

The Planning Board for the Town of Derry held a public meeting on Wednesday, April 16, 2014, 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: Dave Granese, Chairman; John O'Connor, Vice Chairman; Frank Bartkiewicz, Secretary; Randy Chase, Administrative Representative; Michael Fairbanks, Town Council Representative; Ann Marie Alongi, Jim MacEachern, Members; Lori Davison (7:05 p.m.), Marc Flattes, Alternates

Absent: Jan Choiniere, Darrell Park, Frank Mazzuchelli

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk; Mark L'Heureux, Engineering Coordinator; Robert Mackey, Code Enforcement Officer

Mr. Granese called the meeting to order at 7:00 p.m. The meeting began with a salute to the flag. Mr. Granese then introduced the staff and Board members present.

Mr. Flattes was seated for Mrs. Choiniere.

Escrow

None.

Minutes

The Board reviewed the minutes of April 02, 2014, meeting.

Motion by O'Connor, seconded by Bartkiewicz to accept the minutes of the April 02, 2014, meeting as amended. The motion passed with Alongi abstained.

Correspondence

Mr. Bartkiewicz read the current list of Change in Use applications. The new businesses by address are as follows: Granite State Arts Academy, 16 Route 111; Tailgate Motors, 34 Pinkerton Street; Orange Leaf Frozen Yogurt; 55 Crystal Avenue; DREA, 14 East Broadway; The Bird's Nest Café and Pub, 7 A Street; Focal Point Communications, 55 East Broadway; Dynasty Nail and Spa, 27A Crystal Avenue; Birch Street Kitchen, 49 East Broadway; Thomason Performance, 8 Tinkham Avenue; Triskelia Wellness Chiropractic and Acupuncture, 16 Route 111, Building #2, Suite 5; The Drinkery, 29 East Broadway, Unit 3. Mr. Granese noted he liked the changes; there are some really good ones. He has noticed as one drives around town it seems as if for every one business that goes in, others close. He feels the town needs an economic development person or someone to find out why businesses leave Derry. Mr. Sioras said people

come and go in town and it is disappointing to see businesses close or move. It was a pleasant surprise to get the new businesses on Broadway; they all came in within months of each other such as DREA, Yarn and Fiber, The Grind Rail Trail Café and The Drinkery. There is more in the pipeline. Mr. Granese said he was more curious as to why people leave town. Mr. Flattes asked if there was a questionnaire that was sent to businesses that close. Staff advised the town does not send one.

Other

Mr. Sioras noted there were several abutters present for the PSNH application. The plan was made available for their viewing ahead of the hearing and the representatives for the plan were available to answer questions outside of the meeting room.

Ms. Davison was now present and seated for Mr. Park.

Mr. Sioras advised the Folsom Road zoning changes were on the Town Council schedule for May 6th.

Public Hearing

Hannaford Bros., Co.
PID 08280-002, 35 Manchester Road
Acceptance/Review
Addition of grocery pick-up location

Mr. Sioras provided the following staff report. The purpose of this plan is for the addition of a grocery pick up location at the existing Hannaford Supermarket. All town departments have reviewed the plan. There are no waivers requested or state permits required. He would recommend approval of the site plan application. J. Lord of Maple Rock Marketing & Project Development presented for the applicant. Hannaford Brothers is rolling out a new program called Hannaford to Go which is a grocery pick up location. There is one program existing in Dover, which was the pilot program, and there are four other locations around the state in process. With regard to the overall site plan, the location is on the north side of the store where it was determined there was less traffic and it would be out of the way. There is an existing 15 foot striped fire lane. The traffic island will be reconfigured into two islands and they will create a drive through area. They did this so that they can access the pick-up area and keep the area open to keep sheet flow drainage as low as they could. They have added a catch basin to catch the drainage. Mr. Lord explained the traffic flow. Motorists will pull up to a call box and then pull up to the canopy. An employee will come out the side door that will be created as part of this program. Hannaford will utilize current empty space in that area of the store as stack space. This is a simple operation. Customers can call ahead at any time. The store will not sell prescription drugs or alcohol through this program. The hours of operation are 10:00 a.m. to 8:00 p.m. There is no limit on the amount of groceries ordered. Peak hours of operation will be between 10:00 a.m. and 12:00 p.m. and 4:00 p.m. to 6:00 p.m. The service is very popular with young mothers and the elderly as they don't need to get out of the car.

