairbanks seconded by Bartkiewicz to accept the revised hydrant exhibit which details the water line expansion, accepted by the Planning Department on March 10, 2017. Discussion followed.

Mr. Connors commented relative to what he felt was incomplete and inaccurate information provided to the Board at the onset of the public hearings for this application. He was not sure it made sense to have a new hydrant 68 feet from an existing hydrant. He thought it was expensive, at \$31,000.00, to put a new hydrant across the street and wondered if the Board could reconsider its decision on the waiver.

Chase, Carver, Foote, Connors, Flattes, Davison, Bartkiewicz, Fairbanks and Granese voted in the affirmative and the motion passed.

Mr. Granese asked Mr. Peloquin to confirm they were adding 482 feet of pipe. Mr. Peloquin said they were moving the hydrant 68 feet. Mr. Fairbanks confirmed with Mr. Peloquin there is an existing hydrant across the street and this version of the plan does not include a residential sprinkler system. Mr. Peloquin editorialized the discussion relative to fire protection goes back

to the TRC discussions several years ago when the then Interim Director of Fire Prevention said there was insufficient pressure at the hydrant. That issue was not ironed out until recently.

Mr. Fairbanks asked if the Board needed to address the fact finding request. Mr. Sioras said the Board should take that up after it votes on the application. The Board asked for revisions to the plan, which it received, therefore the Board had to vote to accept the revised plan. The findings of fact is a separate issue.

Mr. L'Heureux advised that it is not uncommon to have hydrants close together. The town has done that on more than one occasion during recent water line extensions. Hydrants have been placed across the street from each other in areas where there is a heavily traveled way. This allows the town to access to a hydrant without shutting down an entire road.

Attorney Cronin asked the Board to vote the application up or down. He has asked for findings and rulings as he needs to make a record. He feels the Planning Board decision with regard to the water line expansion waiver was a mistake. He has some issues with respect to the regulation and the reduction from 1000' to 500 feet for health, safety and welfare, and the enabling authority when he looks at the precedence set by the Doolittle case and the language in that decision. He thinks the Board's decision was wrong and he needs to ask the Board why it made its decision the way it did. The Board had correct information about the hydrant pressure when it made its decision on the waiver request. ~~It is~~ Attorney Cronin felt it was unfortunate Mr. MacEachern is not present this evening as he would be interested to hear why Mr. MacEachern felt there was a difference between this case and Doolittle. Attorney Cronin explained his job is to request the Board make a finding of fact.

Mr. Granese asked how long is the water line run. Mr. Peloquin referenced the revised hydrant exhibit and said the distance is 42 feet to cross the street and another 56 feet for the water line itself to bring the hydrant within 500 feet of the driveway. There will be about 98 feet of pipe. Mr. Granese confirmed the waiver the Board denied was a request to not run 98 feet of pipe. The reason that waiver is different from the Doolittle waiver is that the existing water line was over 1000 feet away from the parent lot and then there would have been an additional 900 feet to get to the first proposed lot. The Board found significant hardship for Mr. Doolittle because there would have been an extension of about 2000 feet.

Attorney Cronin stated the Planning Board is only allowed to regulate based on health, safety, and welfare. He did not feel the Board was within its rights to say it is okay for one development, with three new lots, to have a residential sprinkler system and it was not okay for a one lot subdivision, near a hydrant and with a residential sprinkler system. This is about extending the water system, not health and safety. The original option proposed by his client is much safer than the Doolittle proposal. This is very expensive for just one lot.

Mr. Granese said the town has rules in place and applicants can ask for a waiver from those rules. The stated hardship in this case was cost and it was decided to grant the Doolittle waiver because Mr. Doolittle would have to have run about 2000 feet of pipe and in this case the stated distance is 98 feet.

Attorney Cronin presented a copy of his request for findings to the Chairman and one for the record. He asked that the Board answer each of the 26 questions.

Mr. Granese inquired of Mr. Sioras the proper procedure to handle the request for findings. Mr. Sioras said the Board could continue the hearing to allow the other Board members a chance to review the request, or the Board could answer the questions this evening.

Motion by Flattes to continue the public hearing to the next meeting to allow the Board time to review the request for findings. There was no second and the motion died.

Attorney Cronin advised the Board should vote the application up or down; the request for findings has nothing to do with the plan. The request for findings is related to the denied waiver.

Mr. Granese felt since the request for findings was presented during a public hearing, it became part of the record of the hearing. Attorney Cronin explained the request for findings has nothing to do with disposition of the plan. ~~He added;~~ the Board would be penalizing the applicant if it continued the hearing and did not vote on the plan this evening.

Mr. Fairbanks asked with regard to the procedure to properly address the request for findings of fact. Should the Board hold a separate public hearing? Mr. Sioras said the Board voted on the waivers. Normal procedure would be to vote the plan up or down. If the matter goes to court, Attorney Cronin wants the questions answered at some point. The Board can move forward on the plan before it. Mr. Fairbanks said the Board cannot ignore the request but felt the Board should move forward on the plan. Attorney Cronin advised there did not need to be a public hearing to respond to the request for findings. He can come back for another hearing to discuss it. This has been in the mix for a while. The applicant needs to be able to do something with the plan and the applicant will make a decision later as to whether to make an appeal or not. Attorney Cronin said he would not be doing his job if he did not make this request for findings to the Board and stressed again this has nothing to do with the base plan.

