

The Planning Board for the Town of Derry held a public meeting on Wednesday, April 17, 2013, at 7:00 p.m., at the Derry Municipal Center (3rd Floor Meeting Room) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman; John O'Connor, Vice Chairman; Frank Bartkiewicz, Secretary; Randy Chase, Administrative Representative; Albert Dimmock, Sr., Town Council Liaison; Darrell Park, Jan Choiniere and Jim MacEachern (7:10 p.m.), Members.

Absent: Ann Marie Alongi, Lori Davison, John Anderson

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

Mr. Granese called the meeting to order at 7:00 p.m. The meeting began with a salute to the flag. Mr. Granese asked for a moment of silence in honor of those affected by the bombings at the Boston Marathon on Monday. He acknowledged the law enforcement, fire department and emergency response personnel for their efforts. Mr. Granese then introduced the staff and Board members present, and noted the location of the exits, and meeting materials.

Escrow

None.

Minutes

The Board reviewed the minutes of the April 03, 2013, meeting.

Motion by O'Connor, seconded by Bartkiewicz to accept the minutes of the April 03, 2013, meeting as written. The motion passed with all in favor.

Correspondence

Mr. Bartkiewicz advised the Board is in receipt of the Spring 2013 edition of *The Source*, a newsletter published by NH DES. The Board also was provided a copy of a reminder letter sent to Joseph Landers of Covey Run, advising that the Letter of Credit for the project is due to expire in June.

Other BusinessReview of Changes to Policy and Procedures

Mr. O'Connor stated he has reviewed the proposed changes to the Planning Board Policy and Procedures, and Planning staff has incorporated the suggested changes that resulted from changes to the Town Charter. The proposed changes are as follows:

Section 1, Membership, remove under 1.a, "if approved by the Town Council."; remove completely 1.b, "An administrative official of the town shall be appointed by the Town Administrator to be an ex officio member"; renumber the remainder of Section 1; change Section 1.c from six members to seven members. In addition, a new Section 10, Procedure for Reconsideration of a Planning Board Decision" was added. The Board currently follows Robert's Rules but needed to further define how the Board reconsiders a decision. Mr. O'Connor read the new section into the record.

Motion by O'Connor, seconded by Bartkiewicz to accept the changes. Discussion followed.

Mr. Granese asked if the Board could establish time limits for the meetings? The Procedures state the meetings start at 7:00 p.m. Mr. Sioras said he did not feel it was necessary. It is not often that Planning Board meetings run late. Town Council has more time consuming items. Mr. O'Connor noted that under Robert's Rules, the Board has the option to continue a hearing to another time if it is running late. Mr. Dimmock noted for the Town Council, if they approach 10:00 p.m., a request can be made to extend the meeting an additional ten minutes, and then for one more ten minute period. The extensions need to be approved by the whole Council. Mr. Sioras noted if the Board finds its meeting is running close to 9:45 p.m., the Board can make a motion to continue to another evening.

Chase, Park, O'Conner, Dimmock, Choiniere, Bartkiewicz and Granese voted in favor and the motion passed.

Reminder of Site Walk

Mr. Sioras reminded the Board of the site walk that is scheduled for Saturday, April 20, 2013, 10:00 a.m., to view the 22 Lenox Road property. The Board will view the proposed site for the town house duplex. Mr. Granese noted the weather is supposed to be rainy and recommended umbrellas.

Public Hearing**Tsienneto Fourteen Development
PID 08079-005, 14 Tsienneto Road
Acceptance/Review, Site Plan
General Office Building**

Mr. Sioras provided the following staff report. The property is located at 14 Tsienneto Road between the Goddard School and Merrimac Tile Company. The purpose of the site plan is for a 12,300 SF office building located in the General Commercial II zoning district. The building is part of the 14 Tsienneto Medical Park. All town departments have reviewed and signed the plan. There are no waivers requested. A wetland permit has been submitted to NHDES and the approval is pending. He would recommend general approval of the site plan. There is a letter from Merrimac Tile Company that he would like to read into the record. Abutters had questions regarding landscaping and wildlife.

Mr. MacEachern was now seated.

Mr. Sioras read the letter from Merrimac Tile, located at 18 Tsienneto Road, dated February 28, 2013, into the record, noting a copy of the letter went to the Conservation Commission as well:

“To whom it may concern: As a direct abutter to the proposed new development of 14 Tsienneto Road I have many concerns.

I understand that a new 12,000 square foot building of two levels will be constructed on the other side of a stream. Parking will also be on the other side of this stream. Will the stream be moved or discontinued permanently? Will this be the first step in developing this small strip of land between the existing buildings and the apartments since an earlier application wanted to cross over this stream and has not yet.

I currently have many drainage issues on my parcel of 18 Tsienneto Road so bad that we have added to the end of our exit a small speed bump barrier to keep water out of our lot. There is much sheet flow from the post office side which flows down to our lot. I have two wetland areas on my property and enjoy Turtles laying their eggs outside of the building into the landscaped areas they have done this for many years. I have had Turkey, Fox and Baby Fox outside my windows we also see Deer. There is a lot of wildlife in this area but will not be for much longer if this uncontrolled development continues in such a congested way.

Beauty and vegetation around a business helps create a more pleasing working environment for my employees and the town of Derry. All this concentrated development and pavement does not.

