

The Planning Board for the Town of Derry held a public meeting on Wednesday, November 19, 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: John O'Connor, Vice Chairman; Frank Bartkiewicz, Secretary; Michael Fairbanks, Town Council Representative; Randy Chase, Administrative Representative; Jan Choiniere (7:34 p.m.); Ann Alongi, Members; Marc Flattes, Alternates

Absent: David Granese, Darrell Park, Jim MacEachern, Lori Davison

Also present: Galen Stearns, Town Administrator; George Sioras, Planning Director; Elizabeth Robidoux, Planning Assistant

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

Mr. Flattes was seated for Mr. Park

Escrow

#14-22

Project Name: Hampstead Road & Harvest Drive

Developer: Robert MacCormack

Escrow Account: Hampstead Road & Harvest Drive

Escrow Type: Letter of Credit

Parcel ID/Location: 10015, 10025, 10024, Hampstead Road

The request is to renew Letter of Credit #19959, drawn on Enterprise Bank, in the amount of \$174,286.08 for the above noted project. The expiration date will be December 10, 2015.

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

#14-23

Project Name: Wetland Impact Plans – Driveway Crossing

Developer: Yvon Cormier Construction Corporation

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 08280-004, 7 Ashleigh Drive

The request is to establish Letter of Credit #121201, drawn on SalemFive Bank, in the amount of \$241,869.89 for the above noted project. The new expiration date will be December 03, 2015.

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

#14-24**Project Name: Martin Gate, LLC****Developer: Same****Escrow Account: Same****Parcel ID/Location: 30047, 1 West Broadway**

The request is to renew Letter of Credit #19981 in the amount of \$45,961.34 for the above noted project. The new expiration date will be December 04, 2015.

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

Minutes

The Board reviewed the minutes of the November 05, 2014 meeting.

Motion by Flattes, seconded by Bartkiewicz to approve the minutes of the November 05, 2014 meeting as written. Discussion followed.

There had been a request for clarification on page 22 of the minutes. Mrs. Robidoux asked if the Board could please advise if the shed was to remain in place or where it had been shown on the site plan approved by the Board. It was an important distinction and it had not been clear what the Board had intended. The Board members advised the record should be amended to read "The Board members determined the shed could remain where it is on the plan."

Flattes and Bartkiewicz moved to accept the amendment and all voted in favor to approve the minutes as amended.

Correspondence

None.

Other Business**Voluntary Merger – Edward & Nathalie Russo; PIDs 04067-010 and 06014-011**

Mr. Sioras advised the Board has received a request to voluntarily merge two properties located off Island Pond Road. The original developer was Robert Baldwin. The purpose of the merger is to combine two lots. The request has been signed off by the Assessing office. Staff recommends approval.

Motion by Bartkiewicz, seconded by Alongi to approve the voluntary merger of Parcel 06047-010, 11 Stone Fence Drive, and Parcel 06047-011, 13 Stone Fence Drive. Parcel 06047-011 will be deleted and Parcel 06047-010 will be retained.

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

Other

Mr. Sioras reported the Central Business District subcommittee met on Monday afternoon and made some good progress. The next meeting will be on Thursday, December 11, 2014. The goal is to finish the draft amendments in January and bring it to the Planning Board in February so the Board can start the public hearing process.

Public Hearing

SECOND public hearing to discuss the following proposed changes to the Town of Derry Zoning Ordinance:

To amend Article VI, District Provisions to add a new section, Section 165-32.2, General Commercial IV District and list the permitted uses in the new district;

To amend the following sections of Zoning Ordinance: Section 165-5, Definitions; Section 165-29, Enumeration of Districts. The Board will also discuss amending Section 165-30, Zoning Map, to remove the following three parcels from the Office Medical Business District and place them in the General Commercial IV zone: Parcel IDs 05039, 05039-001 and 05092, and to remove seventy-seven parcels from the General Commercial District located along Route 28 South and place them in the new General Commercial IV District.

The following amendments will also be discussed to add a new use, Commercial Performing and Fine Arts Schools and Studios, to the following: Section 165-32, General Commercial District, Section 165-33, Central Business District, Section 165-45, Medium High Density Residential District, and Section 165-49, Traditional Business Overlay District.

Mr. O'Connor advised the Board has received a letter from Attorney Morgan Hollis of Gottesman & Hollis who is representing several of the affected property owners. Mr. O'Connor asked Mr. Sioras to provide a brief summary of where the Board is to date.