Mr. Fairbanks suggested the Board keep moving forward toward making a decision on this application; he was just not sure how to handle the request for findings. Mr. Sioras said a request of this type to the Board is rare. He would defer this to the town's attorney and consult with him on the matter. He suggested moving forward with the plan as is.

Mr. Peloquin confirmed the application before the Board contemplates an extension of the water line, the installation of a hydrant, and no residential sprinklers in the new home. There is an existing water line with a hydrant across the street. Is that better than a home without a sprinkler system? He wondered if he could request the Board to reconsider its decision on the waiver request one more time. Attorney Cronin said the Board would have to make that determination. The request cannot come from the applicant.

Motion by Flattes to send the request for findings of fact (the 26 questions) to legal counsel and to continue on with discussion of the plan.

Motion by Connors to reconsider the plan, which includes a hydrant and no sprinklers, adding now the Board has all the information before it. ~~he~~ He would recommend reconsideration of the waiver decision.

Mr. Fairbanks noted there are two motions on the table; neither has a second.

Davison seconded the motion made by Flattes.

Chase, Foote, Connors, Flattes, Davison, Bartkiewicz, Fairbanks and Granese voted in favor; Carver abstained and the motion passed.

Mr. Connors reworded his motion to reconsider.

Motion by Connors to reconsider the decision made on December 07, 2016 with regard to a request for a waiver from LDCR Section 170-30.1 and 170-28.D, based on receipt of new evidence that was not provided originally, the lack of which impacted the Board's decision. Fairbanks seconded the motion as he felt the Board needed to be consistent and has not been. Discussion followed.

Mr. Sioras said procedurally, if the Board voted to reconsider the waiver, then the Board would need to make a new motion on the waiver and decide it up or down. Mr. Flattes asked if it mattered who sat and voted on the waiver. It was noted Mr. Connors did not sit during the original discussion and therefore could not make the motion.

Connors rescinded his motion.

Motion by Fairbanks to reconsider the decision made on December 07, 2016 with regard to a request for a waiver from LDCR Section 170-30.1 and 170-28.D, based on new evidence that was not provided originally, the lack of which impacted the Board's decision. Bartkiewicz seconded the motion

Chase, Foote, Connors, Flattes, Davison, Bartkiewicz, Fairbanks and Granese voted in favor; Carver abstained and the motion passed.

Mr. Flattes asked if the Fire Department has had a chance to review the revised hydrant detail plan, and which does the Fire Department prefer – sprinklers or a hydrant. Mr. Sioras stated Assistant Chief Jackson was comfortable with either a hydrant or residential sprinklers if the hydrant is waived. Attorney Cronin added that if the waiver is granted, it is understood Note 9 will be reinstated on the subdivision plan, which states the applicant will voluntarily install residential sprinklers. Mr. Connors asked for cost estimates for the two options and was advised to install a hydrant would be about \$31,000 and it would cost between \$4,000 and 8,000 for a residential suppression system.

Mr. Sioras said in his discussions with Assistant Chief Jackson, a hydrant located down the road from the new lot would be adequate protection because the Fire Department could run hose to

the house. Mr. Peloquin added Public Works and Pennichuck reviewed the connection. The new hydrant would also need to be maintained by the town so that is an additional cost. Mr. L'Heureux explained the hydrant rental charge is to the Town of Derry from Pennichuck. Pennichuck maintains and owns the hydrant; the Town pays a fee to protect that part of town. This is common practice; Londonderry pays similar fees to the Town of Derry for hydrants in their town. The fee is somewhere in the vicinity of \$1,500 to 2,000 per year based on his recollection; he would need to verify that figure.

Motion by Fairbanks, seconded by Connors to grant a waiver from LDCR Sections 170-30.1 and 170-28.D to not require extension of the water main to within 500 feet of the proposed development. After review of the waiver request the Board finds that strict conformity to the regulation would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations. Discussion followed.

Mr. Granese reminded the Board if the waiver is granted there will not be an extension of the water line and there will not be an installation of a new hydrant but the applicant will install a residential sprinkler system in the new home. Mr. Chase said if the waiver is approved and since the Board has accepted jurisdiction on the revised plan, there should be an addition to any motion to approve that the hydrant is forgone to keep the record clean. Mr. Connors asked if ~~there is any~~ annual maintenance or inspection is required by the town ~~of for~~ residential sprinklers. Mr. Granese said the homeowner should have the systems inspected every five years but the town does not perform the inspection.

Chase, Foote, Connors, Flattes, Davison, Bartkiewicz, and Fairbanks voted yes. Foote said his decision is based on the points raised by Mr. Connors; Connors cited cost to the town as a reason for his vote. Carver abstained. Granese voted no, stating he wanted to remain consistent with his December vote. The motion passed.

Motion by Fairbanks, seconded by Bartkiewicz to approve, pursuant to RSA 676:4,I, Completed Application with the following conditions: subject to owner's signature; subject to on-site inspection by the Town's Engineer; establish escrow for the setting of bounds or certify the bounds have been set; establish appropriate escrow as required to complete the project; add sprinkler system as shown on the reinstated Note 9; obtain written approval from the IT Director that the GIS disk is received, is operable and complies with LDCR Section 170-24; note approved waivers on the plan; amend the driveway profile to show at least a 1-2% slope to aid in sheet flow; the driveway profile should reflect the current driveway regulations; revise plans and details per current and subsequent comments from the Town's Engineer; clarify and/or amend notes regarding the trees to be installed in the buffer: the trees should be 4 feet tall with a no less than five foot spacing; note the total number of trees to be planted (48); subject to receipt of federal or state permits relating to the project; conditions precedent shall be met within six months; a \$25.00 check, payable to Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirement; submission of the appropriate recording fees, payable to the Town of Derry.

