

The Planning Board for the Town of Derry held a public meeting on Wednesday, October 05, 2022, at 7:00 p.m. The meeting was broadcast from the Derry Municipal Center, 14 Manning Street, Third Floor meeting room with the majority of Board members physically present.

Members present: John O'Connor, Chairman; Jim MacEachern, Vice-Chair; David Nelson*, Secretary; David Granese, Secretary Pro-temp; Andy Myers, Members; Chris Feinauer, Richard Malaby, Alternates

Absent: Joseph Tremper, John Morrison, Brian Chirichiello, Mark Connors, Randy Chase

*Denotes virtual attendance.

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning & Economic Development Assistant; Mark L'Heureux, Engineering Coordinator

Mr. O'Connor opened the meeting at 7:00 p.m. The meeting began with a salute to the flag. He provided appropriate links for members of the public to join the meeting electronically via a MAC, PC or by phone. He then introduced the Board members.

Mr. Feinauer was seated for Mr. Connors.

Mr. Malaby was seated for Mr. Temper.

Escrow

#22-18

Project Name: Subdivision Mill Road/Alyssa

Developer: NIKKO Land, LLC

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 06040-001, 45 Mill Road

The request is to renew Letter of Credit #2, drawn on Washington Savings Bank, in the amount of \$24,481.44 for the above noted project. The new expiration date will be October 08, 2023.

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

#22-19

Project Name: Tree Line Property Services

Developer: Same

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 05052, 92 Rockingham Road

The request is to approve a final release of Letter of Credit #82376429, drawn on Haverhill Bank in the amount of \$65,765.52 for the above noted project. The amount to retain is zero.

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

Minutes

The Board reviewed the minutes of the September 21, 2022, meeting.

Motion by MacEachern, seconded by Myers to approve the minutes of the September 21, 2022, meeting as written. The motion passed with Granese and Feinauer abstained.

Correspondence

Mr. Granese advised the Board in receipt of the September/October edition of *Town and City* magazine.

Other Business

Presentation of the West Running Brook Corridor Study – Hoyle Tanner Associates

Mr. Sioras explained this study is specific to the West Running Brook District. The district is comprised of mainly frontage lots beginning at Humphrey Road, heading south to 120 Rockingham Road, east up Island Pond Road to include 2 Island Pond Road, and west on Rockingham Road to Watt's Auto and 74 Rockingham Road. There are several projects in the pipeline for mixed use development in this area. The town wanted to take a proactive look at potential traffic impacts in this corridor and hired Hoyle Tanner Associates to analyze the impacts and intersections. Of particular concern is the intersection at Island Pond, Bypass 28 and Rockingham Road. This intersection is owned and maintained by NH DOT, who has been included in discussions with regard to projects in this area. Staff worked with Hoyle Tanner on the study. Mr. O'Connor commented all the engineers with projects in any stage of development in this district were notified of this presentation so that they could attend or watch remotely. The final report will be posted on the town website.

Stephen Haas, of Hoyle Tanner Associates, presented. The study goals included evaluating impacts to traffic resulting from approved and potential developments in the West Running Brook zoning district and recommending possible mitigation measures, to include potential construction costs and funding options. The focus of the study was on the NH Route 28 (Rockingham Road), North 28 Bypass (South Main Street) intersection, known as Webster's Corner. Traffic counts conducted along the corridor showed volumes of traffic along the Bypass to be between 10 – 11,000 vehicles per day. Island Pond was slightly less at 4,000 vehicles per

day. The speed limit in the study area is 35 MPH. The Webster's Corner intersection is owned and maintained by NH DOT. The urban compact is 2,000 feet north of the intersection. Island Pond is owned and maintained by NH DOT in the summer, with Derry taking over the winter maintenance. There are approximately 90 parcels in this district with around 200 acres of developable land.

The study looked at future development potential in the district and utilized a 2 year and 20-year build scenario. March of 2022 was utilized as a benchmark. Any proposed development discussed with the town after that date is not included in the projection as the recommendations in the study did not significantly change. Any potential development discussed with the town prior to March 2022 has been included. Based on current status of projects, it is anticipated by 2024 there will be at least three projects permitted in the zone. These include the developments at 74 Rockingham, 109 Rockingham, and 1-4 Humphrey Road. These projects contain a mix of retail, restaurant, and residential uses. For the 20-year future buildout (2042), the proposed development of the Siragusa property and the former flea market at 2 Island Pond were included. There has been no proposal discussed or contemplated for 2 Island Pond, so the Planning staff created a likely development scenario.