Mr. Granese asked if customers could order on the internet? Mr. Lord said customers would sign up inside the store initially, and then order through the internet. Mr. O'Connor asked how the financial transaction would occur? Mr. Lord said payments are done on site, no money is collected over the internet. Customers pay as they pick up. Ms. Davison asked if people will drive around the back of the building to get to the pick-up location? She was concerned with potential conflicts with the bank drive up window. Mr. MacEachern explained the traffic flow around that side of the building and did not believe there would be any conflicts. The lane that leads to the rear of the building is in a different location. Mr. Lord explained the traffic flow. Mr. Fairbanks inquired if there was enough turn radius to the south of the median? The area looked tight. Mr. Lord said there was enough room. Mr. MacEachern did not want to see people making u-turns in front of the health club. Mr. Flattes asked with regard to the height of the canopy and if the maximum height would be posted? Box truck traffic goes through that area currently and he also had a concern that the snow plow vehicles might not be able to get through this area. Mr. Lord said the call box is located 4 feet off the ground. The canopy is 10 feet high with a swing away; he does not feel the plaza will use a loader to plow in this area. Mr. MacEachern asked as to the purpose of the canopy? Mr. Lord advised the canopy keeps the customer under cover. It is not intended to shield the employee from the elements. Mr. Flattes asked if there is a maximum dollar amount on the transaction? There is not. Mr. Granese noted this is a great service for the handicapped.

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

There was no public comment.

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

Motion by MacEachern to accept jurisdiction of the site plan application before the Board for Hannaford Brothers Company, PID 08280-002, 35 Manchester Road, seconded by Bartkiewicz.

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

Motion by MacEachern to approve, pursuant to LDCR Article IX, Section 170-51, Site Plan Determination, with the following conditions: subject to onsite inspection by the Town's Engineer; establish appropriate escrow as required to complete the project; that the above conditions are met within six months. Bartkiewicz seconded the motion. Discussion followed.

Mr. Granese asked Mr. L'Heureux if there were any concerns from DPW? Mr. L'Heureux advised all of the DPW comments were addressed at the TRC level.

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

**Public Service Company of New Hampshire
Utility Right of Way in the Town of Derry
Conditional Use Permit for wetland impact for construction of new 115kV transmission line**

Mr. O'Connor recused himself from this application. Ms. Alongi confirmed she was not an abutter to this application.

Mr. Sioras provided the following staff report. The location of the project is in the existing PSNH utility right of way beginning at the Scobie Pond Road substation and continuing to the Chester substation. The purpose of the plan is for the construction of a new 115 kV transmission line in the existing PSNH right of way for approximately six miles from Derry to Chester. The proposed project is necessary in order to support current and projected future electricity demands in southern New Hampshire. The proposed project will impact wetlands in the right of way and requires a Conditional Use Permit per the Derry Zoning Ordinance for the construction of the new transmission line and poles for the work in the wetlands. No town department signatures are required for this application. The applicant has gone before the Conservation Commission for their input. There are no waiver requests. This is not an approval of a transmission line; it is the approval for the poles that will be in the impacted wetland area. Mr. Sioras would recommend the Planning Board grant the Conditional Use Permit for the proposed impacts within the Derry Wetlands Conservation Overlay District (Article X – Derry Zoning Ordinance). Sherrie Trefry of GZA GeoEnvironmental, Inc. (GZA), presented for the applicant. Also present from PSNH were Elizabeth Larocca, Walter Bilynski and Sandra Gagnon.