Chase, Foote, Connors, Flattes, Davison, Bartkiewicz, and Fairbanks voted yes; Carver abstained, Granese voted no as the construction of the new home was a hardship for the neighbors. The motion passed.

Attorney Cronin stated he withdrew his request for findings of fact. This would negate the motion made by Mr. Flattes.

*Mr. Connors stepped down and Mr. O'Connor resumed his seat.*

**Crom, LLC**  
**125 Windham Road, PID 01023-001**  
**Compliance Hearing, Site Changes**

Mr. Sioras noted the Board decided to schedule a public hearing to discuss the changes to the site which had been approved for the addition of a self-storage building. This was based on the additional information provided by the applicant and at the request of Maureen Rose. The plan shows the location of underground storage tanks, heating/air conditioning units exterior to the new building, and the associated landscaping and buffering. Abutters have been notified of the hearing.

Eric Mitchell, of Eric C. Mitchell, Associates presented for the applicant. Also present was Edward MP Smith, owner, and his representative, Rico Borrazzo. Mr. Mitchell handed out a copy of a revised plan to the Board members. The difference between the plan presented this evening and the plan presented for the Board on January 20, 2017 is the addition of a sound barrier fence note near the HVAC units and a very light line denoting the location of the sound barrier fence. There is no revision date, nor is the plan stamped by a LLS. Maureen Rose, seated in the audience, asked for a copy of the plan. Mr. Granese and Mr. Fairbanks offered their copies to be passed around the audience.

Mr. Mitchell stated the underground propane tanks are still on site and arbor vitae has been proposed to screen them. The pads for the HVAC units are near the parking spaces in the corner of the building and they would add fencing to screen them and to reduce noise. They are in the same location as shown previously. Representatives from the propane and building companies are present tonight in the event the Board members have questions. He noted the propane tanks are installed and the pads for the HVAC units are already in place.

Mr. Granese asked Mr. Mitchell if he was up to date on the details of the last discussion. Mr. Mitchell said he was aware the Board wanted to hold a public hearing to discuss details of the plan. Mr. Granese explained there had been discussion that there would be heating units hung on the inside of the building. Mr. Connors added the contention seemed to be around the term "climate controlled" versus "heat". Mr. Borrazzo stated there was never a plan that showed heating units hung on the inside walls of the building. Mr. Mitchell said he understood there had been some discussion during the initial plan review. Mr. Borrazzo stated at the last meeting, Mr. Smith publicly apologized for misspeaking once about the heating units. He has many projects



going on at the same time. Each time this building has been discussed since 2014, it has been referred to as a 'climate controlled' building. It is understandable, given the contentious nature of the abutters at hearings during which Mr. Smith has been [verbally] battered that he misspoke one time. This building was always intended to be climate controlled.

Mr. Granese said he only mentioned it because he wanted to make sure Mr. Mitchell was fully aware of all the discussions that took place at the last meeting. It had also been mentioned at the last meeting that the building approved by the Board could not be built. Mr. Borrazzo stated Mr. Smith bid out the project to multiple companies. They did not go with one of their former vendors, and instead awarded the bid to BETCO. This is the first project they have done working with BETCO. Mr. Smith was not aware of technical specifications contained in a BETCO designed building.

Mr. Flattes noted the revised plan submitted this evening is lacking a Professional Engineer stamp. Mr. Mitchell said the plan can be certified as it was prepared by licensed engineers in his office.

Mr. Fairbanks said he understood the structure as is cannot support the heating units on the interior walls, but the HVAC system could go inside the building on the ground. He works in this profession. It would require a different design and different HVAC units, but it could be done. He felt the Board should discuss the location of the propane tanks; that item did not make the public notice. Mr. Sioras did not believe the motion had included that item. In reviewing the minutes of the February 01, 2017 meeting it was noted Mr. Granese had added that item after listing out the three items on the legal notice, and Mr. Fairbanks only voted to hold a public hearing if the location was discussed.

Mr. O'Connor said the LDCR grants Mr. L'Heureux the authority to make revisions in the field. Mr. Fairbanks said his opinion was that in most cases, changes of this sort would be minor changes. However, the brunt of the public hearings for this site plan dealt with abutter issues, and the spirit of the public hearing discussions, movement of the propane tanks is not a minor change. 90% of the public hearing discussion was about the residential buffer. The tanks are not in the buffer but are close to the buffer and the tanks affect the abutter. Mr. Borrazzo confirmed the tanks are not located in the buffer. He asked Mr. L'Heureux if in his experience, tank locations are altered on sites and it is considered a minor change. Mr. L'Heureux said if the locations are changed, they are typically changed to a similar location and it is considered a minor change. Mr. Borrazzo noted the tanks were moved, but not into the buffer; he does not understand why this would not be considered a minor change.