Mr. Sioras stated the Board has worked for a few months on the proposed zoning changes. The affected area is on Rockingham Road east of Shute's Corner to Clam Haven, north to the Butterfield's property on Humphrey Road and south to the Windham town line. During the last public hearing in September, the Board made changes to the text, adding a few new permitted uses and clarifying definitions. The Board members have the letter from Attorney Hollis, who will speak to the Board. There are also several property owners present this evening.

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

Attorney Morgan Hollis said he would like to speak to the proposed amendments. He represents six landowners: The Browns, Palmers, Smiths, Taylors, Butterfields and the Siragasas. His letter to the Board addresses the ordinance as proposed. He has also brought a plan showing the district and would like that placed into the record. His client researched the land in the district and has indicated the owners and use as noted by the Assessor's office for each lot. This is relevant to his October 31, 2014 letter, and his client's feelings and beliefs with regard to the zoning change. There are 24 parcels of land, some large, which are used as single family residences in this district, which is a significant number. Sixteen parcels contain an auto sales use. This is important because there are a substantial number of property owners that would be zoned out of a permitted use and the proposed change would make their use illegal. They would be grandfathered but could not expand. Any change in any of those 40 uses would require a variance before they could make the change. If this ordinance is passed, forty properties with limited uses would be grandfathered but illegal going forward. The map establishes what the district is; it is not general commercial in the typical sense of the word. This is a mixed use district with many different uses. His clients feel this ordinance as proposed is illegal and unreasonable. Attorney Hollis wanted to review his letter to the Board but said he did not want to address the legal citations at this time; he could make those available. He feels his position is well supported by case law.

Under New Hampshire law, proposed zoning amendments can only be justified when they are for the purpose of promoting the health, safety, morals or the general welfare of the community. The Court has established several factors to determine whether a statute is valid under this analysis and those are whether the amendment is out of harmony with a comprehensive plan for the good of the community, whether the public need supports the amendment, that the amendment reflects the current character of the district, and, if the current character is different than the proposed change, a sufficient basis must exist for a town to enact an ordinance specifically targeted at altering the district's character. There needs to be a sufficient basis for the amendments.

Attorney Hollis advised he reviewed the town's comprehensive plan and it is a detailed plan. He did not find any recommendation for the necessity of removing single family use along this corridor or anything targeting this area to remove single family use. This is an existing, developed area of town. The comprehensive plan does not say single family residential use should be removed. There is also nothing that suggests the removal of automotive sales in this area; it is not singled out to be eliminated. He does not feel these changes are in harmony with the comprehensive plan.

Is there a need to prohibit single family residential in this area? He noted some unusual uses have been created that don't exist there currently. Is there a public need that supports the elimination of single family residential or auto sales? Is there a need to prohibit the coexistence of single family residential and commercial use? He sees no reasonable legal issues to support these changes and the proposed ordinance does not reflect the current district. The proposed changes alter the character of the neighborhood. What reason involving health, safety, welfare,

morals or general welfare of the community justifies the changes? It is important the residents hear the reason why.

Any amendment must meet the Constitutional standards as well. With regard to due process, there is a fundamental fairness that must be met. The change must be rationally related to a legitimate governmental interest. Are the limitations now imposed related to a specific public interest? His clients have not heard one. Tax basis for single family residential is not a valid, legal reason. Under equal protection, the proposed changes should also be substantially related to an important government function.

Attorney Hollis stated he was impressed with the presentation provided to the Board by Melissa Polk. It was comprehensive and he hopes the Board was impressed with her family history because it is rare to find that in southern New Hampshire. What has the Board done if this amendment passes? The Board is saying it is not interested in retaining the existing character. Many of the lots have been in the same family for generations and the families have maintained the properties. He urges the Board to take the opportunity to make this right. He is not sure why these changes are coming forward at this time. The public hearing presents the opportunity to amend the document and include uses such as single family residential and auto sales. The Board can do that. Or the Board can say it does not recommend the proposed changes at all and hope the Town Council will listen to that. He urges the Board to listen to the townspeople and conduct a true workshop. He feels there could be a perfect zone with a mixed use overlay. Mixed use currently exists. Now is the time to do this. He suggested the Board invite the neighbors and see what they have to say and to share the Board's views and concerns. The views may conflict but there can be a good discussion. This is difficult for the property owners because it imposes a substantial financial and personal change.