The first step in the study process was to look at the current traffic counts which were taken in late March. Those counts were then reviewed to see if they needed to be adjusted to take into account the effects of COVID 19 on traffic patterns. Hoyle Tanner Associates (HTA) did verify with the NH DOT that COVID 19 adjustments were not required as the traffic counts are back to pre-COVID numbers. Adjustments for future growth (not including the proposed developments) included a 1% annual growth rate. The study looks at the existing condition at the intersection. HTA performed a Highway Capacity Manual Level of Service analysis to look at the level of service at the intersection, delay, and the volume to capacity ratio. The volume to capacity ratio is how much capacity the intersection has with the volume of traffic going through it at any given time.

What HTA found in the 2022 existing condition is that the overall level of service (LOS) during the morning peak is at an LOS of E with a 60 second delay, with a volume to capacity ratio of 0.99. For comparison, a volume to capacity ratio of 1.0 is approaching failure. The evening peak is a bit better with a LOS of D with a 41 second delay, and a volume to capacity ratio of 0.80. HTA utilized ITE trip generations to estimate what the developments will generate based on the uses. For residential uses, they utilized the Journey to Work which is census data. For the commercial uses they utilized the gravity model that looks at a radius around a development and the population centers in those areas and ranks the data based on a percentage to determine who will patronize the business. In the projected 2024, the LOS at the intersection drops to D with a 49 second wait time for the morning peak. These numbers reflect build out without mitigation of the traffic signal but do include a slight modification in the timing at the intersection, which is why the LOS improves. In the proposed 2042 buildout, the LOS drops to F with a 160 second delay during the morning peak. That is over a two-minute delay. The volume to capacity ratio is degraded to 1.42, which indicates mitigation is required as the intersection is saturated.

Crash data from the last three years for the intersection was obtained from the Derry Police Department. Of those 38 incidents, 25% were left turn failure to yield. There is no dedicated

left turn lane provided currently on the east and westbound approaches. 8% of the incidents were a result of the east bound right turn merge. This slip lane heading to Salem is known to have traffic traveling at a higher rate of speed that has to merge with traffic traveling south.

The study looked at potential mitigation options for the intersection. The options include traffic signal improvements planned to increase the level of service out to 2042 to make it a LOS of D.

The second option is a single lane roundabout with an optional east bound right bypass. There would be minimal widening at the approach. The LOS in 2042 would still be in failure. The next option is a two-lane roundabout with dual circulating lanes. This option results in a LOC of C, with considerably less delay than the single lane roundabout or signal, but there are many challenges with the land around it to create it. There is also an optional hybrid configuration.

Given the various scenarios, HTA worked with DPW and Planning staff and the preference was to further explore and create a concept for traffic signal improvements at the Webster's Corner intersection. The concept plan includes adding north and southbound lanes and turn lanes and eliminating the slip lane heading to the south by bringing that lane into the intersection. The new improvements would require new mast arms, and right of way impacts at the Automart lot and near Brady Avenue. HTA did coordinate with NH DOT, and there are no known DOT projects in this area during the build out years, other than a resurfacing project planned to be advertised in 2023.

The cost estimate for the Webster's Corner intersection improvements is \$1.75 million. HTA chose a 2030 construction year and inflated current costs annually to that time period. This cost includes estimated right-of-way acquisition costs and engineering fees. Funding would be through a developer mitigation fee which is the percentage of the increase at the intersection multiplied by the \$1.75M improvement cost. Other avenues for funding include inclusion in the NH DOT Ten Year Plan, State Aid Highway funding, and the Congestion, Mitigation and Air Quality (CMAQ) program.

Mr. O'Connor asked with regard to the accident data. Some appear to be left turn failure to yield incidents and he agreed there should be signs provided stating people need to yield. With regard to signal optimization, is the timing of the light controlled by peak times, or by a buried cable that senses the volume of traffic? Mr. Haas believed there are detectors in the pavement that provide a maximum amount of green time based on the AM and PM peak periods. There are smarter signals available, but this intersection uses the detectors to determine the maximum time. Mr. O'Connor said he was glad to see the town recommended signal improvements rather than a roundabout. His experience with them, including the two-lane roundabout, is that they work very well for people who know how to navigate them, but many do not. The wait at the signal might be a little longer than a roundabout, but he believes it a safer option. He suggested the Board let developers know that the \$1.75 million estimate may increase over time, given the recent changes in the interest rate.