Mr. Fairbanks stated in 99% of the cases, he would agree it was a minor change. In this particular case, it is an issue. He said the tanks also could have been left in the original location and the parking spaces moved instead. Mr. Connor read from the minutes of the February 01, 2017 minutes (page 6) where it stated the original configuration did not comply with the safety codes, even without the addition of air conditioning. He thought the issue of the location of the propane tanks had been settled.

Mr. Borrazzo said the alteration of the parking space locations would be considered a major change and therefore they did not explore that option. They went with what was considered a minor change so as not to alter the spirit and intent of the project. The propane tanks are not a safety concern; propane is safer than most other heating alternatives. They did not interfere with the buffer and they protected the tanks, so he is not sure why this would be considered a major change.

Mr. Fairbanks felt in this particular case, this is not a minor change. Everything that has been done with this plan had to do with the impact to the neighbors and he feels changes of this type were worthy of discussion as the changes affect the neighbors. Mr. Borrazzo wanted to know how this location has more impact than the original location. Mr. Fairbanks responded because the tanks were now 65 feet away from the property line. Mr. Borrazzo noted the tanks could be 10 feet away from the property line per code. Mr. Fairbanks disagreed because in this case, that would put them in the buffer. Mr. Borrazzo rebutted they are well outside of the required safety parameters. They did this the right way. It would be a major expense to reconfigure the parking and the location of these items. The plan was submitted and approved. The issue with the location of the propane tanks was not picked up by the Fire Department, the town, or their staff. The propane company came to the site for the install and said no, they can't go there. There is no other location because of the pavement, roadway, and ponds on this site; that is why they were put there.

Mr. Connors said he had been under the impression that the Board was not going to be discussing the tank location at this meeting. Mr. Granese said review of what was voted on indicates the location of the propane tanks should have been in the legal notice, but it was part of the last meeting and can be discussed this evening. He asked the Board how the members wanted to proceed.

Mr. Sioras commented at the last meeting, and in the notice, the Board stated it was to review the plan received on January 20<sup>th</sup>. This is a different plan.

Motion by Fairbanks, seconded by Bartkiewicz to accept the revised plan presented this evening to the Board. Discussion followed.
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Mr. Mitchell stated the plan presented to the Board this evening was prepared by a Professional Engineer. As a condition of approval, they will present a plan stamped by a PE, and will add the revision date (today's date) in the revision block. They can also have the plan stamped by a Licensed Land Surveyor. Mr. Mitchell signed and dated the plan for the record. Ms. Rose felt it was wrong for the Board to accept this version of the plan; this is not the plan her engineer saw and the Board should not hold a hearing on a plan that as an abutter, she has not had a chance to see. Mr. Connors asked if the Board accepts the January 20<sup>th</sup> plan and then decides later it likes the idea of the sound barrier, can the Board make the addition of the sound barrier as a condition of approval. Mr. Granese said the Board would decide that.

Chase voted yes; Carver voted no as she was not comfortable voting on a plan that is not technically complete; Foote voted no as the plan was submitted this evening and is not stamped; O'Connor voted yes; Flattes voted no because the plan is not stamped and it was not available
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for review by the public; Davison voted yes; Bartkiewicz voted no for the reasons stated; Fairbanks voted no for the same reasons and this was not the plan in the member packets and it was not available before this meeting to the public for review; Granese voted no for the same reasons. The motion failed.

Mr. Mitchell said he would like the Board to consider the plan the Board has on file. If the Board moves forward, the only addition to that plan would be the addition of a sound barrier in front of the HVAC units. With regard to the location of the propane tanks and the HVAC units, he would like to continue with the location of the tanks and AC units as shown. They need both the propane and the AC for the building and would like to move forward. They would have discussed this two years ago if they could have.

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

Maureen Rose, 115 Windham Road, said it was upsetting to have a new plan presented at the last minute. She read a letter from Christian Smith, PE of Beals Associates, PLLC dated March 13, 2017 into the record. This letter along with information prepared by Ms. Rose relative to noise pollution, climate controlled versus non climate controlled storage units, air conditioning soundproofing, a copy of the proposed changes to the plan, the current tax card for 125 Windham Road, and propane accident information gathered from OSHA and the press were provided to the Planning Board members prior to the start of the meeting and a copy was placed in the file. The letter from Beals Associates recommended placement of the HVAC units inside the building and if that was not possible, to move them to the southwest or southeast side of the building. At a minimum, if the units remained in the proposed location, they should be enclosed in a sound deadening enclosure with fencing, and the propane tanks should be equipped with a 3 sided, four foot high reinforced concrete wall to protect Ms. Rose's parcel from any potential initial blast concussion in the event of an explosion.

Ms. Rose noted her lot is in a residential zone and the project is in an industrial zone. The Zoning Ordinance says under prohibited uses in the Industrial zone are uses that are injurious, noxious or offensive by way of the creation of adverse traffic impacts or conditions, odor, fumes, smoke, dust, vibration, noise or other objectionable features, or hazardous to the community on account of fire or explosion or any other cause. This parcel is seven acres in size and they are developing 3 acres of land. If there were oversights, this is not the town's issue. Ms. Rose noted NSA Property Holdings, LLC owns the land and she is not sure that NSA is bound by anything that Mr. Smith says. Mr. Smith had said he would heat the inside of the building but then he chose to purchase a building that could not meet those requirements or the requirements of the granted approval. His decision disregarded the town approved plans.