Mrs. Choiniere was seated at 7:34 p.m.

Melissa Polk, 2 Kilrea and 204 Rockingham Road advised she was representing herself and her parents. The family owns property at 204 and 202 Rockingham Road, and 8 Stark Road. 12 acres of their property is affected. She would like to reiterate some of the points she made at the last public hearing. Her grandparents owned and lived at 2 Kilrea Road during the time when the railroad went through and they farmed the land. 8 Stark Road was purchased in 1873 and was farmed until it burned in 1934. The landscaped lot has two stone foundations, fruit trees and other vegetation. In 1969 the land was changed to General Commercial and the right to farm removed. In 2013, the town removed the right to construct a single family residence on this lot, so they now cannot develop the land as her grandparents intended. The town is now telling them what commercial applications they can put on their property. Her family objects to this proposal. She asked the Board to please go back and consider mixed use. A mix of residential, retail and commercial within this given area will contribute to the vitality and viability of their neighborhood.

Sheldon Wolff, 242 Rockingham Road, provided three additional signatures of residents who are in opposition to the proposed changes. He stated these landowners do not want any changes to what is allowed currently, unless the Board is interested in adding uses. He feels this is discrimination. When the Board eliminates uses, it eliminates what people are allowed to do on

their property. He feels this is immoral and ridiculous; the attack on the auto dealer is wrong and he felt the free market should dictate the use in this zone. The highest and best use will dictate what happens on a lot. There is no reason to create a new zone but the Board could add to the zone to stimulate change. There is no return on investment with regard to the water and sewer expansion. The north side of town (Manchester Road) will pay the same tax as the landowners on the south side of town (this area), but the landowners on the south will not all have the same services. Not all of them will have water and sewer. This is the last portion of General Commercial land in Derry. Changing the zone will be a taking. This is a New Hampshire State road and the Board can't discriminate with regard to uses. A portion of this area is also on the Robert Frost/Old Stage Coach Scenic Byway. This is taking of property rights by elimination of uses. As a property owner, he has legal rights that go with his property. To take away some of the existing uses diminishes value and creates a loss.

Mr. Wolff said there are 77 parcels affected by this proposal. This is huge – the area encompasses about five to six miles. Two years ago, the Board wanted to change a portion of the lot to Office Medical Business and that did not work out. Now, the Board will add three parcels from OMB to the General Commercial which is a benefit to those property owners. The Board could add an overlay and allow condominiums and single family residential while encouraging multiple commercial developments. He is not sure if the Board is acting at the request of the Town Council or if Board members are acting in a pragmatic sense. The town needs to be more receptive and not send out negative signals.

The downtown area has been upgraded. He is not sure why this area was developed first; it may have been because Board members had businesses there. This Board may not be qualified to change zoning. Without guidelines, the members are shooting from the hip. There has been no study done which supports the change. There may have been many people who did not like the uses that were allowed on the north side of town, but that area is flourishing. This is the last commercial area to be developed on a state road. He feels this is immoral. The previous zoning changes wrecked the real estate market because no condominiums were allowed but there are multifamily apartments. Poor previous planning put a burden on the school system and increased the taxes on single family residents. Tax burdens lower resale value. He asked the Board to not make the same mistake as their predecessors and to not take away the rights of the property owners without them agreeing to it. He said to stop sending negative messages to the people who want to settle in Derry. The Board should encourage local economy and not discriminate against property owners who have been here for years. Add water and sewer to the town line and let the market dictate the uses.

Gerald and Elizabeth Siragusa, 49 and 45 South Main Street, spoke to the Board. Mrs. Siragusa stated they have lived in Derry for 33 years. They started a business here, contribute to the town and pay taxes. Dr. Butterfield and Mr. Brown (who owns Motor Sports) have also contributed to the character of the town, educated children, been part of the town and paid taxes. They feel this Board has not been fair to the people. This is a taking. There needs to be a moral, health, welfare or safety reason to change zoning. Why would the Board take out single family residential? She can't build a home for one of her children on any portion of her property. She would like to poll the Board and get an answer as to why this was removed. Mr. O'Connor asked her to continue with her testimony. He believed the reason had been brought up a year

ago. The value of a single family residence is not the same value as a commercial building. One intent is the higher tax rate commercial development can bring to the town. Mrs. Siragusa asked if it was because single family residential would bring more children to the schools. Mr. O'Connor said the school tax issue is a separate issue; attempts to decrease that are handled elsewhere. The municipality is trying to offset the taxes imposed by the school by increasing the commercial tax base. He noted the Board will have its own discussion after the public testimony.