Ms. Trefry advised this project is supported by the non-profit ISO New England Ten Year Needs Assessment. The assessment looked at the future needs in New Hampshire and Vermont to ensure the reliability of the transmission system and future demand of electricity. The southern New Hampshire demand has increased dramatically over the last five decades and will continue to increase. In order to meet the demand for service, ISO recommends a new transmission line be constructed in this area of New England. The proposed line upgrade is within the existing right of way. Currently, the lines are R193 115 kV transmission lines, B172 115 kV lines and a 363 line with 345 kV, which is a larger transmission line all in this corridor. The R193 line along the northern portion of the right of way, beginning at #428 as shown on the plan provided (see Fig. 3.01) will be reconstructed along the northern corridor, 45 feet from the edge of the right of way. The new lines will go up and a new A184 line will also be constructed. The existing structures are two pole structures with a crossbar. To make space for the new line, they will install new monopole type poles that will have the three phases aligned vertically. The monopoles will be taller than the existing structures in order to accommodate the new lines. The proposed structures are 60 feet with a maximum height of 105 feet. Ten percent and two feet go underground, so the poles will have a maximum height of 88 feet above ground. GZA did the wetland delineation in April of 2013, as well as a vernal pool assessment during vernal pool breeding season. The Derry wetlands are noted on the plans in blue. Vernal pools are noted in orange. Figure 3.04 shows one of the Rare and Threatened Endangered species areas (RTE). There have been Blandings Turtle and Black Racer snakes found in the area. They have been in

communication with NH Fish and Game who has asked that the existing poles not be removed, but cut at the ground surface so that the snake species can den at the base which is their preference. They have agreed to leave the footings to protect the nesting sites. If they can't avoid construction during the breeding season, they will use spotters in front of the construction. GSA will perform the environmental and storm water monitoring. A National Pollution Discharge Elimination System (NPDES) program permit is required so a Storm Water Pollution Prevention Plan (SWPPP) will be in place which requires monthly monitoring for storm water. As part of that, GZA will be monitoring the erosion control for the site. They will use timber matting for the wetland crossings to prevent rutting and to protect the plant roots. She provided copies of photos to the Board that showed the use of timber mats on another project. The photos were passed among the Board members and a copy placed in the file.

Ms. Trefry advised there are 9 structures proposed that will impact wetlands. Four structures will be removed from the wetlands. There will also be a 900 SF terminal yard constructed and that is shown on Figure 3.01. This is the point where the line goes underground and connects with the Scobie Pond Station. There will be 1060 SF of permanent wetland impact within the existing right of way for these installations. There will be 27,725 SF of temporary impact to access the structure installation and removal sites; 970 SF of temporary impact to a prime wetland, 8 SF of temporary impact to a perennial stream, for a total 29,763 SF of wetland and stream impact for the project. Prime wetland impacts are shown on Fig. 3.10; they will access the wetland to add two poles and remove one pole.

GZA did the wetland function value assessment and she has photos of the wetland impact areas. Those photos were also passed to the Board members and a copy placed in the file. Regarding the construction schedule, the intent is to begin this summer with the construction of the R193 line and have that portion of the project complete by the end of this year. The A184 construction will begin on January 2015 and be completed in the spring. The Phase I Archeology Survey is complete. Sensitive areas were identified (areas where American Indians may have settled or camped based on topographic and soils conditions). The Phase II B Assessment will occur prior to the Army Corps of Engineers (ACOE) issuing their permit. The Conservation Commission had requested a copy of the Phase II B results, but those can't be released because they are confidential. The results are released only to the ACOE and the Division of Historical Resources.

The Conservation Commission also had concern that construction might disrupt the deer rut in September. Per NH Fish and Game, deer have a territorial range of 1 square mile so the construction should not have an impact.

Mr. Granese asked what material would be used? Ms. Trefry said they could be wood or steel pole. Mr. MacEachern asked how tall are the current poles? They are 40-50 feet tall. Ms. Trefry passed around pictures of a monopole structure. That was not kept for the file. Mr. Granese asked why they were changing to monopole structures? Ms. Trefry said they need to meet the separation distance between the different lines and it can't be done on the current structure. Mr. MacEachern had a question as to the location of the different lines in the right of way.

