

The Planning Board for the Town of Derry held a public meeting on Wednesday, June 19, 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; Frank Bartkiewicz, Secretary; John O'Connor, Vice Chairman; John P. Anderson, Town Administrator (7:06 p.m.) Randy Chase, Administrative Representative; Albert Dimmock, Sr., Town Council Liaison; Darrell Park, Jan Choiniere (7:40 p.m.), Members; Ann Marie Alongi, Lori Davison, Alternates

Absent: Jim MacEachern, Frank Mazzuchelli

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 then introduced the staff and Board members present, and noted the location of the exits, and meeting materials. He also asked members of the public to refrain from outbursts; anyone exhibiting unseemly behavior or disrupting the meeting would be asked to leave the building.

Ms. Davison was seated for Mrs. Choiniere; Ms. Alongi was seated for Mr. MacEachern.

Escrow

#13-16

Project Name: Keith Subdivision
Developer: Ernest Lewis Keith Revocable Trust
Escrow Account: Same
Escrow Type: Cash Escrow
Parcel ID/Location: 29029, 15 Hillside Avenue

Please establish cash escrow in the amount of \$8618.40 for the above noted project.

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

#13-17

Project Name: 2nd Building – General Office Building
Developer: Tsienneto Fourteen Development LLC
Escrow Account: Same
Escrow Type: Cash Escrow
Parcel ID/Location: 08079-005, 14 Tsienneto Road

The request is to establish cash escrow in the amount of \$233,094.67 for the above noted project.

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

#13-18

Project Name: Schibbelhute

Developer: Bella Vista Homes, LLC

Escrow Account: Same

Escrow Type: Cash Escrow

Parcel ID/Location: 09084, 164 Hampstead Road

The request is establish cash escrow in the amount of \$5572.80 for the above noted project.

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

Minutes

The Board reviewed the minutes of the June 05, 2013, meeting.

Motion by O'Connor, seconded by Bartkiewicz to accept the minutes of the June 05, 2013, meeting as amended. The motion passed with O'Connor and Davison abstained.

Correspondence

Mr. Bartkiewicz advised the Board is in receipt of a copy of a letter sent to Brady Sullivan Indian Hill, LLC reminding that the Letter of Credit for the Indian Hill project is due to expire on August 2, 2013. The Board has also received correspondence from Southern New Hampshire Planning Commission advising of the activities that occurred in the region during the month of May.

Mr. Anderson entered the meeting.

Other Business

Summer Schedule

Mr. Sioras advised the next meetings of the Planning Board will be on July 17th, August 21st and September 18th.

Mr. Granese advised the Farmer's Market has begun and will be held every Wednesday in the parking lot of the Municipal Center between the hours of 4:00 and 7:00 p.m.

Voluntary Merger – Panos (continued from June 05, 2013)

Mr. Sioras advised the intent is to merge two parcels containing summer cottages located on Parcels 51079 and 51080. The cottages that were constructed in the 1920s will be torn down and replaced with a single family residence. This matter had been tabled at the last meeting to allow staff time to research the deeds to determine if water access rights for Parcel 51084 were on the deed for Parcel 51080. Parcel 51084 is owned by the Simard family and access is through another parcel owned by that family. The Panos family has applied for and received a permit from Shoreland Protection and has been working with Mr. Mackey on the building details.

Motion by Anderson to approve, pursuant to the provisions of RSA 674:39-a, the voluntary merger of Parcel 51079, 64 Beaver Lake Avenue with Parcel 51080, 66 Beaver Lake Avenue, owned by Andrew and Donnalee Panos. Parcel 51079 will be deleted and Parcel 51080 will be retained. A condition of approval is that the two existing cottages are razed and a single residence is constructed in accordance with the DES Shoreland Impact Permit #2013-01099. Bartkiewicz seconded the motion.

Chase, Park, Alongi, O'Connor, Davison, Dimmock, Anderson, Bartkiewicz and Granese voted in favor and the motion passed unanimously.

