

The Planning Board for the Town of Derry held a public meeting on Wednesday, April 19, 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; Brian Chirichiello, Town Council Liaison; Frank Bartkiewicz, Jim MacEachern, Lori Davison, Mirjam Ijtsma, Members; Mark Connors, Alternate

Absent: Randy Chase, Elizabeth Carver

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. Granese addressed a housekeeping issue. He reminded the Board members to respect the person who had the floor and to be cognizant of the appropriate opportunities to speak. Everyone gets a chance to speak on matters and if a Board member has a comment, it should be held until that Board member has the floor. It is difficult to accurately record the meeting or to listen to the meeting when people are speaking the same time.

Escrow

#17-10

Project Name: 30 Brook Street Site Plan

Developer: Stage Crossing, LLC

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 23016, 30 Brook Street

The request is to renew Letter of Credit number Stage-515-P, in the amount of \$175,342.32 drawn on Merrimack County Savings Bank for the above noted project. The expiration date will be May 19, 2018.

Motion by Bartkiewicz, seconded by Fairbanks to approve as presented. The motion passed with the majority in favor. O'Connor voted no as he wanted to stay consistent with his vote to deny the original site plan.

#17-11**Project Name: Lou's Custom Exhaust****Developer: Felco Builders****Escrow Account: LG Auto Racing Exhaust****Escrow Type: Letter of Credit****Parcel ID/Location: 05037, 82 Rockingham Road**

The request is to approve the final release of Letter of Credit #2016-210, in the amount of \$107,071.63, drawn on Triangle Credit Union for the above noted project. The amount to retain is zero.

Motion by O'Connor, seconded by MacEachern to approve as presented. Discussion followed.

Mr. Connors advised he has been informed by abutters to the project that there is an excessive amount of noise at the end of the work day. Mr. Granese advised the issue should be referred to the Code Enforcement Officer as the Planning Board does not have jurisdiction over that. Mr. Connors also reported a pine tree has come down and is resting in the drainage swale. Mr. L'Heureux stated that was not the case when he was last on site, but he will look into it and speak to the owner about removing the tree.

The motion passed with all in favor.

#17-12**Project Name: Groundhog Landscaping****Developer: 6-8 Bowers Road****Escrow Account: Same****Escrow Type: Cash Escrow****Parcel ID/Location: 02065, 8 Bowers Road**

The request is to establish cash escrow in the amount of \$20,023.20 for the above noted project. This is a non-interest bearing account.

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

#17-13**Project Name: Groundhog Landscaping****Developer: 6-8 Bowers Road****Escrow Account: Same****Escrow Type: Letter of Credit****Parcel ID/Location: 02065, 8 Bowers Road**

The request is to approve a final release of Letter of Credit #27363 drawn on Enterprise Bank in the amount of \$43,448.40 for the above noted project. The amount to retain is zero.

Motion by MacEachern, seconded by Fairbanks to approve as presented. Discussion followed.

Mr. MacEachern recalled the Board had conducted a site walk of this property to view concerns raised by the abutters. How does the site look? Mr. L'Heureux said it looks good. The developer did a good job dressing up the site in the green areas, in the patio area and keeps the lot orderly even with the storage of stock materials and equipment on site. Mr. MacEachern confirmed the swale along the river is in good shape. Mr. Connors also felt the site looked good and confirmed abutter concerns were addressed.

The motion passed with all in favor.

Minutes

The Board reviewed the minutes of the April 05, 2017, meeting.

Motion by MacEachern, seconded by Bartkiewicz to approve the minutes of the April 05, 2017, meeting as written. The motion passed with Ijtsma abstaining.

Correspondence

Mr. Fairbanks reported the Board has received an invitation to the Annual Drinking Water Source Protection Conference to be held in Concord on May 18, 2017. If any member is interested in attending, they should see Mrs. Robidoux. The Board also received an unsigned, anonymous letter regarding cell towers. DES has forwarded the latest edition of *The Source* newsletter.

Other Business

Schedule Public Hearing Zoning Amendments, Article II, Section 165-5, Definitions, and Article III, Section 165-25, Accessory Dwelling Units

Motion by MacEachern, seconded by Fairbanks to schedule a public hearing for May 17, 2017, regarding proposed changes to the following section of the Town of Derry Zoning Ordinance: Article II, Section 165-5, Definitions, to ADD a definition for Accessory Dwelling Unit and Article III, General Provisions, Section 165-25, to revise the provisions regarding the creation of an Accessory Dwelling Unit. The purpose of the changes is to conform to recent changes in the State RSAs. Discussion followed.