Ms. Rose asked that the Board obtain clarification if there are to be three units outside or two. There had been discussion of two units/pads, but the plan and notes clearly shows three; although one of the pads is hidden under a tree. Ms. Rose discussed the effects of noise pollution at different decibels as well as how noise decibels are calculated. Three units at 88 decibels each are going to be loud. The concrete pads are already there and were put down early in the construction. These will be outside of her bedroom window and she does not have air

conditioning. She is requesting the removal of the AC units and that the heat is put inside the building. Put the propane back where it was supposed to go. Nothing will take away the noise. She is requesting the AC units be denied. Climate control was a topic of discussion. The definition for climate control storage can vary between storage companies and locations. Sometimes units are heated but not cooled and vice versa.

Ms. Rose said propane tanks do explode. A manager at Haffners told her that 2000 gallons could create a blast that could destroy the neighborhood and it would feel like an earthquake. Can there be sprinklers around them in case they do explode? This is a bad location as there is a dangerous bend in the road where there have been multiple accidents. She feels the applicant should remove the parking spaces and put the propane tanks 10 feet from the building. Ms. Rose also had a clarification to the minutes of the February 01, 2017 meeting, specifically page 8. The telephone pole is at the corner of her property, above the location of the propane tanks, not at the corner of Windham Road.

Ms. Rose said this is upsetting. This is a 44,000 square foot storage building. The developer took all the land and put objectionable things outside her bedroom window. This is not something the Planning Board members would like outside their homes. This is a quiet residential neighborhood. The propane should be further away. She felt the addition of a concrete wall near the propane tanks would be beneficial in case the tanks blow up. The Board needs to think about things when they put a business beside a residence.

Mr. Connors asked if Ms. Rose's engineer was aware the propane tanks are located underground. From his comments about the addition of the wall, it does not appear so. Ms. Rose confirmed the engineer knew they were underground.

Lee Bernard, 1 Towne Drive, had a few concerns. His grandchild plays in the yard. 2000 gallons of propane is a concern and could be devastating to the neighborhood. He is requesting there is not as much volume and would like the propane moved as far away as possible. They live in this neighborhood. With regard to the condenser units, he does not feel that to be a safety issue, it is more of a noise issue. The noise will not allow them to enjoy a warm summer night. He also felt the public should have been notified of the site changes. The air conditioning units have a direct impact on Ms. Rose and the neighbors. He asked the Board to consider what they would think if this was next to them and to go by the regulations of the town.

Rene and Peter Austin, 113 Windham Road, advised they can see the site from their bedroom window and the corner where the a/c units are planned. Mr. Austin advised he had forwarded an email earlier today for the Board to review and his concerns had been placed in writing. They can see the back of the facility from their window. Any sound will come forward and bounce off the walls. He does not feel a wall or trees will stop the noise and they will be able to hear this all year long. Ms. Austin explained they moved to Derry as Derry is one of the few communities that will allow ducks and chickens on residential property. This noise could drive the poultry literally insane. They want fresh eggs and chicken. The chickens are an investment for them and they would like to keep their investment healthy. To allow the air conditioning units on top of the building will stress the chickens out and they won't lay eggs. She asks the Board to consider why people move to Derry. Mr. Austin understands this is an industrial use next to a

residential area. Can they keep the industrial noise to the industrial side and not pointed to the residential side? He shares the same concerns noted by the other abutters about the propane.

Mary Cappotto, 10 Towne Drive, shared the concerns with regard to the propane tank and the gas. She lives several homes away. Sound travels and goes over her house. Noise from the HVAC units will be louder than what they should live with. This development has changed the dynamics of her street and town. She respectfully asks the Board to consider that. She has a nice home and entertains often. Highway noise is difficult and this will add to the stress. One of her neighbors sent her an email and asked her to read it into the record as he could not attend.

Doug Delara of 4 Towne Drive indicated in the email he had concerns about the climate control equipment for the new building. He felt the abutters to the facility would experience an increased level of noise that he does not want to experience. The location of the HVAC units will not physically affect him but he feels it would be best to place them to the back of the property so the abutters do not have to adjust their at-home lifestyles to compensate. Ms. Cappotto said she was aware there is a plan to plant 6 foot high trees to buffer improvements. Before the site was cleared, there were 30 foot tall trees and those were a better sound barrier. It will take years for the six foot tall trees to grow enough to be effective.

Jessica Axne, 3 Towne Drive, said she has one small child and another on the way. She is two homes away from the main road. This is a nice, quiet neighborhood and they would like to be able to enjoy the outdoors. She does not think the noise will be good for anyone and would like things to stay as they are.

There was no further public comment.

Motion by Flattes, seconded by Bartkiewicz to close the public hearing. The motion passed with all in favor and review of the plan came back to the Board.
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Mr. Granese asked Mr. Chase what would happen if the top came off the underground propane tanks. Mr. Chase said there would be a release of vapor depending on how badly the valve was knocked off. Depending on the weather, the Fire Department would likely put a fog stream on the tanks until it could be plugged or drained. He noted there are thousands of these tanks all around Derry. In the neighborhood where he and Mr. Fairbanks live, there is 2000 gallons of propane around them. He can recall three incidents involving propane in the 35 years he has been on the Fire Department. The chance for an explosion in an underground tank is nil. A tank will only explode if there is an external heat source and flame impinges on the tank, the liquid boils, and then the tank fails. That can't happen with an underground tank. Mr. Granese asked what would happen if a car hit the top of the tanks. Mr. Chase said the most that would happen is a valve would be taken off. There would need to be the right type of air-fuel mixture to create an explosion. There is a good buffer between the tanks and the road. Given the existing trees, the bollards and the proposed arbor vitae, he feels it is very unlikely that anything would get that far. He would rather see the bollards around the tanks than a jersey barrier. He feels a three sided, explosion proof barrier is ridiculous. Mr. Chase said he also felt Mr. L'Heureux was faced with a field decision and that he made a good decision. This area of the site has less traffic and the location of the tanks is in a better position than the former location which had more traffic.