There is Granite under my building and on the surrounding land which was apparent with all the blasting that was done for the construction of the existing building. My whole building shook and we even felt the blasting from Walmart so this probably travels along the Granite in the area this is very disrupting to my workers.

There has been talk of a traffic light....How will that work and affect my employees exiting our parcel it is extremely difficult now.... Will traffic be stacked up in front of my building? Crossing over Tsienneto Road 2 lanes of traffic is a safety issue now.

The Conservation Commission recently did a site walk in the snow....How can that be a good way to know what is really on the ground regarding water and stream flow? These lots have a lot of water on them, and around them, and it even extends across the street.

I suggest you do a site walk and have a traffic study done prior to any additional approvals. Without snow would be the best option.

I would like my concerns and comments to be part of the record for the Technical Review Committee, Conservation Commission, Planning Board and Wetlands Board.

Thank you and please notify me of any and all correspondence concerning this site. I am a very interested party.

Regards, Thomas Indoccio, Vice President"

Mr. O'Connor noted this plan was reviewed by the Conservation Commission. Did the TRC see the letter? Mr. Sioras advised the letter was received after the plan was provided to the TRC. The TRC reviews and signs off on the plan before the plan even gets to the Planning Board. [Clerk Note: review of the file identified the TRC and Conservation Commission were forwarded copies of the letter on the same day it was received by the Planning Department.]

Chris Nickerson and Keith Coviello presented for the applicant. Mr. Nickerson stated the project is located on Tsienneto Road between the Goddard School and Merrimac Tile Company. The site currently contains a 24,000 SF medical office building that was approved about three years ago. The intent is to construct a 12,000 SF building immediately behind the existing building and the apartments that are located on Linlew Drive to the west. The property totals 3.5 acres. With regard to the parking calculation, they have determined there is more than enough parking for the site. They have submitted to the DES wetlands bureau for the Dredge and Fill permit. DES received that on February 25th and the application is still under technical review but they speculate they will have the permit in hand soon. They have been to the Technical Review Committee and Conservation Commission. At the Conservation Commission they received some recognition of the work they did to study the wildlife and to conduct a thorough review of the site. All of the TRC signed the plan, as did the Conservation Commission. They have renderings of the proposed building which is similar to the others in the area. They look forward to moving this project forward.

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.
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Maureen Rose, 115 Windham Road, advised she is an employee of Merrimac Tile Company. She has worked there for eleven years and has watched the Conservation Commission meetings regarding this project. At those meetings it was mentioned that there are turtles on the site that would be behind CLM. The Commission did not recommend the addition of silt fence on the site. She feels the Conservation Commission should pay more attention to the wetlands in all areas of town. CLM has a treatment swale for the abutting parcel and there has been a lot of mixing and matching of spaces and double dipping of acreages. On October 19, 2009, the Goddard School site plan was before the Board. She read from the minutes of that meeting (page 3 of 8). "The lighting, sign and landscape plans comply with the regulations." {Clerk Note: these minutes concerned the development of the front building at 14 Tsienneto, not The Goddard School.] Ms. Rose said all of these lots have come to the Board for changes in the parking areas. In some instances, waivers were granted to allow less parking and then the applicants came back and asked for more parking. During the same meeting, it was noted that 111 parking spaces were provided and only 96 were required. When CLM was developed, 208 parking spaces were

required and 120 spaces were approved in November of 2010. She stated parking is an issue at these sites because the Planning Board waived the parking requirements and no one has a place to park. With regard to the minutes of The Goddard School approval, the minutes say the owners are sensitive to parking issues there and have looked at alternatives. There is upland to the rear that could be utilized if parking became an issue. So what is it? Is it open space or is it parking? The Goddard School came in at 3 acres. This new building came in at 3 acres, or is this one lot with 3 acres total? There has been some discussion of a traffic light which may cause conflicts for Merrimac Tile. Ms. Rose requested the letter sent from Merrimac Tile be included in the body of the minutes.

In 2009 a twelve hour traffic study was conducted. Ms. Rose said she believes a new traffic study needs to be done because there are more people on the road. If a light was added two lots down from Merrimac Tile, their trucks will not be able to get in and they will have an issue getting out of the site. A light can back up a lot of traffic. From what she understands of this proposal, the green space to the rear of the site will go away. She provided an aerial view of the lot from the Derry GIS. A copy was retained for the file. She noted the river that is supposedly just seasonal that is depicted on the lot. She felt the Board needed to look at the cumulative effect to the whole area not just the one lot. This river does not stop on one parcel. There have been changes near this water, but there is wildlife corridor there. The Board knows how important water is. She read from a DES fact sheet with regard to the importance of water. A copy was not provided for the file. Ms. Rose stated there are two ponds on the Merrimac Tile site. The color printout from the GIS shows a stream that she felt was obviously not seasonal if it is depicted on the GIS. Ms. Rose read the following from the November 17, 2010 meeting of the Board at which it had approved expanded parking at CLM. "Mr. MacEachern noted that Merrimack Tile was constructed before these buildings and knows that wetlands can be filled if there is mitigation elsewhere. Has this whole thing been looked at to see the effect of all of these parcels together? Mr. Sioras said Conservation Commission is working on an ordinance to look at the setbacks from parking lots. They will look at that and hope to bring it before the Board in a few months. It raised the issue of cumulative impacts. Mr. MacEachern felt that the cumulative impacts should be looked at as areas in town are developed. Mr. Sioras said the overall drainage in this area will be reviewed when Walmart comes in." Ms. Rose asked if that happened? Did the Conservation Commission do the parking lot setback ordinance? Mr. Sioras explained the Conservation Commission began work on it but has not forwarded anything to the Planning Board. He would defer questions on it to them. Walmart did provide a drainage study for its project. Mr. L'Heureux added that Walmart mitigated all of their disturbance and did provide a drainage study for their property.