Schedule Public Hearing – Sign Regulations

Mr. Sioras advised staff has made the changes suggested by the Board at the last meeting to the proposed amendments to the sign regulations. Town Council held a public hearing in May on the previous proposed changes and provided some positive feedback but asked the Board to review the suggestions from Attorney Sabean and a few local realtors.

Motion by Anderson to schedule a public hearing regarding the proposed amendments to the Town of Derry Zoning Ordinance, specifically dealing with signs, for July 17, 2013. O'Connor seconded the motion.

Chase, Park, Alongi, O'Connor, Davison, Dimmock, Anderson, Bartkiewicz and Granese voted in favor and the motion passed unanimously.

Other

Mr. Granese advised there was a pad of paper at the back of the room. He would ask that any abutter who wished to speak on the Accurate Transport matter please place their name on the paper and if the Board decides to open the floor for public comment during its deliberations, he will call up the names on the paper. Each person will be limited to four minutes as the last hearing was over two hours long.

Public Hearing

Jeffrey and Rosemary Moulton PID 18041, 5 Taylor Brook Lane Waiver from LDCR Section 170-30, Fire Protection

Mr. Sioras provided the following staff report. The property is located at 5 Taylor Brook Lane. The purpose of the request is a bit unusual in that the request is for the Board to review a waiver from the Land Development Control Regulations (LDCR) with regard to fire protection requirements. In 2004, the Board approved a three lot subdivision of this parcel. One of the conditions of the plan was to provide fire protection through a cistern or sprinkler system. This applicant would like a waiver of that provision as he does not want to construct a cistern or install residential fire sprinklers. Attached to the staff report is a letter from Fire Chief George Klauber and one from the Interim Director of Fire Protection, James Kersten. They do not support the waiver request. There is also a memo from Bob Mackey, the Director of Code Enforcement, who also does not support the waiver request. Mr. Moulton has met with Chief Klauber, Firefighter Kersten, and Mr. Mackey and is aware of their position.

Jeffrey Moulton presented his request. He noted he had just supplied supplemental information to the Board. A copy was retained for the record. Mr. Moulton stated he has been working with the state and the town for about one and a half years. The intent is to replace the existing building with a year round structure. He has been working with Mr. Mackey. In December of last year he supplied the Building Department with the building plans and was advised that his parcel was part of a 2004 subdivision and sprinklers were required for the new residence. The original variance approval granted in 2004 also had a condition placed that all construction was to be completed in two years. He feels this is a gray area. Mr. Mackey also admits this situation is unique. Mr. Moulton said he was unaware that he would have to comply with the LDCR and that this lot was part of the subdivision.

The intent of the LDCR is to regulate subdivisions and multiple homes in a location and putting in fire protection that would serve multiple houses. Today, the law says that fire sprinklers cannot be mandated by a town. There is legislation currently going through the approval process at the state that lets towns offer that option. He has been in conversation with Representative Carol McGuire. The law has not yet passed and her opinion is that the town can't substitute sprinklers for a cistern until this law goes into effect. Because this lot is in the floodplain, there is no cellar planned for the home. There is no room for a sprinkler tank; they would need a large tank because the well only draws 2-3 gallons per minute. He would need to redesign the house to make it work. Installation of a sprinkler system would cause an economic hardship. The original variance approval for the subdivision is vague and does not make it clear that this lot is also included. He is not sure if the intent of the town is that an existing structure to be replaced needs to go back and comply with the regulations in place at the time of subdivision which may have been many years ago. His attorney agreed it was vague. Mr. Mackey agreed it was vague. The Fire Chief and Fire Marshall have strong opinions about fire sprinklers. Mr. Moulton said he has included information from National Fire Protection Association (NFPA). Sprinklers will

not achieve the objective. NFPA statistics (2010) state that on average 2555 people die in homes as a result of fire. Most of the people who survive do so because of smoke detectors. Sprinkler rules are for a small percentage of people and are at a higher cost. The best form of fire protection is smoke detectors and proper egress. All of the rooms in the proposed home have double egress. This is a well-intended regulation but across the country he has never run into a town that requires sprinklers. He has lived in seven states and has participated country wide in Habitat for Humanity. Sprinklers are not required; they drive up the cost of the house. With regard to affordable housing, the town should determine if that extra cost will deprive x number of people from being able to afford a house. The town has a code and it needs to be followed. But he believes smaller developments should not be required to have sprinkler systems because it is very costly for a small population.