He feels the tanks are safe where they are currently located, especially with the addition of the bollards and the proposed arbor vitae.

Mr. Granese confirmed there are three air conditioning units. Mr. Borrazzo said the a/c units went there after it was determined the propane tanks could not go there. It was the most convenient and the only place they could put them. They did not explore putting them inside because they would have had to reconfigure the building, and the compressors would have to be outside.

Mr. Smith said when he moved the tanks they looked for a place to put the HVAC units. He further clarified the item having to do with the hanging heat units. This project has taken years to do. The economy is picking up and they were lucky to obtain BETCO for the building vendor. There are self-storage projects taking place all over the state. When it was found they could not hang the heating units on the inside of the building, or put them on the roof, it was felt the most out of the way location on the industrial site was in the alcove. They can work with fencing and sound proofing for the Board. People drive Windham Road every day; these are not loud units and they will take all precautions to protect the neighbors from the noise. They made sure the underground tanks were protected. Mr. Granese asked where the a/c units were planned originally. Mr. Smith said they had not specified a location on the plan. He takes full responsibility for not saying there would be air conditioning for the building as well. He has four ongoing projects; this one is the most contentious project he has ever had. The town and staff have been fantastic to work with; the Planning Board has been reasonable.

Mr. Granese asked for further clarification for the record. He understands Mr. Smith misspoke; at what point did he realize they needed to add the air conditioning? Mr. Smith said they met with the Town, went before the Planning Board for approval, and then began to hire subcontractors. When the propane company representatives ~~come~~ came to the site to install the tanks, they found out they could not put the propane tanks in the proposed location. At this point, they have not yet hired a heating/cooling company because they don't know what to do. Mr. Granese asked where the condensers will go. Mr. Fairbanks stated the documentation submitted at the last meeting indicates the units are combined. They could be placed inside the building with the condenser outside, which would decrease the noise levels. Mr. Smith said they looked at the situation and felt soundproofing with a fence and vegetation would be of the best benefit.

Mr. Borrazzo advised he has research with regard to sound travel. The sound of the units will be at 88 decibels, one foot away from the units. The property line, on Ms. Rose's side of the property, is 100 feet away. The noise would be at 47.08 decibels at that property line, with no obstructions. They are willing to add a 6 foot high sound barrier. That same 88 decibels, with the barrier set 3 feet from the sound source, measured at five and half feet from the ground, brings the decibel level to 16.8. He took the average height of a second floor window, which is 15 feet, and estimated Ms. Rose's home to be 200 feet away. This brings the decibel level to 13.5 at her window. A comparable noise at 13.5 decibels is the hum of an incandescent light bulb. He does not see how this will impact her sleep. Ms. Rose said her bedroom is on the first floor. Mr. Borrazzo said that brings the decibel level down even more.

Mr. Connors reviewed portions of the minutes from the last meeting, specifically on pages 5 and 6. He noted there are three HVAC units proposed. He can see the need for air conditioning and believed Mr. L'Heureux made a smart move in relocating the propane tanks. Buried propane tanks are not a hazard. He feels the issue is noise. If there was a mistake made in not speaking of the air conditioning up front then admit it, mitigate it, and move forward. The town needs business in town but the abutters also need to be made happy. He suggests spending time discussing ways to mitigate the noise.

Mr. Flattes noted per the comments made by Mr. Chase, it appears the underground tanks do not cause a major threat. However, could an alarm be installed that would ring through to fire alarm if there was a leak? Mr. Chase said that was not an option; that is why mercaptan is used. He does not see an issue with the tanks. They are all over town. There are two apartment buildings on either side of him with 20,000 gallons of propane, and there is a 100,000 gallon above ground tank on A Street. He feels there is ongoing discussion about something that does not need to be discussed.

Mr. Flattes asked Mr. Fairbanks if the HVAC could be 100% inside the building with a vent for the air exchange. Mr. Fairbanks said there would still need to be an outside component. The noisiest part is the air handling which could be inside. Mr. Smith reiterated that at the beginning of the last meeting and at this meeting, he claimed fault for the lack of representation for the air conditioning units. Ms. Carver stated she did not think the applicant did anything wrong here. With regard to the propane tanks, there does not seem to be a safety issue but would expect in the future that if there are changes to a site plan, the changes are brought to the Board for review; especially on a contentious plan. With regard to the decibel study, does it take into account the positioning of the walls of the building? The walls are angled. Mr. Borrazzo said the study does take that into account; it included reflected sound. Ms. Carver said at the last meeting, she had asked if they had exhausted all possible options and the answer was yes. As far as the options, she would like to see the iterative process to prove this is the only place the units can go. Mr. Smith said no matter where the units go on the site, it will be an issue. Ms. Carver noted if she was an abutter, she would want to see them facing the industrial zone. She believed when the lot was purchased, Mr. Smith knew the lot abutted a residential zone and that this would be contentious. Mr. Smith said he had no idea. Mr. Borrazzo said this is a unique lot as it is industrial but abuts residential. This is why the town has guidelines in place for noise levels at the property line; the town code says no louder than 80 decibels. They are well below that noise level. They are in compliance with the regulations and within the spirit of it. What the study he prepared does not show is the 50 foot treed buffer, the structures, and the additional trees between the building and the property line and the sound barrier. All of those things will act as sound deadening material. They wanted to show a worst case scenario. They want to be good neighbors. The arbor vitae will also act as a sound barrier. They want to minimize the impact on the community. They comply with all of the regulations and want to have the spirit and intent of the regulations upheld. They are well within the regulations.