Ms. Rose wanted to know if the Board looked at this whole area and the disturbances to the wildlife corridor? The Zoning Ordinance says there should not be development in that area that might contribute to erosion. She read from other sections of the Zoning Ordinance, having to do with poorly drained soil. She reminded the Board that HADCO has 37 monitoring wells on site, 2 surface water stations and 2 influent wells. She believes the site to now be clean but the Board needs to pay attention to the pollution in this area of town and keep the drainage clean. She reported she did speak with Chris Nickerson on behalf of her employer and asked him for additional information after Merrimack Tile was notified of this project. He did not send her anything in writing but offered to meet them with a copy of the plan and discuss the project; they

opted not to do that. She is not sure if they are going to blast on that site or not. In the General Provisions of the Zoning Ordinance, it states the Board can request environmental impact assessments. She thinks the Board should consider one for this project.

This is a General Commercial II zone that has specific area and dimensional requirements. Ms. Rose asked if each of the two buildings that are on the one parcel, meet those requirements and setbacks? Or are they lumped in with all the other projects on the road and share them? If the buffer of trees between the apartments and this project are removed, it will change the aesthetics, the water flow, quality for wildlife and other things on the site.

Mr. Granese noted there does not appear to be a waiver to reduce that rear buffer and the rendering provided by the applicant shows a treed buffer. Mr. Sioras added the plan shows the applicable setbacks. Ms. Rose said she was inquiring about the Goddard School as well. Mr. Granese said the Board is not dealing with the Goddard School. Mr. Sioras said that each of the projects on Tsienneto Road are on their own lots. Ms. Rose said it appeared from the minutes that the lot will all be paved to the rear. Snow storage is also a concern on this site and she is not sure where it will go. There are many issues to look at and be addressed. She recommends this whole area needs to be looked at to be sure there are no outstanding approvals, from Merrimac Tile to Overlook. She believes there are still some pending crossings of the stream and they have not all yet been completed. The open spaces and wetlands in the whole area need to be looked at. What is left for wildlife habitat and wetland protection? The land should be left on the other side of this river as a wildlife corridor. She suggests a second level garage be utilized or a shuttle bus to bring people from the further parking spaces to the building as it seems like everyone wants to park by the front door. She has nothing against this new development since we all need healthcare, but the Board needs to be aware of the effect water and wildlife have on our health. She hopes the owners will take her comments, go back to the drawing board and do what is right for the land. She would like to see the Board hold a site walk during a business day; she is also not certain fire trucks will be able to get around the site and if they will be able to get across the bridge.

Keith Coviello pointed out the snow storage areas on the plan. There are two locations. Ms. Rose asked if the snow will be placed between the new building and the apartments? Mr. Coviello indicated the two areas again and said they will drain to the bioretention basin they will have on site. Ms. Rose asked if there is any open space for the front parcel? Mr. Coviello clarified a previous question noting the Goddard School is on its own separate parcel. The only thing shared between the two parcels is the common driveway and that is centered on the lot line. Each lot has its own open space. By the regulations, they are required to retain 33% green space on the lot. This parcel has 34% after the new development. The plantings are considered green space. Ms. Rose did not think that helped the wildlife much. Mr. Granese said that it is part of the regulations.

Mr. Granese asked if Mr. Coviello could point out the location of the bridge as he did not see one. Mr. Coviello said there will not be a bridge. The bridge mentioned by Ms. Rose is one that was proposed to be behind CLM. Ms. Rose asked how they planned to cross the stream, were they just going to fill it in? Mr. Coviello explained they are piping it to a 60" culvert. Mr. Granese noted there is no bridge, it will be pavement for the parking lot. Ms. Rose said the

Board needs to think of the environment and how it will affect our health and the wildlife. There needs to be balance. People need places to go outside of their workplaces. Mr. O'Connor advised he lives in the area and walks the area quite frequently. On one of his recent walks, he counted 13 turkey hens, 2 toms, 5 white tail deer and other wildlife; this after the construction of the Walmart store. Ms. Rose said she has seen those animals at Merrimac Tile. Mr. O'Connor stated the Board is aware and is concerned for the environment. Ms. Rose said she would like the Board to be aware of the impacts. The wildlife has no one to speak for them.

There was no other public input.

Motion by MacEachern to close the public hearing, seconded by Dimmock. The motion passed with all in favor and the plan came back to the Board for review and comment.

Mr. Granese asked if the Conservation Commission granted approval to this project? Mr. Sioras said they did. Luke Hurley of Gove Environmental sent a letter to the Commission regarding the turtles that could be on site. A copy of the letter is in the Board packet. Mr. Nickerson can explain the contents of the letter.