Mrs. Siragusa said all of the residents have the same question. No one has answered why single family residential and mixed use are not allowed. Mr. Siragusa said they have had mixed use on their property for years and it has worked well. This has been going on for two plus years and this is a big issue. They had someone who was going to sign a four year lease on their small property and it could not be done because of these amendments. Mrs. Siragusa believed that all of a sudden, that particular use was added to the changes. Mr. Siragusa stated people want to do mixed use in this area. With this change, people can't live above the retail space in his building and they can't lease the building. Taxes are going up. Mrs. Siragusa said the list of permitted uses was not well thought out. The Board added things like a movie theatre and a performing arts center. The town already has the Stockbridge Theater at Pinkerton Academy. The last time changes were before the Board there was an attempt to add a buffer zone for gas stations. She feels the Board has shown preferential treatment. A former Councilor asked to have filling stations left in and it has been. That is a hazardous use, but auto dealers and single family residences are cut out of the list and they are good uses and are the character of the neighborhood. She appealed to the Planning Board and the Town Council to go back and think about what they are doing and leave this area General Commercial.

Mr. Siragusa recalled they had been told by the Board it would go back and look at mixed use in this area and it did not happen. Mrs. Siragusa felt the residents could speak but they are not getting answers from the Board and the Board represents the people of Derry. Mr. Siragusa felt that the affected property owners should be notified, and not just by the one "legal" public notice that there is going to be a workshop.

Marjorie Palmer, co-owner of Rockingham and Stark Road properties, said her husband is the fifth generation owner of the Palmer homestead. Her daughter, Melissa Polk, and her children are the 6th and 7th generations living on the family land. Their family is well established. Mr. Palmer attended the previous meetings but was unable to attend this evening. They have tried to be concerned and involved Derry citizens contributing to the Planning Board, Heritage Commission, and the retention and rehabilitation of the Upper Village Hall. Who benefits from these proposed zoning changes? Their family has preserved the land and its beauty in this area; it has been a struggle to do that. Their future plans have been thwarted. The plan to bring money to town will be paid for by the property owners who have held onto their land for many years. What they have struggled to save, attracted many of the new residents to live here. She urges the Board to consider their pleas and objections. She believes some of the Board members have already made up their minds, so why is the Board holding this hearing? She asked the Board to start over and to consider the pleas of the property owners. Mr. Chase has said that mixing commercial and residential does not work – it is working now. Please schedule a real hearing where all the neighbors have input.

Dale Smith, 120 Rockingham Road, advised he also represented his mother. He has been to most of the meetings. He agrees with what people have said. He had a few observations. Performing arts as a use is pretty specific. Who wants this and what is the motivation? What did the Board have in mind? There is a laundry list of uses for the zone. It seems like the Board is dictating that the property owners need to do this. They oppose the change as they oppose the change last year. He is not opposed to commercial development along Route 28; he likes the rural atmosphere in this area. They would not like to see high density housing but want the option to do what they want with the land which could include the option to build a single family home for themselves at the top of the hill to the rear, but they can't do that as this is written. He asked the Board to scrap this and revisit what was passed last year.

Mark Osborne, Cardinal Circle, stressed he was speaking this evening as a resident. With the help of other residents, it has been concluded that the current tax rate is not sustainable. The economic decline as it presently exists is not sustainable. He concurs with Mr. Chase that mixed use along the Bypass is not practical. He respects the opinions of those who have spoken this evening and in the past. This is their neighborhood. There are substantial family legacies along Route 28. There are also thousands of residents who support the zoning change and understand that in order to lower the tax rate, the town can't do it by closing schools or cutting positions and town services. The tax rate will decrease when the town brings in industry and commercial business. With regard to mixed use, not too long ago a company wanted to come to Derry. This would have resulted in a mixed use with commercial next to residential. The residents said, "Not in my back yard". No one on Route 28 is saying that now, but if the wrong industry comes along, how long will it be before the residents there are saying not in my backyard, or I don't want it there? It will be industry versus residents again. How many industries would like to come to Derry, creating jobs and paying taxes, but won't do it because it is not worth it because they don't want to be involved in a lawsuit over planning or zoning. If this Board permits mixed use, it is inviting that conflict and denying thousands in the town who acknowledge the tax rate decreases when commercial comes to town. With the water and sewer upgrades along Route 28, many have put up with the traffic inconveniences and the expense of the bonds because they know it will bring in revenue to support the schools and enhance municipal services in the long run. The revenue will come from commercial growth. The town can attract commercial and industrial uses not with mixed use but with the proposed zoning the Board is considering. This Board does not have an easy job. The Board members may not be thanked now, but they will be thanked a decade from now for having the courage to have a vision as to what Route 28 should look like 20 years from now. These are the considerations before the Council. There have been workshops on this issue. Just because the workshops don't bring the outcome some of the residents would like, does not nullify the vision.