Mr. Smith wanted to respond to Ms. Carver's comment that he knew what he was getting involved in. Mr. Smith said he met with the town and the staff who appeared eager to have more business in town. This is an industrial site. The staff is always available and either answers the

phone or phones right back. They answer emails the same day. As difficult as this project has been, this is the finest town staff he has worked with. He had no idea this project would be so difficult; in other projects the town staff and the regulations is the issue. They are three years into this project and in that time the town has had more self-storage projects. Had he known how this would have gone, he would not have done this project.

Mr. Foote asked with regard to the air conditioning unit noise. How long will they run? Will it be continuous? Mr. Borrazzo said the heat in the units will turn on when the internal temperature of the units reach 50°F. The air conditioning will not turn on until the internal temperature reaches 85°F. There may be fifteen hours over the span of a year that they will turn on. Typically, the hottest hours of the summer occur during midday. Mr. Foot asked how does the interior temperature of the building factor. Mr. Borrazzo said the interior of the building is 10-15° colder than the exterior. It is a very insulated building. Mr. Smith explained a good portion of the building is below grade and one corner of the building is about 5 feet in height from the pavement. Mr. Foote asked if they could explore the option of placing the HVAC units inside the building. Mr. Smith said they would look into it. He feels keeping the units in the proposed location, and adding sound deadening material and trees would be sufficient according to what they researched. He is behind on the project and would prefer to move forward as proposed. Placing the units inside the building would also necessitate removing rental space. The average self-storage project takes between 12-15 months; this is one for the books.

Mr. O'Connor had comments with regard to the climate control for the new members. He recalls during the site walk held in September of 2014 there had been discussion of climate control. During all discussion with the Board and staff it was mentioned this was a climate controlled building. The Board has seen climate controlled storage units at Linlew Drive and Ashleigh Drive. The Board knows what 'climate controlled' means. Mr. O'Connor stated he has a friend who owns an HVAC firm that constructs them for LEED certified schools. He likes the idea of a sound barrier fence, but there would be some reverberation because of the building. He recommends a complete surround using all-weather barriers that would reduce the vibration. Mr. Smith said they would be willing to do that. Mr. O'Connor shared the information he received from his friend with Mr. Smith. (A copy was later provided for the record and is now part of the file.)

Mr. Chase asked where on the plans were the barriers shown for the industrial units. Mr. Borrazzo said these are L shaped and would be on the house and street side of each unit. Mr. Chase said a sound wall from the building wall to building wall would create less chance for sound to escape. He would enclose the units; this is not a large architectural change and is a reasonable cost alternative. Mr. Smith said they are willing to do that. Mr. Connors agreed with Mr. Chase and has seen something similar in the southwest. The outdoor AC units are placed behind decorative walls and people don't even know they are there.

Motion by O'Connor to accept the signed and stamped plan provided by Crom, LLC to the Board on January 20, 2017, which is dated January 19, 2017, seconded by Fairbanks.

Chase, Carver, Foote, O'Connor, Flattes, Davison, Bartkiewicz, Fairbanks and Granese voted in favor and the motion passed.



Motion by O'Connor to approve the location and addition of the air conditioning/heating units as shown on the plan, the buffering and proposed landscaping, and the addition of the all-weather sound panels which will surround all of the air conditioning-heating units to be shown on the plan; approve the bollards as shown for the underground storage tanks as per the plan; and all conditions noted on a certified plan. Discussion followed.

Mr. L'Heureux asked with regard to the existing bollards, will the number be reduced or will they remain as is.

O'Connor added the following amendment: the bollards will be retained, as is, with the addition of thirteen (13), six foot tall arbor vitae. Discussion continued.

Mr. Connors asked who recommended the number of bollards be reduced. Mr. L'Heureux noted there had been numerous comments during the meetings with regard to the number of bollards. Mr. Granese asked if the sound barrier would go all around the units. Mr. Fairbanks suggested placing it wall to wall. Mr. O'Connor felt that would create more reverberation. In addition to the sound barrier surrounding each unit, there will still be five, six foot tall arbor vitae which will provide a barrier to the front.

The motion was seconded by Bartkiewicz.

Chase, Foote, O'Connor, Davison and Bartkiewicz voted yes; Carver abstained; Flattes voted no as he felt there were too many changes to the plan; Fairbanks voted no as he felt there were mistakes made in the design but that does not mean that what goes into the site is not what is approved by the Board; Granese voted no for the same reasons and this is a hardship to the abutters. The motion passed.

The Board took a five minute recess.