Walter Bilynski, Project Manager for PSNH, explained there will also be a substation constructed in the Town of Chester. The new line will terminate there. They did not want lines crossing which would mean taller structures. They are staying away from the 345 kV line.

Mr. Flattes noted on Fig. 3.05 it appears the right of way goes through existing homes. Mr. MacEachern said that is correct; they will not be impacting the homes, and areas shown on that plan are for temporary wetland impacts.

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

There was no public comment.

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

Mr. Granese asked for confirmation the poles are all in the existing right of way and the right of way will not be expanded. Ms. Trefry confirmed and stated there have been some minimum changes to the extent of the existing right of way such that they did brush cutting in areas that had not had cutting in the past, but they have not expanded outside of the existing right of way. The project is within the existing easement boundaries.

Mr. L'Heureux stated Public Works has no issues with the application. The town has a utility water easement near Ashleigh Drive but there are no impacts.

Mr. MacEachern asked with regard to state permits. Is there anything the Board should know about; for example, will the town see the Public Utilities Commission (PUC) report? There is no record in the file of a state meeting. Did PSNH go before the PUC? Mr. Bilynski explained PSNH did not need to go before the PUC for this project. Mr. MacEachern asked why? He would have thought the PUC would have comment since this project crosses several towns. Mr. Bilynski said they would go before the PUC for an interstate project or a generation facility. Regarding the transmission system, they are performing work in the existing right of way easement so the state does not require a hearing before it. Mr. MacEachern thought the purpose of the upgrade was to provide better service for existing customers with no expansion of service in surrounding communities. Mr. Bilynski said they are building a new substation and making the service more robust and reliable for the general area. But this does not fall under PUC requirements.

Ms. Gagnon further explained that this transmission project is managed by ISO New England. The PUC has the opportunity to weigh in with ISO as the projects are being developed but they do not need to present a special plan to the PUC. ISO is the organization that performs need assessments and project development. Once a need is developed and the project is formulated, the PUC weighs in at that point. The transmission project is managed by ISO. ISO is a not for profit organization that manages the transmission and generation infrastructure throughout New England. They model the system and look at constraints in the system and where projects are needed to make the system more reliable. They identify the projects and work with the utilities

and she believes, the PUC, to determine how they can come to solutions for those types of constraints in the system.

Mr. MacEachern said that is why he would have thought there would have been something from the PUC that said they looked at it. When asked, State Representative O'Connor advised he had no comments on this project. Mr. Granese noted the Conservation Commission did not appear to have issues with the project per the minutes provided to the Board. Ms. Trefry said the Conservation Commission did have a concern regarding the deer rut and they followed up with Fish and Game on that concern. The archeological interest question was answered. They performed a site walk with the Conservation Commission to review the crossings at the prime wetland area during high spring conditions and found that the proposed access is the least disruptive and has the least impact to the wetland. They are using the historic access ways to minimize the crossings.

Mr. Flattes asked if there will be any impacts to the abutters such as noise or dust? And will PSNH ensure they do not damage town roads with their trucks? Mr. Bilynski stated they will monitor trucks coming onto the town roads to make sure they don't track onto the town road. The contractors are proactive with regard to dust control and will abide by local and state rules.

Ms. Davison asked for the construction schedule. Mr. Bilynski said they will work on the relocation of the R line between August and October, remove the existing R line between October and November and then after the first of the year begin again. Mr. Granese asked if the town will need to inspect any of the work? Mr. L'Heureux said this project would be outside of the town's purview; there is nothing for the town to inspect since they will just be replacing poles and erecting lines. PSNH is the responsible party when it comes to the wetlands and will make sure their contractors are following the permit process. Ms. Trefry added Fish and Game made recommendations to NH DES and they will need to incorporate those recommendations into their compliance. Mr. MacEachern asked who polices to make sure the wetlands crossings are done correctly? Mr. L'Heureux said this is a state wetland permit not a town permit and typically they have their own personnel inspect.