Mr. Nickerson stated that they visited the Conservation Commission on three occasions. They had a meeting, a site walk, and a third meeting at which the plans were approved. During the meeting the Conservation Commission asked that they take a look at wildlife, specifically the turtle habitat in the area. On February 20, 2013, Luke Hurley wrote to Margaret Ives of the Conservation Commission. He summarized the letter as follows. There are a number of turtle species in the area that are native to this area and to the state. The letter described the spring hatching habits of the turtles and how they travel from the winter hibernation areas to the nesting areas. Mr. Hurley had suggested placing silt fence around the site to deter turtles from entering the construction area and directing them to what was felt to be the most likely nesting area. The Conservation Commission felt it would be overkill to wrap the site in silt fence as the silt fence that was left behind could become a deterrent to other wildlife entering the site. They have accommodated for the recommendation and would like to move forward.

Mr. O'Connor noted the letter said the majority of the turtles were thought to be behind CLM and that silt fence could be placed on that side of the site. Mr. Nickerson said they felt the turtles might move from the north near Merrimac Tile to behind CLM where there is a grassy area. They did put silt fence so that the turtles can't get onto the site. Mr. Coviello stated the silt fence is planned to be placed along the edge of pavement. It was suggested they wrap the site in silt fence, but decided to meet that suggestion in the middle and have extended it along one side so that any turtles would be deterred from the construction area.

Mr. O'Connor asked if there would be any blasting? Mr. Coviello said there was some blasting that was done when they constructed the front building. There may be minimal blasting for this site. Mr. Nickerson said naturally, their preference would be not to blast because it is cost prohibitive. They may use a hammer; blasting is a last resort. Mr. O'Connor asked if the applicant was aware of the requirement to pull a permit from the Fire Chief and that a pre blast survey would need to be conducted to protect the abutters. Walmart did this. Mr. Nickerson

commented that was good housekeeping and noted that the construction for Walmart was for a 200,000 square foot building. This is a 12,000 square foot building.

Mr. Granese asked if DPW had any issues with the project? Mr. L'Heureux said all concerns have been addressed. The Keach Nordstrom report was received today and those items will be addressed as part of the plan revisions.

Mr. Coviello advised they read the KNA letter and have no issues with the comments. He did want to mention one item that Mrs. Robidoux asked be addressed for the record having to do with the rear buffer and plantings on the plan. Steve Keach had noted the need to extend the plantings to the north and south along this buffer. They are in agreement. They will need to grade in that area for the bioretention basin. They will add three or so trees to the north and ten or so trees to the south to extend the buffer and make sure it is full along the length of that property line. Mr. Keach had also made a comment regarding the existing light pole that they would like to salvage in place. The light pole may end up in an area of a parking space. They intend to salvage the space, but will remove it if they have to in order to keep the light pole. They will add a landscaped island and have the ability to add the space in another area of the site if necessary.

Mrs. Choiniere asked with regard to the culvert. Is the culvert going to be under the pavement, and in essence will be a bridge? Mr. Coviello said it will be under the pavement but will not be a bridge. At the north end of the parking lot there will be a drop structure with 8 feet of concrete which will prevent the drainage of the wetland. It will be at the same elevation as the existing wetland so that the wetland does not drain. Mrs. Choiniere asked if turtles can get through? Mr. Coviello said no. Mrs. Choiniere asked if there is any way to make the area more passable for wildlife? Mr. Coviello explained that in order to not drain the wetland, they need to put the bottom of the pipe 9 feet below ground level. They don't want to drain the wetland or stop the wetland up. A culvert of this size and length is too confined and has too much of a grade change for animals. Mr. Nickerson referenced Sheet C4. On the left hand side there is an exaggerated drainage detail. This is an area of seasonal flow and the profile is shown. This structure drops down so they have minimal disturbance of the wetland.

Mrs. Choiniere asked if the plantings along the buffer will help divert wildlife? Mr. Coviello felt that any cover would be appreciated by the wildlife. They intend to plant Norway Spruce in this area. Mr. Nickerson added the plantings are intended for residential screening but the ancillary benefit is that it will create a nice understory and will, over time, be a thick buffer between the buildings and the apartments. Mr. Coviello said the bioretention basin is going to be used for stormwater treatment. The plantings are wetland species. He believes wildlife would head to that area rather than the main portions of the property.

Mr. MacEachern asked if the drainage calculations were based on a 25 year storm? Mr. Coviello said they sized the drainage to pass a 100 year storm. Mr. MacEachern asked with regard to Sheet C2 and the drainage trench. Is that the fill around the 5 foot pipe? Mr. Coviello said it is a typical drainage trench detail. Mr. MacEachern asked if something extra needs to be constructed since this is such a large pipe? Will there need to be more rock? Mr. Coviello explained the stone is put down to ease the laying of the pipe. In theory they could lay the pipe on original

material. They don't need to ramp up the bedding. Mr. L'Heureux explained the important part is the stone cradling the pipe to the half way point. Six inches of bedding is variable and will be based on excavation of the trench. The 2 ½ feet on either side of the pipe is important. Mr. MacEachern commented that dimension is not shown on the plan. Mr. L'Heureux said the material needs to be half the dimension of the pipe, so there will be 2 ½ feet of stone on either side.

Mr. MacEachern said he still has the same questions he had several years ago. He thinks there should be a site walk so that the Board can go look at the area. The Board still needs to look at this as a complete project. This is an existing commercial zone. He still thinks the Board should look at this street in a more holistic manner. The plan meets the regulations and rules and the Board makes decisions based on that. He still wants to look at this as a whole street. The other side of the street needs to be dealt with as well. The discussion of the traffic light comes up as each lot is developed. This is one entrance to three buildings; which is okay. Did anyone look at this a whole from Shaw's to the light at the post office?