Mr. Chirichiello confirmed the proposed changes would be available on line, beginning tomorrow. There will be no abutter notification for this amendment.

Ijtsma, Chirichiello, O'Connor, MacEachern, Davison, Bartkiewicz, Fairbanks and Granese voted in favor and the motion passed.

Review of Policy and Procedures – Second Reading

Mr. O'Connor advised he received an email today reminding him there were three days left to register for the Planning and Zoning Conference that is coming up next weekend. There are two major land use trainings offered each year, one in the spring and one in the fall, as well as the Law Lecture Series that takes place in the fall. In the Policy and Procedures, on page 4, Section 4.g, it states members are "strongly encouraged" to attend training sessions. Boards in other towns require their members to attend at least one and state "shall take at least one". He is not suggesting this Board change the policy, but thought the Board should consider it. Mr. Chirichiello said he has been a member of the Planning Board for a long time and tried to take advantage of the trainings when they are offered, as his time allows. Should the members try to get to at least one training a year? He does feel the Board members have an obligation to keep abreast of law changes and land use issues. Mr. MacEachern felt the Board should keep the wording "strongly encourage" but remove the agencies listed. There are many more agencies from which Board members can receive training than the two listed. The way it is worded now sounds limiting. He asked that a list of agencies which provide training be forwarded to the Board. He also suggested that the wording be amended by deleting "agencies such as the State of NH Office of Energy & Planning, the SNHPC and the NH LGC" and replace that with "State and other planning agencies".

Mr. Chirichiello said the process of how members get appointed to Boards may change in the future and it would be of benefit to those members seeking re-appointment to attend the trainings. Mr. Fairbanks felt the Board members "should be encouraged to attend", rather than "shall attend". He also thought that as members ask for re-appointment, it would be important for the Town Council to know who has attended training sessions.

Mr. Fairbanks suggested adding a clause that states if a member abstains from a vote, they should explain why they are abstaining from the vote. The Board does this for 'no' votes. Mr. MacEachern suggested amending Section 5.g to add wording such that 'no votes and abstentions shall be explained'.

Mr. Chirichiello said if an alternate is placed, sitting, and is voting on a subject, they cannot abstain at that point. The recusal should take place prior to being seated for a missing member. People have been placed as voting members and have abstained. That will not hold up in Court if an application is appealed. It was suggested that Section 5.d be amended to add the following sentence, "If an alternate member to be seated has a conflict, that alternate shall, before being seated, asked to be recused." Mr. MacEachern suggested the chair ask the alternate prior to seating them if they have a conflict. If not, then they are seated. If they admit to a conflict the Chair can move to the next alternate. Mr. Chirichiello thought that was a good solution but if seated, that alternate would have to vote yes or no. Mr. Connors felt alternates should disqualify themselves before any discussion takes place; however they do have a right to abstain. Disqualification and abstentions are two different things. He does not know if the Board can

force an alternate or member to say why they are abstaining from a vote. Mr. Granese disagreed. An alternate or member should state up front that they are not comfortable sitting and provide a reason. If someone abstains because they are not comfortable voting on a plan because they are not up to speed on it, then they should not sit. It can take a while to become comfortable with voting on plans, but after a year or two of being on the Board, most members and alternates have gained a good understanding of the review process.

Ms. Davison asked if the Board can add language with regard to abstentions. If the alternate or member cannot come to a decision and that is why they are abstaining, that is contrary to why they are sitting on the Board. There needs to be a legitimate reason other than someone can't make a decision. Mr. Sioras said in some cases, it is appropriate to abstain. For example, if there are four members present and an alternate needs to be seated to complete the quorum, it may be that particular alternate has not been present for prior discussions and they need to abstain when it comes time to vote. That would be appropriate. Some attorneys have mentioned to staff that the town is leaving itself open to litigation because of members abstaining during the vote on applications.

Mr. Chirichiello felt a sitting member must take a side and vote an application up or down. Sometimes it is difficult to make a decision but if a sitting member takes part in the back and forth discussion, then it is not fair to either the applicant or the other members to abstain when it is time to vote. If members or alternates are not comfortable making a decision, then they need to ask to be recused before discussion starts.

Mr. Fairbanks suggested amending Section 5.g to state "...of which the yeas, nays, and abstentions shall be recorded in the minutes. Any nays, abstentions, and recusals shall give an explanation and that explanation shall be recorded in the minutes."