Mr. MacEachern said he would like the Board to receive a letter from the PUC or the state as a condition of approval. Mr. Chase disagreed, stating the PUC can't usurp the ACOE which is the party issuing the permit. Ms. Trefry said the permit is a Federal permit and a DES permit. The ACOE and DES will issue the permit and the ACOE will inspect during construction. Mr. Granese said he wanted to make sure there was oversight and things will be compliant without the contractor performing self-inspections. Mr. Sioras explained the state wetland's Board has its own inspectors who will come into town and inspect. There will be some oversight by the state wetland board on this project. Mr. Granese felt that gave some certainty. Normally it is the town that inspects. Ms. Trefry added GZA will also make sure that PSNH and its contractors are complying with the permit requirements. They will come with the state and federal inspectors and will walk with them on site. This is a major project and they will be in constant communication with the regulators. It is not unusual for projects of this type to be shut down from time to time because of site conditions. Mr. Bilynski said PSNH also has its own construction representatives and they have a good track record. Mr. Flattes asked who residents could contact if there was an issue with the project?

Ms. Gagnon is the Project Support Specialist and her contact information will be provided to the landowners. She has spoken with the abutters already. Mr. Flattes said he wanted the abutters to be able to call and speak with someone; would they be notified ahead of construction? Mr. Bilynski said abutters along the right of way have already received a letter. Ms. Gagnon advised PSNH is reluctant to send letters with exact dates for construction as the weather can make it challenging. If they are too specific they run into the issue of multiple notices and it becomes confusing for the abutters. Because of the time span for the project, she can send a start of construction notice and then another one in the new year. This is a three month project for the summer/fall and it would be difficult to pinpoint exact dates. Mr. Granese asked if the practice is to send one notice describing the project? It is. Ms. Alongi asked if there can be an update link on the PSNH website for the customers? Ms. Gagnon said the project is not on the website currently. Mr. Granese thought if PSNH sent a letter with Ms. Gagnon's contact information, including email address, it would suffice. Ms. Gagnon noted the linesmen keep her contact information with them and it is not unusual for her to receive a message from one of the linesmen asking her to contact an abutter who has approached the linesman with a question or concern. She keeps up to date with the project team and they hold regular meetings to make sure everyone is on the same page.

Motion by MacEachern to accept jurisdiction of the Conditional Use Permit application before the Board for Public Service Company of New Hampshire. Bartkiewicz seconded the motion.

Chase, Fairbanks, Alongi, Flattes, Davison, MacEachern, Bartkiewicz and Granese voted in favor and the motion passed.

Motion by MacEachern, seconded by Bartkiewicz to grant pursuant to the Town of Derry Zoning Ordinance, Article X, Wetlands Conservation Overlay District, Section 165-80.B.2, a Conditional Use Permit to allow the construction of roads and other access ways for power lines and other transmission lines. After review of the proposal, the Board finds that (1) the proposed construction is essential to the productive use of land not within the Wetlands Conservation District; (2) design and construction methods will be such as to minimize detrimental impact upon the wetland, and the site will be restored as nearly as possible to its original condition; (3) no alternative which does not cross a wetland, or has less detrimental impact in the wetland is feasible; and (4) economic advantage alone is not the reason for the proposed construction.

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

Proposed changes to the Town of Derry Zoning Ordinance, Article II, Word Usage and Definitions, Section 165-5, Definitions to AMEND the definition of Livestock, Structure, and Fowl and to ADD definitions for the following terms: Nuisance, Pasture and Enclosure and to discuss proposed amendments to Article XX, Livestock, to revise various sections within the Article.

Mr. O'Connor was reseated.

Mr. Sioras provided the following staff report. The Board has conducted months of workshops and has finalized the document. The Board has received correspondence from Ann Evans which highlights some recommendations and changes she would like to see in the proposed document.