Mr. Myers inquired about the alternative mitigation analysis. Were the roundabouts considered but then rejected by staff? Mr. Haas stated staff asked that the signal improvements be advanced to show a concept. He would not say any other option has been rejected or is off the table. Mr.

Myers believed many would agree that driving habits in Derry's current rotary are atrocious. Is there any crash data available in this report for the Danforth Circle? Mr. Hass advised that was not part of this study. Mr. Myers noted that crash data includes the reported incidents and does not include things that are not reported or the near misses. He believes the incident count at the Webster's Corner intersection is likely higher. Why has the eastbound slip lane been eliminated? Would that not alleviate some traffic at the intersection? Mr. Hass said that was suggested as part of the alternative. From a capacity standpoint, the slip lane pulls the traffic out of the intersection, but there are safety concerns. If some of the impacts are undesirable, they can look at it again. Mr. Myers asked if any of these alternatives have been seriously discussed with NH DOT – his concern is the length of time it takes to get projects approved and permitted through NH DOT – citing the Exit 4A project as an example. He believes it is a good idea to discuss improving Derry's roadways but would like to know if any concrete discussions have yet taken place with the legislature or NH DOT about the potential for these improvements. Mr. Haas said they have not yet done that. This analysis is the first step in the process. The next step would be to communicate with NH DOT as the projects move forward as this is DOT's road. He confirmed the potential impacts of Exit 4A were considered and factored into this analysis.

Mr. O'Connor noted Southern New Hampshire Planning Commission does have funding available to look at intersections and this intersection could potentially be added to their list. Mr. Myers wanted to clarify his point was that it took a long time to get projects done at NH DOT as there is limited funding, and he understood this was just a proposal.

Mr. Nelson asked if a fair share contribution had been proportioned to the approved plans in the district. Mr. Sioras confirmed a fair share contribution was assigned to the Keystone project. Mr. Nelson noted the construction year is proposed at 8 years out; the town can only hold the fair share contributions in escrow for 6 years, otherwise the funds need to be returned. That appears to be a disconnect. He wondered if it would be better to bring the time frame closer to the 6-year window since we are already allocating or collecting funds so that that funding source is not lost.

Mr. Feinauer asked if the \$1.75 improvement cost included impacts to the businesses: for example, costs for property acquisition. Mr. Haas said they did look at that and allocated \$100,000 for acquisition/easement costs, and items such as landscaping. It is hard to say if that will be the amount, but they did budget for it.

Mr. L'Heureux explained the town has collected fair share contributions toward future improvements such as the projected light on Tsienneto Road and returned the funds after the 6-year time frame. The proposed signal on Tsienneto Road never met the traffic warrants to install one.

Mr. O'Connor thanked Mr. Hass for the presentation.

Chairman Updates

Mr. O'Connor advised the Board will hold a training workshop on November 09, 2022, to learn about Form Based Code. The Administration and the Town Council have requested the Board explore this form of zoning, and training is being provided. The Board previously had a presentation on Form Based Code and how it worked in Dover by Christopher Parker. Mr. Sioras stated dinner will be included as part of this training. More details are forthcoming. The training itself will be between 6 – 9 p.m. It is possible that Form Based Code can solve some of the issues the town has been having in its downtown. The workshop this evening was scheduled to discuss amendments for the TBOD prior to the date being set for the training.

Workshop – to discuss proposed changes to the Town of Derry Zoning Ordinance, Article VI, District Provisions, Section 165-49, Traditional Business Overlay District, specifically the dimensional requirements in the district.

Mr. Sioras explained the downtown district is known as the Central Business District and extends along Broadway to Veteran's Hall (Maple Street), down to South Avenue, on either side of Birch Street to just south of Wilson Avenue, and north on either side of Crystal Avenue, down Rollins Street and to the former Walgreens at the intersection of Crystal and Lenox Road. Over that, is an overlay district known as the Traditional Business Overlay District. Originally, the TBOD consisted of the frontage lots on East and West Broadway from Crystal and Birch to Maple Street. The TBOD has zero front setback requirements to maintain the traditional look of the downtown. It worked well over the years. A few years ago, the Board was asked to extend the TBOD to the side streets in an effort to increase economic development and revitalization potential. On paper, this seemed like a good idea, but in practice, the ordinance has created redevelopment challenges in the district on the side streets. It is not working well. Landowners are finding it difficult to apply the zero foot front setback and maximum five foot side setbacks to the existing lots. Properties are having to request variances to the point where this should be reviewed. To get the discussion started, Planning staff suggested utilizing a conditional use permit – this is controversial but can give the Board some flexibility with the more challenging lots located off Broadway. Currently, the ordinance creates a redevelopment challenge on these 100 year old lots that predate any zoning and do not meet the current requirements.