Jim Smith, 208 Rockingham Road, owns Seacoast Sport Cycle. He has not lived here long, but moved his business here ten years ago. They have been successful in growing their business from one to fourteen employees. They are the largest Ducati dealership in New England and are the largest Italian motorcycle dealership in the north east. They want to be able to expand their business and pay their taxes.

Harland Brown, 190 and 205 Rockingham Road has been a resident of Derry for 55 years. He also owns Motor Sports. Mr. Brown said he aids the community as he can. Most recently, American Excavating staged vehicles on his property so that they could get the sewer project underway. He supports the Derry Pathfinders, a local snowmobile organization by allowing them to use his property as a drop off. He supports many other organizations in the Town of Derry. He is all for change and progress but feels the way this has been put together is an issue. There are other ways to entice business, but the town needs the tools. He thinks the Board may be ahead of itself and does not have the appropriate tools in place yet. He suggested allowing the property owners from Webster's Corner south to police themselves with regard to the uses. If someone has a problem with a neighbor's use, they can discuss it and bring it to the Planning Board or the ZBA if necessary. He does not want to see arguments; this is not doing the town a service. The town does not have water and sewer to the Windham town line; he may never see that in his lifetime. He feels the town does not have the tools it needs to support this type of master plan at this time. There are other ways to solve these issues and gain taxes. Business people ask for tax breaks to get going and they have been denied by the town. This drives people away. One large company wanted to move here and requested a break on the taxes for one or two years; they were denied. He has heard similar stories over the last 55 years. He would like the Board to rethink some of the amendments. Let the southern area resolve their own issues as they see fit. He is in opposition to the proposed changes, but is in favor of progress.

Al Dimmock, High Street, spoke as a concerned resident. The Board has a job to do, and it is not easy. The Board members need to have compassion for the people and understand where they are coming from. Some members of the Board are disrespectful to the public. The Board is there for the people as well as the town. He asks that the Board use compassion and understanding while doing their job. People can use their land – maybe not for what they wanted to, but they can use it. He does not feel the Board can take away grandfathered uses or that grandfathering is a fair solution. He feels for the residents and is asking for compassion and understanding while the Board is making its decisions. This needs to be settled in a nice way.

Timothy and Sharon Butterfield, 2 Humphry Road, also spoke. Mrs. Butterfield stated she has lived in Derry her entire life. Attorney Hollis represents their interests. She asks the Board to listen to his presentation and follow his suggestions in moving forward to make a good situation for all.

Dr. Butterfield acknowledged the Board has a tough job and everyone appreciates the job they do. He has heard two opposing views and concurs with Mrs. Butterfield. There is a way forward. Attorney Hollis has provided that way forward. Dr. Butterfield said he felt this change is a done deal and the Board is not listening to the residents. The workshop may have been posted legally but the landowners were not notified as they were for the public hearing. In the future, he would ask that the Board let the landowners know about workshops that might affect them. Workshops are taken very seriously and people do participate. He wants to reiterate that 40 of the 77 properties will be made illegal. That is huge. There is another way to have the benefit of water and sewer along with well thought out mixed use with commercial to the front and residential to the rear. It is done all over the country and state. He concurs this change is not right and there is another way to reap the benefits of commercial use with a buffer to the rear. His neighbor is developing a food service business and could develop his property with a

restaurant, adding quarters upstairs for the help. Under this change, that would not be allowed. He was told the Board would get to discussions about mixed use – that did not happen. He asks the Board to consider Attorney Hollis' way forward and in a non-divisive way, discuss the issues and come to a compromise.

Attorney Hollis said he felt he had to rebut some of Mr. Osborne's statements and cited case law. *Boulders at Strafford, LLC v Town of Stafford* 153 NH 633 involved a substantial due process challenge. Zoning changes are legal only if they are rationally related to a legitimate governmental interest. An equal protection case, *Cmnty. Res. For Justice, Inc. v City of Manchester*, 145 NH 748, says that the challenged amendment to the Zoning Ordinance must be substantially related to an important governmental directive.