Bob Mackey, Code Enforcement Officer, advised the proposed changes to the existing Article XX came about per the directive of the Town Administrator to deal with issues at that time. They have attempted to tighten up parts of this Article and have made some changes; there are not many. The most substantial is that they have removed the word "public" from the nuisance provision so that Code Enforcement or the Animal Control Officer can deal with common nuisance type situations. Nothing has gotten any stricter. The one acre requirement is still in effect for larger animals. The setbacks are the same, but Structures has been given its own section. The penalty section was added. This section references what is already in the Zoning Ordinance. It is not his office's intent to find someone and penalize them. His office gives ample opportunity to educate and gain compliance. Since 2008 when this ordinance was enacted, the town has not yet taken anyone to court and fined them. They have also added definitions to make things more clear. Representative O'Connor had provided information on the proposed changes the state is making to the definition of livestock. He believes the vote is before the Senate on April 17th. The state definition includes poultry and rabbits. The town separates livestock and fowl and has a separate definition for fowl which includes ducks, geese and chickens. He feels the town covers everything in the state definition as written. The town's definition won't be exactly the same as the state and he would like to see the proposed changes go forth as written; they can be adjusted in the future if that becomes necessary.

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

Jonathan Dowie, 2 Collette's Grove Road, had comments regarding Section 165-156, Shelter. Regarding fowl, he has a number of ducks and his experience is that when livestock or poultry are penned, that is when they begin to create a smell. Is this saying that chickens/fowl must be confined to a coop and kept there all day? Mr. MacEachern said this section is saying they need to be housed in a structure. Mr. Dowie said that geese can create a nuisance when you are speaking about manure when they fly in and spread their droppings. That does not create a smell. If they are confined they will create a nuisance. He suggested that the ordinance work with nature and require the fowl to be penned at night only. His experience is that when the birds are allowed to spread the manure naturally, there is no smell. Mr. MacEachern said he thought the intent of that section was to ensure that the fowl/animals were kept in the landowner's yard and did not believe it was intended the animals be confined all day long. Mr. Granese noted the items in red are the proposed changes to the existing ordinance. Mr.

Fairbanks commented that many of these changes were added because of neighbor complaints. Mr. Dowie said he knows this was because of a rooster. He talks to his neighbors about his livestock and it would be nice to see leadership that directs the neighbors to talk to each other. He has always been able to resolve issues with his neighbors. He would suggest instead of fining people because of complaints that the town directs the neighbors to work out the issue and mediate. He understands this Code Enforcement Officer does not want to fine people, but what about his successor? Mr. Chase said the coop is a shelter. Many owners have a pen outside the coop with no cover and the animals get out and end up in the neighbor's yard. The pen needs a cover to prevent the fowl from flying out and damaging someone else's property. Mr. Dowie felt requiring a cover over one acre of land is unrealistic. Mr. Chase said the fine is not intended to be assessed at the first complaint. It is for people who have no intention of complying and is a last resort. Mr. Dowie felt the town should follow the mediation route first. Mr. Chase said mediation is fine but the town needs the fine component in the ordinance so that if it needs to be enforced the town can enforce. Mr. Granese said he understood Mr. Dowie's concern. He also had concerns when he saw the fine level. The Board had originally wanted to add specifics to the ordinance that said the first step in enforcement would be to talk to the landowner then send a letter and then look for the fine. In order to fine someone, there would need to be a court order. The Board held many discussions on this issue.

Mr. Mackey said this regulation [Section 165-132, Violations and Penalties] is in the Zoning Ordinance as its own Section. This applies to anyone who violates any part of the Zoning Ordinance for example, junk cars. The fine can be up to \$275.00 per day per the state RSA. Because Article XX is part of the Zoning Ordinance, it is subject to Section 165-132. The town can't put a tiered penalty system in the Zoning Ordinance. Because the Article is in the Zoning Ordinance any violation falls under the penalty provisions of the Ordinance. Half of his job involves mediation; it is the same with Ms. Bishop. He has one case that goes back to the fall concerning chickens running loose. He performed a site visit, sent three letters, and a letter was sent from the town attorney. Things got better for a short while, but now have gotten bad again. He has sent another letter and will now need to look at taking the person to court and requesting a fine. This becomes expensive for the town. If there is a fine, and what the amount would be, is ultimately up to the Judge. Code Enforcement does not determine the amount of the fine.