The original variance for the subdivision was very vague and the Planning Board focused on roadway access. The two year construction stipulation has expired. He feels it is reasonable to infer that sprinklers not be required.

Mr. O'Connor reported he has attended the hearings on HB278 (sprinkler systems). As of this morning, that bill has passed the House and the Senate. He concurs with the LDCR requirement. Mr. Moulton has stated there is an extra cost to install sprinklers. What are the savings if he installs one? Insurance companies testified stating that the initial cost was outweighed by the savings in insurance premiums over time. Mr. Moulton said the cost of construction, based on NFPA estimates is about \$1.61 per square foot. Based on the size of the building, the estimate comes in at around \$6000.00. If the system is on town water, it is less expensive. Insurance companies grant between a 10 and 15 percent reduction in premium per year, but NFPA 25 recommends an extensive maintenance program that requires inspection of control valves, and gauges. There needs to be monthly tests and annual inspections. Gauges need to be replaced periodically. The average homeowner cannot perform some of these tests or maintenance. The costs of maintenance will outweigh the savings in insurance premiums over time. The homeowner will need to hire someone to come in and perform the tests.

Mr. O'Connor asked if Mr. Moulton had considered the cistern? Mr. Moulton said a cistern would cost about \$30,000.00. It is not cost effective for a single family home. Why would the town regulate this for two lots? He added that the law is not yet into effect and the towns would need to wait 60 days after the Governor signed the law for it to come into effect. He added that if he was in the Board's position, he would question why a cistern would be required for a subdivision of two lots; it is a very high cost to split between two lots.

Mr. Anderson asked for the cost of the proposed home. Mr. Moulton said it is estimated at \$450,000.00. Mr. Anderson wondered why Mr. Moulton was balking at the cost? Mr. Moulton said he would need to redesign the house to accommodate a sprinkler system; there is no basement which is where such a system would normally be installed. The town should look at this across the board. Is this proper for all the homes in Derry? He felt the town was squeezing out part of the population by requiring cisterns in order to have the house. Mr. Anderson asked if the waiver request was turned down, would Mr. Moulton still build the home? Mr. Moulton said he would but it would cause further delay in construction and additional cost.

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

Mark Flattes, Linlew Drive, urged the Board to deny the request and to keep sprinklers or cisterns as a requirement for properties. He sees this as a life safety issue. Mr. Moulton stated he is right next to the 500 acre lake, which is about 20 feet from the house. The current regulations require cisterns. He is next to a 500 acre lake which is more than equal to a fire pond. In the winter, a fire pond would run into the same issues as the lake with regard to freezing issues. Hydrants also freeze.

There was no further public comment.

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

Mr. Granese said he feels it is safer to have homes sprinkled. His own subdivision of seven homes has sprinklers. It can take between six and eight minutes for the Fire Department to arrive. The town requires cisterns for developments, but he does not feel the intent of the regulation is to require cisterns for a single family home.

Mr. Anderson said he supports the staff recommendation to not grant the waiver. He has read the packet of information as well as the letter from legal counsel. He does not know how they can get water from a frozen lake.

Mr. Park noted the lake will likely be frozen between December and March. Mr. Moulton said his point is that a fire pond, which is an acceptable alternative per state law, would have the same issues.