Attorney Hollis felt this proposed change does not meet either test. Is it an important or legitimate government interest to tell 40 property owners their use is to go away because it will increase tax revenue? The Board should pick on other residential areas of town and spread the burden; don't place it only on these property owners. Commercial uses are currently allowed and business owners are not afraid of residents who object. Commerce will go to good locations; the town can't force these residences out to increase commercial uses. That is not a legitimate governmental interest to say the town will force out the 40 residential uses so the town can welcome commerce. That is not a substantial relationship to an important interest. He said the Board could say mixed use is no longer allowed in the downtown or to get rid of Burger King next to doctors. It does not pass the test. An example is the cycle shop which now can't expand because apparently that does not bring enough revenue.

Mr. Wolff said there are some people present tonight who are business owners and residents and they do not want to speak. He asked if he could poll the audience to see how many people were against the proposed change. Mr. O'Connor said he would allow it although he thought the outcome was a given. Mr. Wolff asked for a show of hands of those opposed and a majority of the audience raised their hands. Mr. Wolff confirmed mixed use is allowed in the downtown and stated he felt that worked.

Ms. Polk stated the thousands of people Mr. Osborne mentioned are not at this meeting. The property owners who are affected by this change are here and she asked the Board to please start over and work on something they all agree on.

There was no further public input.

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

Mr. O'Connor had a few comments prior to opening up for discussion with the full Board. Based on the abutter comments, concerns with some of the proposed uses, and questions about adding and eliminating uses, he did not feel the Board should rush to approve the proposed changes. The Board should pull back. He has not had the opportunity due to his medical leave to discuss some of the issues such as the auto sales use. He has questions that he does not believe were brought up. The Board's decision will have a long term impact on the growth of

the town. He has questions regarding some of the land uses and how the land is taxed by use. He suggests the Board not proceed with this version for the General Commercial IV and form a subcommittee as the Board did for the sign ordinance and most recently with the Central Business District with the purpose of creating a new General Commercial IV district. He has heard comments that some of the Board vision does not fall within the 2010 Master Plan. He would dispute that. Hundreds of people were involved in making decisions about the fate of Route 28. He would like to invite a more in-depth analysis of the changes. He would like to hear from other Board members.

Mr. Flattes agreed this should go to a subcommittee and asked that if one is formed, it includes and meets at a time when residents can attend. He feels the public should be able to attend the meetings or one or two residents from the affected area should be on the committee. Ms. Alongi agreed.

Mr. Fairbanks did not want to do anything in a hasty or uninformed manner. What will the Board gain by moving this to a subcommittee? Could the public hearings continue and the Board discuss the concerns and comments? Mr. Chase agreed and said the Board has put a lot of work into this. Mr. Fairbanks reiterated he would not want the Board to make a hasty decision and feels for all of the comments made this evening, but he did not know what the benefit would be to forming a subcommittee. Mrs. Choiniere agreed, as did Mr. Bartkiewicz.

Mr. Chase did not see why the questions could not be answered at a workshop. He does not feel it is an efficient use of the Board's time to scrap this and start over. Mr. Fairbanks felt the Board should take Attorney Hollis' concerns seriously and have them reviewed to make sure the Board is doing what is appropriate. He is hearing what people are saying but does not necessarily agree with all of it.

Mr. Sioras agreed the Board may not want to completely start over. The Board could do several things. A meeting could be held in a roundtable format, similar to the Master Plan workshops. That would alleviate some of the back and forth discussions and be more productive. It took almost 18 months to finalize the rezoning for the General Commercial III. The Board came up with a fair compromise for that area. He suggested continuing the process in a workshop setting and invite the public and the Town Council to attend. He understands the direction of the Town Council and knows the concerns of the residents. Housing should not have ever been placed in a commercial zone and the town is paying for decisions that were made many years ago. The outcomes of the Town Meeting votes were not always in the best interests of long term planning. The town has a limited commercial and industrial base on Route 28, Route 102, and the north end of Manchester Road. There are no exits off of Route 93 into Derry and the town needs to focus on what it has for commercial zones. There may be a compromise that allows minor subdivision of a few lots. The Board can see where this goes, it may take many years but the value of the properties in this area will gradually increase; it won't happen overnight. He suggested continuing this discussion in a workshop where they can look at more information. The Board could look at January for a date. Mr. O'Connor asked if there was enough time for legal counsel to review and respond to the letter from Attorney Hollis. Mr. Flattes said he felt this document should go to a subcommittee. Residents are of the opinion the Board has made up its mind; that is not the case. He would like to see a smaller group working on it so that it can

move along more quickly. Mr. O'Connor said the majority of the Board members have indicated they would like to continue the discussions in a workshop. Mr. Fairbanks did not believe the Board member's minds were made up, they would have been asking for a vote.