Mr. Dowie spoke with regard to Section 165-158, Wastes. What is "a small compost pile"? He feels that 3 cubic yards is small. Also, the definition of pasture refers to a large area of land. He pastures meat chickens on a 10 x 10 area. He applauds the Board on not outlawing chickens on small plots of land. Mr. Granese wondered why the sentence regarding composting had been added? Mrs. Robidoux explained it was one of the suggestions from the Animal Control Officer. Mr. Mackey said the town wants to avoid large accumulations of manure that could be a problem but also wanted to be able to allow residents to stockpile a small amount to use for composting purposes. Mr. MacEachern felt if the Board put the word "small" in then it should be defined so the Mr. Mackey does not have to be stuck defining it. Mr. Dowie said if compost was done correctly, there would not be a smell; it is the piles of manure that are breaking down anaerobically that create the issue. He thought the intent was to avoid large piles of manure. Mr. Chase thought it meant that small amounts of manure can be used in the compost pile to help break it down. Mr. MacEachern noted that in Ms. Evan's correspondence, she suggested adding the words "of manure" to clarify the sentence. Mr. Fairbanks felt the Board should define small

even if it meant that small was one cubic yard. Ms. Davison agreed the term small is relative if the neighbor does not like it. Mr. Chase suggested adding "10% of the compost pile can be composed of manure". Mr. Dowie said he did not feel the government should be telling him how much manure he can have in his compost pile. If the compost pile is managed properly, it will not smell. He feels the town has covered itself under the nuisance provision.

Ruth Provencal, 246 Island Pond Road, stated she owns seven acres of land. She will be raising chickens for refugees for International and Catholic Charities as well as vegetation and fruit trees. They will have several roosters in their flock. Is the town putting a lid on roosters not crowing and does she need to shut them in? She feels it violates the rights of small, free-range farmers. Some of her roosters crow at 4:00 a.m., but that is because the neighbor's spot lights shine on the rooster house when they get up and turn on the light to put their dog out. Her open fields might allow chickens and rooster noise to echo. She does not feel she should have to shut up the animals; even if contained, wildlife such as fisher cats, fox and hawks still get at the animals. She free ranges the fowl. Mr. Granese said the Board did not end up setting limits on crowing hours. That was taken out of the draft. Mr. Mackey noted there had originally been discussion about hourly restrictions and that was taken out partly on advice of counsel. A crowing rooster is not in violation unless it rises to the level of a nuisance.

There was no further comment.

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

Mrs. Robidoux suggested removing the sentence regarding composting from Section 165-158. People will create their own compost. She agrees with Mr. Dowie that the town should not tell people how to compost and if something rises to the level of a nuisance, Mr. Mackey will become aware of it. Mr. Granese spoke to the next sentence in that section and suggested changing the wording to "all manure" instead of "waste manure". Ms. Alongi said she would like to see a lot of the changes suggested by Ms. Evans incorporated into this document. Ms. Davison suggested the sentence Mr. Granese referred to could read "Manure shall be stored..." The Board was in agreement. Ms. Alongi agreed with Ms. Evan's suggestion that the last sentiment of that section be amended to read, "Manure shall be stored in such a way...." The Board agreed. Ms. Alongi suggested changing Section 165-155 per Ms. Evans' suggestions to read "At no time shall a livestock owner create or continue with a nuisance for their neighbor or the public." Mr. Fairbank felt what the Board had said the same thing with fewer words. Mr. Granese agreed, adding the attorney reviewed the wording and this is what he suggested for the nuisance provision. He does not feel that should be changed.