Mr. Sioras said there was discussion as each development came in regarding the proposed traffic light. Money was put aside for the light which will be triggered when the other side of the road is developed. There is one parcel to develop on the south side that is located between Sunview Condominiums and Tire Warehouse. A lot of the land is wet. Over the years there has been discussion that Pinkerton would pick up the parcel to use it as an additional access. That has not happened. The traffic study that has been performed shows that when the lot on the other side of the road is developed, that is when the light will be required. Several of the lots on this side of the road have put money aside in escrow as fair share contributions in anticipation of the traffic light.

The Board took a moment to review which businesses are located on each lot on Tsienneto Road. Mr. Sioras said with regard to the wetland, the Conservation Commission looks at the cumulative impact to the wetlands in the area from the Post Office to Fireye, as does the Wetland Bureau. On paper, this project may only affect 1300 square feet but the Wetland Bureau will look at the whole watershed.

Mr. MacEachern asked when the Conservation Commission looked at the property, was it during the wet season? Mr. Sioras said Gove Environmental is very reputable and has one of the best reputations in the state. They are sensitive to the issues involving the wetlands and look at the wetlands in the area. Mr. MacEachern said he would still like to have site walk because this area is getting congested and he has recommended that with every parcel that has been developed on Tsienneto. They have been asking for funds for a light on all of the developments, but if a light was installed where would it go?

Mr. Nickerson said they looked at the traffic overall in the area. They contacted Steve Pernaw to look at the traffic impacts this site would have and there is a memo from him dated March 19, 2013, in the Board packets. The first page of this proposes calculations that include all of the developments in the area. Those figures are taken into consideration. A signalized intersection would be at this driveway. With regard to stormwater or environmental concerns, they were on site in February with the Conservation Commission members. They did everything the

Commission asked them to do from a wildlife standpoint. He feels this development is an improvement to the area, the site is aesthetically pleasing, the project will increase the tax base for Derry, and will create jobs; this will all coincide with a quality development. They have checked off every box along the way. He feels a site walk or going over the same issues over and over is not necessary. This is the last piece to be developed on this side of the road over a ten year period. There is not much to look at and he would like to move the project forward.

Mr. Chase stated the reason for the shared driveway goes back so that instead of many connections on Tsienneto Road, all of the traffic would be funneled to the future traffic light. This area has been looked at as a whole as part of the planning. He sees that the access to the lot will be amended and some of the current parking for the front building will go away. How does this affect the parking calculation for the existing building? Mr. Coviello said that for both buildings, they need 146 parking spaces total per the regulations. They are proposing 156 which includes the deduction of the six that will go away for the front building. Mr. Chase asked if the 24 foot access is the sole access? It is. Will there be one way or two way access around the building. Mr. Coviello said it will be two way access. Mr. Sioras noted that James Kersten in Fire Prevention had asked questions with regard to the access and there is a fire truck access plan in the packet. Mr. Coviello said they typically use a WB50 for the access plan and that was provided to the Fire Department. He advised that he has worked on many of the design projects on Tsienneto Road, although he did not work on the original CLM site plan. He worked on the parking expansion at Overlook and let the applicant know that the site is maxed and they cannot cross the wetland. About 1 ½ years ago, he worked on a proposal to construct a bridge to the upland behind CLM to create an additional 50 parking spaces or so for that site. That project was approved, but CLM did not proceed with the construction. Behind the Goddard School there is a wetland that bellies out. Even though the wetland they are filling is a narrow channel, there is a large wetland on Merrimac Tile's property and at the Goddard School. There is not much opportunity to develop along this side of Tsienneto Road. Drainage studies have been performed for each of the parcels. This is the first "major" impact at 1600 square feet. CLM had impacts under 1000 square feet for the proposed bridge. Regarding the traffic light, Goddard School and Fourteen Tsienneto Road have each placed approximately \$50,000.00 in escrow for a future light. This amount was negotiated between the town and the landowners on each side of the road and the location selected. The traffic light, if and when it goes in, will be at this location. Until something happens across the street, the traffic warrants have not been met. A light is not necessary until the warrant is met. The land owner across the street would need to provide approximately \$100,000.00 toward the traffic light.

Mr. Granese polled the Board to see if the members wanted to hold a site walk. Mr. Chase said there was no need as they have looked at this side of the road many times. Mr. Park said no, Mr. O'Connor said no, he has been on this property and on Linlew Drive. Mr. Dimmock said no. Mrs. Choiniere said no as the Board has looked at this area a lot, but she does hate to disturb the area. Mr. Bartkiewicz said no. Mr. Granese noted Mr. MacEachern had stepped out of the room but believed that since he had requested the site walk he would vote yes. Mr. Granese said he did not feel there needed to be a site walk.

Mr. O'Connor wanted to comment on the environmental issues. There has been a serious increase in chloride contaminants statewide. He complimented the applicant on the salt

reduction plan that was included in this application. The state has been working with municipalities, industry and business owners to reduce chloride in the Beaver Lake Watershed. He was very pleased to see the reduction plan included.

Motion by O'Connor to accept jurisdiction of the site plan application before the Board for Tsienneto Fourteen Development, LLC, 14 Tsienneto Road, PID 08079-005, seconded by Choiniere.

Chase, Park, O'Connor, Dimmock, Choiniere, Bartkiewicz and Granese voted in favor, MacEachern voted no and the motion passed.