Mr. O'Connor polled the Board to see if they wanted to send the document to subcommittee or continue in a workshop.

Mr. Chase, Mr. Fairbanks, Mrs. Choiniere and Mr. Bartkiewicz wanted to continue in a workshop; Ms. Alongi, Mr. Flattes and Mr. O'Connor wanted to go to a subcommittee.

Mr. Sioras suggested the Board proceed as this is a public hearing. There have been no substantial changes made this evening to the document before the Board and the Board can vote on the document as proposed this evening. If the Board approves the document as presented, it should then be sent to Town Council for consideration and approval. If the Board votes the document down, they can go back to workshop and make changes at that level. The Board should not continue the public hearing when it does not know what the changes will be. The cleanest way to handle it is to vote the document up or down. If the vote is not to approve, then the Board can start in workshop in January with the input it has gained this evening.

Motion by Bartkiewicz to vote on the proposed changes to the Town of Derry Zoning Ordinance as presented this evening and to forward the proposed changes to Town Council for consideration, seconded by Choiniere.

Chase voted no, he is willing to stay open to discussion; Fairbanks voted no for the same reasons, stating he assumed this meant they would move to workshop in January; Alongi voted no and would like to move to a workshop; Flattes voted no as the document is not ready to go to Town Council; Choiniere, Bartkiewicz and O'Connor all voted no.

The Board selected a workshop date of January 21, 2015.

Mr. Flattes said he wanted to be sure the Board had enough time to focus and address concerns and not fall behind. Mr. Sioras said the Board can adjust workshop dates to accommodate larger projects.

The Board took a short break at 8:59 and reconvened at 9:08 p.m.

Workshop #3, Discussion regarding multifamily housing

This workshop is a continuation from November 05, 2014. Mr. Sioras noted the proposed changes are noted in red and was hoping for some discussion from the Board on the proposed changes. The major item is the reduction in the density requirement for multifamily zones. The Board started the discussion at the top of page 3. A change was the increase in the amount of land required from 3630 square feet to 5000 square feet per unit. Mr. Sioras identified the Medium High Density Residential areas.

Mr. O'Connor invited Mary Eisner to discuss the proposed changes with the Board as she had initiated the discussion. Mr. O'Connor had a comment with regard to the issue of yield and buildable lots. There is a description contained in Section 165-44.B.2.a for "buildable lot" but it might be more clear if that term was placed in the definition section. Mr. Sioras said the issue came up while discussing commercial developments; developers had been utilizing wetland area and placing it in the calculation for total density. This may not be the direction to go and perhaps the developers should not include land that cannot be built upon. The Board agreed. Mr. Fairbanks asked if there was a definition for an unbuildable lot. Mr. Sioras noted 1/3 of open space must be green area and wetlands cannot be included.

Mr. Fairbanks cautioned the Board that they need to be careful about what the Board says is buildable and not buildable. Buildable area needs to be clearly defined. Mr. O'Connor felt it should be clearly defined. Mr. Sioras said in general, slopes over 20-25% and wetlands are not usable for septic areas. Mr. Fairbanks said the Board can only legally limit what a developer can't legally build on. It would be okay to take wetlands out of the equation but he is not sure steep slopes should be excluded. Board members were also not certain.

Mr. Chase recalled a zoning case on Adam's Pond where the developer wanted to use the land at the bottom of the pond as "land" to be included in the calculation; he would rather avoid those types of situations. Mr. Sioras said he would research and see what the state RSAs have to say and will bring that information back to the next workshop. Mr. Chase agreed the Board may need to take a second look at steep slopes.

Mr. Chase asked the Board to look at Section 170-64 of the LDCR and Section 165-45 of the Zoning Ordinance; they conflict. One regulation says a 1/3 of the gross lot area and the other says 15% of the gross lot area – they should be the same. Green space and recreation space can be confused. Mr. Fairbanks recalled one developer said that people don't like swings for recreation area so he was going to use the green space as the recreation area. He indicated he had an issue with the wording in the proposed Section 165-44.B.2.a.