Regarding Section 165-156, Ms. Alongi asked if the Board decided to leave in the last sentence referring the fowl pen's cover? The Board wanted to keep that section as it is written. Mr. Flattes asked if many of the birds' wings were clipped to keep them from flying away. Mr. Dowie said people could do that but it limits the bird's predator defense. Ms. Alongi noted that Ms. Evans had suggested taking the sentence "Fowl pens shall have mesh or poly mesh roofs, or a suitable cover" and moving it from Shelter to Enclosure. Mr. Granese felt it was best suited to

be in the Shelter provisions. Mrs. Robidoux said the shelter refers to the small area such as the coop where the animals are contained and the enclosure could be the entire yard.

Ms. Alongi spoke with regard to Section 165-154.1. The word “kennels” seems wrong. Mr. Fairbanks explained the term “kennel” in this instance is referring to a structure or kennel run, not a boarding kennel.

Mr. MacEachern felt the changes suggested by the Board were not substantive changes and were very minor in nature. Mr. Sioras agreed and did not feel the document had to come back for another reading before the Board.

Mr. Flattes said he still had concerns regarding the fines and penalty provision. Are the fines imposed by the Zoning Board? They are not. Mr. Mackey explained that because the Livestock Ordinance is part of the Zoning Ordinance it falls under the penalty provision. The Zoning Ordinance has a Section that refers to fines and penalties applicable to any violation of the Ordinance, such as building setbacks, livestock, junk yards, etc. The amount of the fine is set by state RSA, not by the town. Any violation of this section of the ordinance falls under Section 165-132. Mr. Flattes felt that \$275.00 created a hardship. Mr. Mackey said a violation would not necessarily get to that point, but that would be up to the court. The town can ask for fines to cover the costs of the action, but the Judge would decide. Mr. Flattes said Mr. Mackey might work well with the residents but his successor later might not and he wanted some protection for the residents for the future. Mr. Mackey said the Board had put in some operating standards for violations but the attorney said the Zoning Ordinance is not the place for that. The reality is that is what they do, but this is not the place for that. Mr. Flattes said he wants protection so that the residents know the town is not out to get them. Mr. MacEachern said the Board can't dictate procedure in the regulations. The town can't legislate job actions. It is left up to staff as to how they go about their day to day duties. Mr. Fairbanks agreed that is an operating policy. Mrs. Robidoux said even if Section 165-161 was taken out of the ordinance, the town might still get to the level that the town would need to take someone to court. As much as the town might want to protect people, the Board also needs to protect the town. For example if there has been a four year span where the town has attempted to gain compliance and there has been nothing but complaints from the neighbors, there needs to be some mechanism to do that and bring the issue to completion. As Mr. Chase said, if it is not in the Ordinance, the town can't fall back on it. Mr. Fairbanks said one of the things Town Council is trying to do is to give Code Enforcement tools to enforce the regulations when nothing else works. Mr. Mackey added the town also has in its Code Chapter 20, which deals with dogs running at large and the feeding of ducks at Beaver Lake which apply more to the Animal Control Officer. That would be the appropriate place for a tiered fine system. So long as the Livestock article is in the Zoning Ordinance, the penalty provision found under Section 165-132 will apply. At some point in the future maybe it could be transferred to the town code and a tiered fine system could be set up there. For the bulk of the people, there are no issues.

Motion by MacEachern to accept the proposed changes to the Town of Derry Zoning Ordinance, Article XI, Word Usage and Definitions, Section 165-5, Definitions to AMEND the definitions of Livestock, Structure and Fowl, to ADD definitions for the following terms: Nuisance, Pasture and Enclosure, and to accept the proposed amendments to Article XX, Livestock to revise
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various sections within the Article as presented and amended this evening to change Section 165-158 Waste, and to forward the proposed changes to Town Council for consideration and approval. Bartkiewicz seconded the motion.

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

Mr. Granese thanked Mr. Mackey and Ms. Bishop for their work on the revisions. This will now move forward to Town Council to be placed on their agenda. Once Town Council posts their legal notice, the Planning Board will make mention of it during its meetings so the public can be aware of the date. He also thanked the residents, staff and past members of the Planning Board who provided comment during this process.

There was no further business before the Board.

Motion by MacEachern, seconded by Bartkiewicz to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:53 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____