Motion by O'Connor to grant a Conditional Use Permit pursuant to the Town of Derry Zoning Ordinance, Section 165-80.B.2.a, to allow the proposed access way to cross an area of poorly drained or very poorly drained soils, other than prime wetlands. After review of the proposal the Board finds that the proposed construction is essential to the productive use of the land not within the Wetlands Conservation District; 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; no alternative which does not cross a wetland, or has less detrimental impact in the wetland, is feasible; economic advantage alone is not the reason for the proposed construction. Bartkiewicz seconded the motion.

Chase, Park, O'Connor, Dimmock, Choiniere, Bartkiewicz and Granese voted in favor, MacEachern voted no and the motion passed.

Motion by O'Connor, seconded by Bartkiewicz to approve, pursuant to RSA 676:4 I, Completed Application, with the following conditions: Comply with the Keach Nordstrom Associates report dated April 16, 2013. All utility plans or submission of additional utility plans shall be signed and approved by all private utility companies prior to final Board signature and prior to construction. A stamped, structural drawing of the proposed headwall shall be submitted to the town for review and approval. Confirm note is on the plan that the existing dumpster will be utilized by the two office buildings. Subject to owner's signature. Subject to on site inspection by the Town's engineer. Establish appropriate escrow as required to complete the project. Obtain written approval from the IT Director that the GIS disk is received and is operable. Subject to receipt of state permits relating to the project. That the above conditions all shall be met within 6 months. Improvements shall be completed by October 17, 2014. A blast permit shall be obtained, and notification of the abutters shall occur prior to any blasting.

Chase, Park, O'Connor, Dimmock, Choiniere, Bartkiewicz and Granese voted in favor, MacEachern voted no citing that he was only voting no in keeping with his belief there should be a site walk. For the record, he feels the applicant did a good job, followed the regulations and this project will be a good addition to the town. The motion passed with the majority in favor.

Proposed amendments to the General Commercial zone

To review the following proposed zoning amendments to the Town of Derry Zoning Ordinance:

To amend Article II, Word Usage and Definitions, Section 165-5, Definitions to ADD the following terms to this section of the Zoning Ordinance: Clinic, Bus Depot, Daycare, Health Service Facility, Library, Medical Office, Open Space, Private Educational Facility/Private School, Radio Broadcast Facility, and Sale of Travel Accommodations.

The purpose of the amendment is to define terms used in the Zoning Ordinance, not previously defined.

To AMEND Article III, General Provisions, Section 165-14, Churches.

The purpose of the amendment is to resolve a conflict with other sections of the Zoning Ordinance.

To AMEND Article VI, District Provisions, Section 165-35.B.4, Office Medical Business District.

The purpose of the amendment is to resolve a conflict with proposed changes to the General Commercial District.

To AMEND, Article VI, District Provisions, Section 165-32.A through B, General Commercial.

The purpose of the amendment is to revise the permitted uses within the zone to encourage town wide business, commercial and employment growth. Additionally, this amendment will allow for expansion and opportunities for future office, business, commercial and employment growth with the availability of water and sewer to the Rockingham Road/Route 28 area of town. It is intended that the types of land use activities proposed will not have a severely detrimental impact on the existing uses within and adjacent to this district. For these reasons, certain prohibitions, restrictions, limitations and requirements are deemed to be necessary and appropriate.

Mr. O'Connor stated that prior to opening the public hearing, after consideration and discussion with various people, he would recommend removal of the buffer requirement from Section 165-32.A.1.a, b, c and k.

Mrs. Choiniere departed the meeting.

Mr. O'Connor said his proposed change would leave the permitted uses in place, but remove the buffer requirement. Mr. MacEachern asked if this would apply to all of the General Commercial zone? He had a question as he looked at the 11 x 17 handout showing the proposed buffer areas; are these all General Commercial? Mr. Sioras said all of the General Commercial areas are depicted. The exception would be the uses noted in the OMB district, parcels 28004 and 27089. Mr. MacEachern said he did not see the auto uses on Tsienneto Road. Mr. Sioras noted that is a General Commercial II zone which is not shown on the map. Mr. MacEachern confirmed what is shown is the standard General Commercial. Why would Shaw's Plaza be depicted? Mr.

Sioras said that is General Commercial. Mr. MacEachern asked why the Shaw's area is not GC II? Mr. Sioras explained that in the 1940 through 1960's the town created the General Commercial zone; that is why Hood Plaza was created. The zone has not changed in that area since that time. When the town created General Commercial II nothing was there, and the town only wanted limited General Commercial uses. Mr. MacEachern said at that time he felt there should be multiple general commercial areas that have the attributes of the area. He still thinks the town is treating some areas of town unfairly. For example, Shaw's is not the same as Ryan's Hill specifically with regard to the infrastructure that is available to those areas. Areas are unique but we treat them as the same. Zones should fit the area. If water and sewer goes from Ryan's Hill to the Windham town line that will change the area and it should be general commercial. He can't conceivably treat Ryan's Hill and Hood Commons the same because they don't have the same type of businesses or infrastructure available. He has no issue with Mr. O'Connor's suggestion. Would that include the OMB also? Mr. Sioras said that staff was asked to look at the existing gas stations from the Windham town line to Hood Plaza and to identify them on a map. The feeling was that there was no need to add more filling station uses at Shute's Corner, but if the use was allowed, to keep it in General Commercial.