## **WORKSHOP**

### Workshop #4 – Review of proposed amendments to the Zoning Ordinance, Article III, Section 165-25, Accessory Dwelling Units

Mr. Sioras reminded the Board discussion of this item had been put on hold until the State Legislature finished its proposed amendments. A copy of HB 265 as amended by the House, dated March 8, 2017 was provided to the Board in their packets. Mr. Fairbanks noted the law states the towns don't have to allow accessory dwelling units in townhouses, but could do so if the towns wanted to. The current changes to Derry's ordinance do not allow ADUs with townhouses, condominiums, or manufactured housing. Mr. O'Connor said this only one segment of the proposed changes at the state level. The proposed amendments now move on from the House to the Senate and if it passes the Senate, will go on for a final vote at which time the law will become effective. He does not anticipate any changes will be proposed at the Senate level. Mr. Connors commented a duplex cannot have an accessory dwelling unit. Mr. Chase

said it could be allowed if the town wanted to allow it; but the town does not have to. Mr. Fairbanks asked if the Board wanted to wait until the State finalized the law before moving forward. Mr. Granese advised the amendments will still need to go before Town Council for final approval. Mrs. Robidoux stated legal counsel had proposed changes to the document and the Board should review those to determine if those changes will be included prior to finalizing the document.

Mr. Granese asked Mr. O'Connor with regard to the "detached" component. Mr. O'Connor has not heard that will be included in the changes at the state level. Mr. Fairbanks noted that is another item, if the State adds it, where the town would be permitted by law to allow them, if the town so chooses.

Ms. Carver commented legal counsel had added a note that ADUs cannot be used for short term rentals. Why would the town not want to allow those? Mr. Fairbanks thought the original purpose of these units is for in-laws, etc. Mr. O'Connor said short term rentals would cover Airbnbs and there are issues at the State level with the recovery of the applicable taxes. Mr. Fairbanks said the attorney did suggest that even though ADUs are composed of kitchens, living rooms, and one or two bedrooms, that the town consider removing that and adding studios. Mrs. Robidoux felt studios might be less than 750 square feet which would not be allowed per the new law.

Mr. Fairbanks commented on the new item F. That item says the conversion of an independent, free-standing accessory structure for the purpose of creating an ADU is prohibited. It seems to say a detached garage cannot be attached to the single family residence just to create an ADU. ADUs are not allowed over detached garages. Mr. Sioras said there is a carriage house in town that is detached which contains an ADU. That was allowed by variance. Mrs. Robidoux said she interpreted the clause differently than Mr. Fairbanks and read it to mean that a detached structure could not be converted to an accessory dwelling unit. The Board noted only one ADU is allowed on a lot. Ms. Carver asked why the town would not allow a detached structure to be converted to an ADU. Mr. Chase explained that would be in opposition to Section 165-8 which states only one residential unit is allowed on a residential lot.

Mrs. Robidoux suggested providing a clean copy of the changes provided by legal counsel and a clean copy of the changes proposed by the Board so that it would be less confusing to review and the Board could then see exactly what had been changed by legal. These could be reviewed at the next meeting. Would that leave enough time to get through the Planning Board and Town Council hearings and have the changes effective by the time the new law went into effect at the end of June? The Board felt the timeframes might be tight but possible. This item will be placed for an additional workshop at the next meeting.

Mr. O'Connor asked when would the changes go into effect for the town. Mr. Sioras said as soon as the public hearing was noticed, residents would need to comply with the proposed changes. Mr. Mackey has stated they don't receive many requests for ADUs.

Workshop #4 – Review of proposed amendments to the Zoning Ordinance, Article II, Word Usage and Definitions, Section 165-5, Definitions

The Board reviewed the remaining proposed changes and additions to the Definitions section of the Zoning Ordinance.

Agritourism will be amended to be in compliance with recent changes at the state level, adding in the marketing items.

The Board was satisfied with the proposed changes to Animal Hospital and Attached.

Bottling and Brewing will be further revised. The two sample definitions will be combined and bottling will be separated for its own definition. The purpose of this would be to make sure that beverages that are non-alcoholic that could be bottled would also be allowed.

The proposed revisions to Buffer and Bulk Fuel Storage & Distribution, and Commercial Service Establishment were satisfactory.

The Board elected to move forward with option three for Contractors Yard.

The proposed amendments to Farm were satisfactory. Ms. Davison confirmed this definition would cover a hobby farm.

The definition for Kennel will move forward as option four, removing “or where dogs or cats”. This will allow boarding, and breeding for sale of “other domesticated animals”. It was noted the state regulates people who breed or have more than six dogs.

Machinery Transportation Equipment will be removed.

The Board was satisfied with the proposed amendment to Modular Housing.

The proposed definition to Nursery will be changed to the definition found at RSA 433:21, XII.

Pharmacy will move forward under option three, removing the word “only”

The Board was satisfied with the proposed changes to Repairman and Rooming House.

Sewage will move forward with option one; and no changes were proposed for Self Storage Unit and Wood/Metal Craft.

All changes will be incorporated and a clean document presented to the Board for review and the scheduling of a public hearing at the next meeting.

There was no further business before the Board.

Motion by Flattes, seconded by Bartkiewicz to adjourn. The motion passed unanimously and the meeting stood adjourned at 10:12 p.m.

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

\_\_\_\_\_  
Secretary

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