Mr. Chase said the stipulation is that fire ponds have to be accessible all year long. Island Pond is drained in the fall and the water, which might be 20 feet from the proposed residence now, will be 100 feet away once the Pond is drained. It does not matter how close the house is to the lake if the Fire Department cannot get the fire apparatus in position to draw from the pond. Taylor Brook Lane is precarious at best for fire apparatus. When the law talks about fire ponds, it means fire ponds that are full and accessible 365 days a year; Island Pond is not full and accessible 365 days a year. Cisterns are placed so that there is ready access, all year long. The current law says that sprinklers cannot be mandated. The town offers that applicants can voluntarily sprinkle their homes. Cisterns are required. If an applicant opts out of the cistern, they can voluntarily offer to sprinkle the home.

Mr. Moulton stated the town mandates cisterns and can substitute sprinkler systems. Representative McGuire's opinion was that is not legal. Mr. Chase said residents can put in a sprinkler system if they want to. Mr. Moulton explained he was just repeating what he had been told. Mr. Anderson estimated the cost to install a sprinkler system would be 1.33 percent of the cost of the entire home and that the insurance savings might be \$150.00 per year. Mr. Moulton felt the cost of ongoing maintenance outweighed that. Mr. Anderson did not feel there was

hardship. A cistern is more expensive. Mr. Moulton will need to make a decision as to what is best for his family, but he does not feel a sprinkler system is cost prohibitive in this case.

Mr. Moulton advised he is a Professional Engineer and has done cost benefit analysis his entire career. Industry says, "What can you afford?" What can the average citizen afford? Is the town excluding a certain percentage of the population from buying a home by regulating cisterns for fire protection? He thinks so. He feels the town is removing that option of affordability.

Mr. Granese spoke to maintenance. Smoke detectors are changed every ten years. With a residential sprinkler system, two times a month valves are turned on, run for a minute and then the system is pressurized. Homeowners check for drips along the lines. No one is required to come out and maintain the system. Fire Inspector Lavalley confirmed the process when Mr. Granese spoke to him a few weeks ago when dealing with another matter. Mr. Moulton explained his experience is that type of maintenance is okay for the first few years. NFPA is clear that is not correct or acceptable for the long term. His own experience shows him that is not an acceptable policy. Proper maintenance includes changing out parts before they fail. The system has to work when you need it.

Ms. Choiniere was now present. Mr. Granese advised that Ms. Davison would step down at the end of this hearing and Ms. Choiniere would then be seated.

Motion by Anderson to grant a waiver from LDCR Section 175-30, Fire Protection. After review of the request the Board finds that specific circumstances relative to the plan or conditions of the land in such plan, indicate the waiver will properly carry out the spirit and intent of the regulations. Bartkiewicz seconded the motion.

Chase voted no, stating he does not feel there is hardship. The regulation has been in place for many years, and for good cause, the terrain is an issue and there is inadequate water source and inadequate access to the site. Park, Alongi, Davison, and Dimmock voted no for the same reasons. O'Connor voted no based on advice of counsel. Anderson voted no for the same reasons stated by Chase and the reasons he mentioned prior. Bartkiewicz voted no because of the Fire Department recommendation, advice of counsel and Chase's comments. Granese voted no for the same reasons, he does not see a hardship. It is all about life safety and he concurs with the recommendation of the Fire Chief and counsel. The waiver request was denied.

**Route 28 Custom, LLC
Scott Buckland
PID 03035-001 and 03032
230 and 238 Rockingham Road
Acceptance/Review, Lot Line Adjustment**

Mr. Sioras provided the following staff report. The plan is for a lot line adjustment between Route 28 Custom, LLC (Paul George) and Scott Buckland. Mr. Buckland owns the boat storage facility just before the Windham town line. The lot line adjustment is between the two properties located in the General Commercial zone. There are no waivers requested, nor are there any town

signatures required. The adjustment will allow for the future expansion of the boat yard. Land will be transferred from Mr. George to Mr. Buckland. He would recommend approval.

Mr. Granese confirmed Mrs. Choiniere was seated and Ms. Davison had stepped down.