Mr. Granese polled the Board on the suggested change. Mr. Park said he had planned to speak against the buffer and fully supports the change. Mr. Chase asked why Mr. O'Connor wanted the change? Mr. O'Connor said he met with various businesses and the Chamber of Commerce and heard what they said they wanted to see for the future. He has no issues looking toward a free market approach as suggested by the residents. Mr. Chase did not agree with the change. Mr. Park agreed with the change. Mr. O'Connor agreed with the change. Mr. MacEachern agreed with the change. Mr. Dimmock noted this discussion has been going on for a while and he is not familiar with all of it, so he would abstain from offering his opinion. Mr. Bartkiewicz agreed with the change. Mr. Granese did not agree, but noted the majority would rule as the poll results were 4-2-1. He noted that because there was to be a change to the suggested wording of the amendment, there would need to be another public hearing, which he would schedule to May 1, 2013.

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.

Morgan Hollis, Esquire, of Gottesman & Hollis, advised he represented 49 South Main Street, LLC. The Board should have a copy of his letter dated April 15, 2013, with his previous letter dated December 5, 2012, attached as part of their packets. He would like to speak with regard to the General Commercial district changes and will limit his comments to the revision regarding Section 165.32.A.2, "Single family residential dwelling units existing as of the effective date of this amendment shall be considered legal permitted uses." His client has followed the proposed changes since the inception and asked him to comment. He has written again to the Board in opposition. The proposed change, according to the Board's own summary is a clarification. The summary does not relate the most important part of the change which is an elimination of an existing use. That is more than a clarification for those with existing single family residences in this area. Any removal of a permitted use reduces the number of options of permitted uses in the future. If they can currently build and meet the setbacks, an elimination of the options changes the value of the property. If options are added, that is different. The Board has clarified the

definitions of permitted uses in the General Commercial zone and has eliminated an option. The Board has reduced the value of those owning property in the General Commercial zone. He acknowledges the Board intends to look at a mixed use overlay which may have some single family components. Attorney Hollis said they would welcome the opportunity to provide comment on that. He feels the Board is putting the cart before the horse. The mixed use overlay may never be allowed. He feels the Board should consider mixed use at the same time and in tandem with the changes to General Commercial and his client would request the same. If this is what the Board wants as a restricted use, it would be better planning in his client's opinion.

The uses in this zone have been compatible for years. He has not heard anyone in favor of the change. Will the Board protect these property owners if it eliminates single family residential as a use? The insertion of "single family dwelling units existing as of the effective date of this amendment shall be considered legal permitted uses" is merely a restatement of the law and does not protect his client. That protection will exist whether it is stated in the ordinance or not by law.

In the future, if his client wants to expand on this non-conforming use, the law and Derry's ordinance frowns on that. His client would need to obtain relief from the Zoning Board of Adjustment if they wanted to add a single family residence on a lot that already contains single family. They may need a subdivision. If they subdivide and leave the house and create a commercial lot, they would need a variance because it increases the intensity of the use on the lot containing the house, because the lot is now smaller than it was before subdivision. It is not easy to obtain variances in most towns. The Board is asking his client to give up a use that has been in place. What is the benefit to eliminating this use? The Master Plan and Zoning Ordinance allows mixed use in these types of areas. The Master Plan defines Neighborhood Commercial Zones. Attorney Hollis read an excerpt from the Master Plan providing that definition. He felt it explained the purpose of mixed use overlay districts. The town has one, and it now is going to remove it by removing single family residential as a permitted use.

Attorney Hollis encouraged the Board to keep the zone as it is. If at a subsequent deliberation the Board can come up with a better plan that the residents support, it could then make changes with regard to single family residential. In the meantime, he asks the Board to reconsider removing single family residential as a permitted use. This is a perfect opportunity as the Board needs to come back for a second hearing because of the previous change.

Tim Butterfield, 2 Humphrey Road, thanked Mr. O'Connor for speaking with people and reversing his position. He thanked Mr. Park for continuing to push for the removal of the buffer zone. Mr. Hollis was eloquent and fair, and Dr. Butterfield asked the Board to listen carefully to what he said. He knows the Board has reasons for taking the single family residential out of the zone. The Board will have an extra meeting and he encourages the Board to look at that.

Sheldon Wolff, 75 Fairview Hill Road, Atkinson, stated he owns property at 242 Rockingham Road. He asked if Mr. O'Connor had suggested removing all the buffer zones? Mr. Park confirmed the Board has removed the automotive use buffers. Mr. Wolff said he thinks it is good that will be removed. He is impressed with these meetings and has read the Derry Master Plan. This process has been an education. The Board does a lot of work that people don't

realize. When reading the Master Plan he noted the intent is to reduce the tax burden, and increase industrial and commercial zones. Is the Board doing anything for the landowners to help them develop their land and accomplish these goals? Mr. O'Connor noted the town has implemented procedures in the downtown under 79-E for revitalization and other things. Mr. Wolff noted he had prepared to speak in opposition of the buffer zone, but if that has been eliminated, his comments are moot. He read from page iii of the 2010 Master Plan. In the Master Plan, there is no indication that the town intended to install a buffer. It is important the town wants to increase commercial business and bring business to the town. If the buffer had been installed it would take away and decrease value from adjoining properties. All properties should be the same with regard to value in the real estate world. Mr. Wolff asked for confirmation there would be another meeting.