Mr. MacEachern stated things seemed to work well when the TBOD was just the lots along Broadway. When the district was expanded, this created an issue. He suggested keeping the TBOD overlay as it is with regard to the boundary but adding a statement that says the zero setback requirements would only apply for the lots that were in the original TBOD. For the other lots, the setback would be determined as part of the planning process. It puts the requirement back to what was in place but allows the Board the discretion for the lots not on Broadway. While the town tries to encourage businesses in the CBD, sometimes the homes are not right on the street, and it makes sense to try to not negatively impact them. If the lots do not front Broadway, it would be at the discretion of the Planning Board to establish the appropriate setback in the TBOD. Mrs. Robidoux noted that if a homeowner wanted to put an addition on a home, with this proposed change, if the addition did not meet the setbacks, it would have to

come to the Planning Board for review. Did the Board want to add these types of requests to its agenda? Mr. MacEachern said that would be okay.

Mr. O'Connor did not object to that suggestion but wanted to add to it. He stated he did watch the ZBA hearings on cases in the TBOD since the zone was expanded and some of the variances are being denied; in one case three times. All of these properties in the district are different and he felt a little more than just the dimensional aspect should be considered. He does have some suggested wording for the Board to consider. He will work with Mrs. Robidoux to get it into text for the Board to review.

The first suggestion would be to amend the wording similar to that found in the West Running Brook District (currently page 84, subsection F): "Developments in this district are allowed by Conditional Use Permit. Any provision of the ordinance may be waived, when upon application by the applicant to the Planning Board, the Board determines in its sole discretion that requiring compliance with the particular provision for the granting of a Conditional Use Permit would create an unnecessary hardship, and the application would still be consistent with the spirit and intent of the ordinance. These waiver requests would be in writing and the Board would vote on each waiver request at a properly noticed public hearing." Mr. O'Connor also suggested adding a section that requires "the applicant to request an informal discussion with the Planning Board, pursuant to RSA 676:4, II (a), to discuss the proposal and preliminary concepts associated with the proposed development and provide the Board an opportunity to provide input prior to the full engineering design of the project." Then the plan would be reviewed by the TRC, and no project would be accepted for Final Application to the Board without the conceptual consultation or TRC meeting. He noted one of the projects that was denied by the ZBA has been trying to work with the TRC on the design of the project. The TRC staff has been urging that developer to go back to the ZBA; the project needs relief from the current setback requirements. This might also be an alternative to Form Based Code.

Mr. MacEachern felt if the setback was eliminated; it would do the same thing. Mr. Sioras suggested putting all of the suggestions in writing and the Board can review it at the next workshop.

Mr. Nelson noted there had been unintended consequences on the side streets when the TBOD was expanded. That should be fixed in the least obtrusive way. He was on the Board when the TBOD and street scape was established. The town wanted the downtown to be pedestrian friendly with significant structures and store displays. It wanted to avoid strip malls in the downtown. He is concerned with utilizing Conditional Use Permits. He does not think the Board wants to abandon the principle of the zero setback in the core of the TBOD; buildings in the downtown should be kept to the sidewalks and not set back. If the dimensions are by Conditional Use Permit (CUP), then the setbacks can be discretionary for a particular Board, sitting on a particular night. Secondly, he is on record stating he is not in favor of using CUPs to grant variances of zoning requirements without having strict requirements that need to be met to grant the CUP. He is not sure they can apply the requirements from the West Running Brook district here. If it is legally permissible to have differentiated setbacks within the district based on the road the lot fronts on, then that might be less intrusive, less complicated, and less likely to have unintended consequences.

The Board agreed to continue discussion at a second workshop, which will be held on November 02.

Mr. Sioras reminded the Board members there will not be a meeting on October 19, 2022.

There were no Board member comments.

There was no further business before the Board.

Motion by MacEachern, seconded by Granese to adjourn.

All members voted in favor and the meeting stood adjourned at 7:53 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____