Paul George presented. He is ready to start development of the storage warehouses that were previously approved by the Board for 230 Rockingham Road. Along the way, it was decided that that area of land noted on the plan as "Parcel A" would not be developed because of the topography. It is hard to access from his side. Mr. Buckland has easier access on his side. They have arranged to sell the land to Mr. Buckland. The Conservation Commission had been concerned regarding the topography Mr. George would need to change to utilize Parcel A for his project so this is a better situation. Mr. Buckland will not be expanding his site for a few years, but they wanted to carve the parcel out ahead of time.

Mr. O'Connor noted that expansion in the future onto the area noted as Parcel A would require a site plan. Mr. George said Mr. Buckland is aware of that. The land was carved out from land that had been approved as part of Mr. George's site plan although the 3.1 acres under consideration tonight had not been shown as developed on his approved site plan. It was vacant land.

Mr. L'Heureux asked that Mr. George make sure that area was not required as part of the calculation for the stormwater design. Mr. George said that he did verify that with Jim Hanley of Civil Design Consultants and has been assured that the removal of that area will not affect the stormwater study for the project.

Mr. Anderson asked if the "Welcome to Derry" sign was on this land? Mr. George said it is not. Mr. Anderson felt it was a good thing that Granite State Boat and Marine will be now be able to expand; this will add three plus acres to Mr. Buckland's existing lot to give him about four acres total. Mr. O'Connor asked if the Board needed to address the stormwater study at this time? Mr. L'Heureux said no. The previously approved plan took that into account. He wanted to make sure that the surface area on Mr. George's property could support the post versus pre construction requirements, after removal of "Parcel A".

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

Mr. Sioras read a letter into the record from Sheldon Wolff of Plaistow, who is an abutter to this project. The letter was retained for the file.

There was no further public input.

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

Ms. Alongi asked where the original line was versus the proposed new lot line. Mr. George indicated the appropriate area.

Motion by Anderson to accept jurisdiction of the lot line adjustment application before the Board for 28 Custom LLC, PID 03035-001, 230 Rockingham Road and Scott Buckland, PID 03032, 238 Rockingham Road, seconded by Bartkiewicz.

Chase, Park, Alongi, O'Connor, Dimmock, Choiniere, Anderson, Bartkiewicz and Granese voted in favor and the motion carried.

Motion by Anderson, seconded by Bartkiewicz to approve, pursuant to RSA 676:4, III, Expedited Review, with the following conditions: subject to owner's signature, subject to on-site inspection by the town's engineer, establish escrow for the setting of bounds or certify the bounds have been set, obtain written approval from the IT Director that the GIS disk is received and is operable, that the above conditions be met within 6 months, improvements shall be completed by December 31, 2014, a \$25.00 check, payable to the Rockingham County Registry of Deeds shall be submitted with the mylar in accordance with the LCHIP requirement, along with the appropriate recording fees, and the applicant shall confirm that the stormwater calculations are not affected by this transfer of property.

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

Mr. George noted he felt he had met all the conditions already and could the plan be signed this evening? Mr. Granese said it could. Mrs. Robidoux will expedite recording of the plan once it has been confirmed the stormwater calculations are not affected.

Accurate Transport, Inc.
PID 08017, 41 Ashleigh Drive
Acceptance/Review
Site Plan – The Dumpster Depot
Continued from June 05, 2103

Mr. O'Connor recused himself from this hearing.

Mr. Sioras provided the following staff report. This is a continuation from the last meeting. The Board has received questions from Mr. O'Connor which are attached to the staff report, as well as the staff responses to those questions. Staff also answered questions from Mrs. Wilson relative to the TRC notes. An email was received from Margaret Berg. Paul Raiche, the Health Officer, has supplied a memo. These items have been attached to the staff report. Several residents suggested conditions of approval and those have been compiled into a list and provided to the Board. They are as follows: higher berms; more plantings; modify facade of the building; semiannual testing of groundwater for VOCs, Chromium, Lead, Mercury, oil and grease; non-concrete pad for the dumpsters; no garbage stored on site; no washing of dumpsters; no moving of dumpsters prior to 8:00 a.m. or after 5:00 p.m. An alternate suggestion was to keep hours of operation between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday. Other suggested conditions included on site monitoring wells; no on-site maintenance of dumpsters;

rodent control; limitation on the size and type of dumpsters; sloped dumpster pad; limit the maximum number of dumpsters on site, and only empty dumpsters on site.