Mr. Connors asked with regard to stating why a member is voting no as it relates to Robert's Rules. Is that a state or local regulation and can the Board require a member to state the reason they are voting no? He is not disagreeing, but is not sure the Board can compel a member to vote yes or no. Mr. Granese stated under Section 5.b it states that Board may operate under a simplified version of the revised Robert's Rules as modified by the Chairman. It has always been required members state why they vote no. Mr. MacEachern added that the reason someone is voting no needs to be recorded in the event an appeal is filed; it would be deemed evidence in Court.

At its next meeting, the Board will review a clean copy of the Policy and Procedures that incorporates the changes suggested this evening.

Public Hearing**Slate Asset Management
SUSO 4 Derry, LLP
PID 08280, 10 Ashleigh Drive
Acceptance/Review, 2 lot subdivision**

Mr. Sioras provided the following staff report. The purpose of the plan is for a two lot subdivision of a lot located on Ashleigh Drive, in the Industrial IV zoning district. No new building is occurring at this time. It is the intent of the owners of the property to market the 7.1 acre parcel which is located next to the movie cinema. All town departments have reviewed and signed the plan. There is a letter dated March 28, 2017 requesting a waiver from the HISS map requirement. Staff would recommend approval of both the waiver request and the subdivision plan.

Chris Tymula, Civil Engineer, of MHF Design Consultants, Inc., presented for the applicant. The intent of the plan is to subdivide 7.1 acres off from the 17 acre lot. The proposed lot is located adjacent to the cinema and would be known as 22 Ashleigh Drive, Parcel 08280-007. Derry Meadows is to the west and there is an Eversource easement to the north. There are some wetlands on the site which were delineated by Gove Environmental in January of 2017. The wetlands are one to one and one half acres in size. There are existing utilities on the site and on Ashleigh Drive.

Mr. Tymula explained they are asking for a waiver from the HISS map requirement as there is no development planned at this time. If the lot is developed in the future, they will provide the HISS maps at that time.

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

Mr. MacEachern felt this was a fairly straightforward plan. This is part of the original cinema parcel and the applicant is just separating off the piece of land that is on the other side of the access road which leads to Hannaford. He sees no issues with the waiver request because this will come back to the Board when the lot gets developed.

Mr. L'Heureux reported Public Works had no issues with this application.

Mr. Connors asked if the lot was in both Industrial IV and Industrial III. Mr. Tymula advised the lot line is also the zoning boundary between the two zones. This lot is in the Industrial IV.

Motion by MacEachern, seconded by Bartkiewicz to accept jurisdiction of the two lot subdivision plan before the Board for Slate Asset Management/SUSO 4 Derry, LLP, 10 Ashleigh Drive, PID 08280.

Ijtsma, Chirichiello, O'Connor, MacEachern, Davison, Bartkiewicz, Fairbanks and Granese voted in favor and the motion passed.

Motion by MacEachern, seconded by Bartkiewicz to grant a waiver from LDCR Section 170-24.A.11, HISS mapping as 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.

Ijtsma, Chirichiello, O'Connor, MacEachern, Davison, Bartkiewicz, Fairbanks and Granese voted in favor and the motion passed.

Motion by MacEachern, seconded by Bartkiewicz to approve, pursuant to RSA 676:4,III, Expedited Review, with the following conditions: Subject to owner's signature on the mylar; subject to on-site inspection by the Town's Engineer; establish escrow for the setting of bounds, or certify the bounds are set; obtain written approval from the IT Director that the GIS disk is received, is operable, and complies with LDCR Section 170-24; note approved waiver on the plan; Certified Wetland Scientist stamp is to be added to the plan; conditions precedent shall be met within 6 months; a \$25.00 check, payable to Rockingham County Registry of Deeds shall be submitted with the mylar in accordance with the LCHIP requirement; and submission of the appropriate recording fees, payable to the Town of Derry.

Ijtsma, Chirichiello, O'Connor, MacEachern, Davison, Bartkiewicz, Fairbanks and Granese voted in favor and the motion passed.

Ms. Davison asked if the public had to be present at a public hearing or was it permissible for them to phone in to the meeting or email questions. Members of the public should either attend in person, or email their concerns to Planning staff in advance of the public meeting.

There was no further business before the Board.

Motion by MacEachern, seconded by Fairbanks to adjourn. The motion passed and the meeting stood adjourned at 7:36 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____