Mr. Granese confirmed the next public hearing on this matter would be May 1, 2013. Mr. Wolff asked to be included in any future meetings Mr. O'Connor has with the landowners. Mr. O'Connor clarified that when he spoke with people it was in relation to his connection to the Chamber of Commerce and his position on the Legislative Business Caucus at the State of New Hampshire.

Whit Palmer, 91 Warner Hill Road, stated he owns a family farm on Rockingham Road that was given to the family by the King's Grant. He compliments the Board regarding its attempts to increase economic development. At one of the previous workshops, Mr. Anderson stated it did not matter when people moved to town, everyone has equal rights. He agrees with the statement as he has spent a lot of time in the military to preserve that right. Mr. Anderson did not realize that natives in town who could have become extremely wealthy in the 1980s building boom did not take advantage of the opportunity and sell their land at \$80,000 per acre. They opted to hold onto it. His neighbors, the Smith and Brown families, did not sell either. They are all fortunate enough to have land that has been handed down to them. Mr. Palmer said he thought he was going to have the option to pass the land onto his offspring and they could build a home on it if they wished. He is faced again with "others" telling him what he can and cannot do with the property his family has preserved. He did not put his land in conservation which would have spent tax dollars. He kept the land in open space by holding on to it. His family owns land along Route 28, down to Kilrea, Mill and Stark Roads. He does not plan on selling his land for a building development because he does not want to see a lot of houses on the land. He has two children and wanted to give a few lots to his children on land that his family has held since the 1600s. He hopes the Board will stop and put on his shoes. How would the Board members feel if people told them what they could be doing with their land and that their kids could not build on the property? They want options for their children to have a house. He invested his money in land. They don't make land anymore. He asked the Board to please keep things the way they are.

There was a short discussion regarding current use. Mr. Palmer said he contributes quite a bit to this town. It just does not seem right to him. He has had property in the town for years and now he is being told that he can't have his children use the land; he wants to keep the land in the family.

Dale Smith, 11 Balsam Lane, Rochester, is a co-trustee with his mother who owns land at 169 Rockingham Road. They own the property between Clam Haven and the Robert Frost Farm. He agrees with Mr. Hollis and Dr. Butterfield. The Board needs to think about what they are taking by changing this ordinance. The Smith's have owned this land for generations and have no desire to see it developed. Family members likely won't live at 169 Rockingham Road in the future because the road is so busy in that location, but someday may want to build on the land on the hill. He feels that when single family residential is removed it is odd because other lots in other neighborhoods were built on a postage stamp. If they developed the land, they would likely have large lots with a business along Route 28. All they want is an option to do what is in their best interest. He appeals to the Board to consider what Mr. Hollis has said about changing the zoning along this stretch of land.

Ralph Valentine, advised he is a commercial real estate broker and owns property on West Broadway. He applauds the Board in its effort to re-write the zone. He has worked with the existing wording for the General Commercial zone for years and feels it is better that the uses are to be more generally noted and not listed. It will make it easier to determine what is allowed the zone and what is not and to transition uses between owners. Regarding the definition for Private Educational Facilities/Private School, if a person rented a room in a multi tenant building and was a music teacher, is it the Board's intent to require the applicant to come before the Board for site plan review? What if the applicant taught beading classes as part of a bead shop? He feels the requirement that site plan review be required should be struck. In support of that he would state the town has capable staff and a good process in the Planning Department. The staff and the TRC do a good job in determining if a use needs to go for site plan review or not. The Town of Derry has a great process and is way ahead of most towns in moving the process forward when something does not need site plan review.

There was no further public comment.

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

Mrs. Robidoux felt that Mr. Valentine had a good point. It speaks to unintended consequences when an ordinance or definition is being drafted. She felt the intent when the definition was crafted was to make sure that a private educational facility such as the Goddard School went to the Planning Board for site plan review, but the unintended consequence of the way that it is written is that an applicant such as a craft school would also have to come before the Board. She said Mr. Valentine's suggestion had merit. Mr. Chase agreed; he also did not want that unintended consequence. He would like to take that sentence out or reword it. Mr. Sioras concurred stating there is a change of use and site plan determination process. There was a short discussion on how that definition could be re-worded to capture the intent of the definition. The definition was reworded such that, "Any private educational facility shall be subject to the change in use process, site plan determination, or site plan review as determined by the Planning Department."

Mr. Granese polled the Board to see if the members were in agreement with the proposed change to the definition of Private Educational Facility. Mr. Chase, Mr. Park, Mr. O'Connor, Mr. MacEachern, Mr. Dimmock, Mr. Bartkiewicz and Mr. Granese were all in favor.

Mr. Park noted one of the main goals of the changes in the General Commercial zone is to prevent housing developments in this area. How does the Board handle that when the current owners may want to cut off a parcel for a family member? Many of the Board members have no issue with that. Mr. O'Connor said the Board will discuss limited single family residential use when they talk about the mixed use overlay district at the future workshop.

There was no further discussion regarding the proposed changes.

Motion by MacEachern, seconded by Park to continue the public hearing on the proposed changes to the General Commercial zone to May 1, 2013.

Chase, Park, O'Connor, MacEachern, Dimmock, Bartkiewicz and Granese all voted in favor and the motion passed.

Mr. Granese noted this will be the only notice for that meeting.

There was no further business before the Board.

Motion by MacEachern, seconded by Bartkiewicz to adjourn. The motion passed and the meeting stood adjourned at 9:15 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____