Chris Tymula of MHF Design presented for the applicant, David Paul, who was also present. He thanked the town staff and the abutters for their concerns and comments and for coming out to the meetings, and the Planning Board members for remaining level headed with any opposition or support of the project. This is the forum where the public have a right to speak up and is part of the site plan approval process in the town government. Although they respectfully disagree with some of the comments and concerns, they have respectfully listened and they feel they have addressed and will address all the comments in a truthful manner to the best of our abilities. As the Board knows they have been following the town process for site plan approval starting with the TRC meetings held last November and in January of this year; over six to eight months of meetings. They have met and received approval from the TRC and met again with the Conservation Commission last week, as a courtesy to them based on their initial meeting in April. The Commission was pleased to see them and had very few comments. They are looking to develop a site located in the Industrial III zone - a site that has been vacant and undeveloped for numerous years and available for purchase by any one, or for purchase so no development occurs. As many of the members are aware, the site previously came before the ZBA for development as a golf course, but was denied by the ZBA. During the Zoning Board hearing for the application, a Planning Board member spoke in opposition. So what do they have now? They have a development following the town zoning bylaws in the Industrial III zone. An allowed use consistent with the permitted uses in the Industrial III zone which include manufacturing industries; warehouse and wholesale uses; professional office uses, machinery and transportation equipment, sales service and repair; freight and trucking terminals, a contractors yard and so on. They are coming before this Board and all of the boards as required, with no variances, no waivers and no wetland impact. This site cannot be developed for retail or residential use so what else can be done? They are asking the Board to respectfully listen to the facts that they will present and not listen to the perception of what may happen at the site. There have been many comments made by the public. Mr. Tymula said he felt there were essentially a few remaining issues to be addressed.

The first issue is with regard to the buffer to the neighbors. Per the site walk and the overview plan shown, they feel there is more than adequate buffering for the developments to the east. It is 800 or more feet to the Wilson's, and 900 feet to the O'Connor's through six to seven hundred feet of woods and wetlands that will remain unaltered. There is 1000 feet to the Struthers' home on Donmac, which has less buffer and the house can be seen from the staked out proposed dumpster storage area. To this, they are proposing three rows of staggered plantings consisting of spruce and fir as recommended by the landscape architect at an additional cost between \$15,000 to 20,000.00. The trees will be six to seven feet tall and be taller than the tallest dumpster. This provides shielding from the sight lines of the building corners from Mrs. Struthers' house, and they feel this is an adequate buffer.

The second issue is the discussions they have had with Mr. L'Heureux regarding the storage area material for the dumpsters. They are now proposing millings and gravel base in lieu of the recycled gravel material as originally proposed. The original intent was to minimize any noise from the dumpsters. With regard to that, the containers stored on site are not dropped to the

ground, and are not loud as one might expect. The containers are slowly lowered to the ground on a track-like system, which minimizes any noise.

The third issue is the question regarding whether this use is considered a solid waste facility or transfer station, or if it needs a solid waste permit. They are not and they don't. Mr. Paul spoke with Wayne Wheeler at DES and explained his business and let him know that they would occasionally have dumpsters on site, covered and under a canopy. This would only occur when the transfer station was closed and would not be an everyday event. Mr. Wheeler said they are only required to register as a Solid Waste Hauler and they are considered Waste In -Transit. A Waste In-Transit facility cannot have containers on site for more than four days, the containers must be covered and they cannot have more than 150 cubic yards stored at the facility. As was previously stated, any full containers would be on site no more than 24-48 hours and they comply with the above regulations. They would not have garbage in the dumpsters as they will not offer that service. If his client wanted to alter that, they would come back to the Board for additional approvals. When speaking with Mr. Wheeler, his client asked if monitoring wells would be required as suggested by members of the public. Mr. Wheeler said monitoring wells are only required at landfills and they are not even required at transfer stations. They are neither of these things. Mr. Tymula said he also spoke to Mr. L'Heureux regarding the need for monitoring wells and he too did not see the need for them. In addition to the dumpsters and what is in them, there were comments with regard to ponding water, EEE and mosquitos. Any water from the dumpsters will drain into the treatment system so no water will remain for mosquito breeding. The smaller dumpsters that have only open tops, have drain plugs that can be removed to ensure no ponding occurs in the units. That being said, the site is adjacent to a very large wetland.