Mr. O'Connor asked Ms. Eisner if she had any comments on the draft. Ms. Eisner asked with regard to grandfathering and snob zoning. Derry exceeds its workforce housing numbers, can the Board include her suggestion in the wording and let the attorney comment on it? She would like to see wording that stated any future use of a residential house would need to be residential and the lot can't be converted to multifamily use – this would prevent a row of apartments. Mr. Sioras said he can understand what she is saying but he does not think the Board could legally do that. A developer could purchase three or four consecutive lots and develop it as multifamily. Mr. Fairbanks said that would actually make the lots more conforming to the existing ordinance.

Mr. Sioras said the Board is not saying single family is not allowed, so they may not be able to restrict the development in that manner. The Board agreed.

Mr. Fairbanks had a question about the rounding up and down suggested in Section 165-44.B.2.a. He felt the number should be rounded to the most restrictive whole number. Mr. Flattes said the Board should be consistent throughout the regulations wherever it requests

rounding. Mr. Sioras said the parking calculation rounds up and agreed the density calculation should be clear. The Board agreed to round down to the nearest whole number.

Mr. Fairbanks asked with regard to Section 165-44.B.2.e. Mrs. Robidoux said Mr. Mackey had asked who would be responsible for measuring the heights of surrounding buildings. Mr. Chase asked if Mr. Mackey had preferred the 1000 foot circumference or the 500 foot circumference. Mr. Sioras explained how the town allows for average front setbacks. Mrs. Robidoux said that the CBD subcommittee is suggesting a 500 foot distance. Mr. Chase noted that for recent plans that have been before the Board, Bunker Hill Estates is about 2000 feet from Brook Street, but across the street from 70 Fordway. Mr. Flattes asked if there were any elevation disks in that area. Mr. Chase did not believe so, but the final plans for Bunker Estates would have a benchmark. Mr. Fairbanks thought it was okay to use a maximum elevation in the downtown as it is fairly flat, but the rest of the town is not. Mr. Sioras added there are many single family buildings in this area that are three stories; some are old Victorians. Mr. Chase agreed, adding in some areas of town, the homes are mostly ranches. Mr. Fairbanks suggested decreasing the circumference to 500 feet; there is better protection for the neighborhoods if the Board uses a circumference. Mrs. Choiniere remarked on one street in town where the homes are mostly cape style and then there is a large colonial; it looks out of place for the neighborhood. She is in favor of this and feels there needs to be more area than just the adjoining properties for a distance. Ms. Alongi asked if the proposed changes considered the height of townhouses; how can the Board cap the height if the regulation is allowing 10% taller than existing structures. Mr. Fairbanks explained if the regulations allow an average, it will keep the height within reason. Ms. Alongi said a townhouse normally has three floors and the town does not want to see skyscrapers. Why is the Board restricting the height? What if someone is over the average by a small amount? Couldn't the Board allow it? The Board members said developers would be able to apply for a variance if they wanted to be taller than regulated. Mr. O'Connor said the purpose of this change is to protect the neighborhoods. It would be up to the builder to get creative in how he designed the building to get the number of stories they want. Mr. Fairbanks said height is the second most common complaint from residents after "it's there". Mr. O'Connor believed that some developments actually improve the areas they are built in. Ms. Alongi discussed the project at 70 Fordway. That was a single family neighborhood; did the Board restrict the height of the multifamily building? Mr. Fairbanks said that building was just above 30 feet tall. Mr. Sioras added the current regulations allow a 60 foot height. The purpose of these changes is the town provides more than its fair share of workforce housing for the region compared to the neighboring towns, and the Board is trying to maintain the character of its neighborhoods while accommodating the market. The Board will have another meeting in two weeks and can come back to this on December 3rd.

Mr. Flattes asked if the draft documents the Board is working with can be placed online for the public to review. Mrs. Choiniere noted the public is welcome to attend the workshops and could be here if they wished. Mr. Fairbanks agreed the items could be placed on the website for workshop items. Mr. Flattes said he wanted to place the emphasis on transparency; workshops are typically held at the end of the meetings and that may be late for some residents.

There was no further discussion.

Motion by Choiniere, seconded by Alongi to adjourn. The motion passed with all in favor and the meeting stood adjourned at 9:44 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____