Mr. Tymula said he wanted to correct a previous statement he made that he noted while reviewing the minutes of past meetings. He had stated that the size of the adjacent wetland was twenty acres. What he meant to say was that the wetland was twenty times the size of the proposed treatment pond. There is however, approximately 14 ½ acres of wetland on the entire 62 acre parcel, and surrounding the site is approximately 21 acres of wetland including the adjacent Cormier site that was approved last year.

Although they don't expect to encounter any problems with regard to mosquitoes, they will monitor for the first six months of activity and come up with a protocol if any problems with mosquitos prove to exist. To make sure there are no issues they will hire an outside company similar to Dragon Mosquito to perform the monitoring as recommended by the town's Health Officer, which will add another cost to his client.

Finally, there have been questions as to what will happen inside the building. With regard to repair, Mr. Paul wants to do what is legally allowed in a contractor's yard. He is not a small engine repair shop and there will be no retail repair service. He is not a Jiffy-Lube type facility or a vehicle repair station and will not have fuel dispensers on site. He would like to be able to maintain his vehicle fleet as necessary without any unnecessary restrictions. Mr. Tymula said he has re-presented a lot of information but feels the need to discuss his client's right to develop and use his future property on a lot that is allowed for this type of use. They feel by adding the

buffer, the mosquito protocol, and responding to all of the comments they have made concessions to the abutters and Board concerns.

Mr. L'Heureux said the material proposed for the dumpster storage area is acceptable. It is similar to the requirements in the regulations. The millings will have a longer life cycle and will be a good surface for long term use. Public Works has no other concerns.

Mr. Dimmock stated he has looked at the allowed use list and nowhere does it say Mr. Paul's company should be allowed there. Why is the Board even hearing this application? He feels the use is not allowed and does not feel the applicant has a right to apply to the Board.

Mr. Granese believed this is an allowed use. Mr. Sioras advised Mr. Mackey took the position this use is allowed. Mr. Anderson said Mr. Mackey has determined this is a contractor yard and freight/trucking terminal. No variances or waivers are being requested per Mr. Mackey. Mr. Granese asked where would this use be allowed? Mr. Sioras said only in the Industrial districts. Mr. Granese noted Mr. Mackey approved the use.

Ms. Alongi asked what kind of trash would be in the dumpsters? Could a homeowner rent them? Mr. Tymula said approximately 85% of the rentals are for contractor or homeowner use, for people cleaning out their homes. Ms. Alongi asked if this company was connected to Home Depot? It is not. Ms. Alongi asked what happens if someone throws garbage in the dumpsters? How are they cleaned? Mr. Tymula said the dumpsters are not cleaned as stated at one of the last hearings. It is technically illegal to clean a dumpster without the proper protocols in place. The dumpsters are picked up from a site and taken to a transfer station and dumped there. Any dumpsters stored on site would be under cover. The intent was to protect the dumpsters from the elements. It has always been Mr. Paul's intent to be a good neighbor. The dumpsters are tarped and will be under the awning. They have made every attempt to understand the concerns of the abutters.

Ms. Alongi asked if Mr. Paul owned any other dumpster franchise? Mr. Paul said there are three franchises throughout New Hampshire and Massachusetts; he does not own any of the others.

Mr. Granese reported that he saw one of the Dumpster Depot dumpsters in Derry in Monday. It was a 30 yard dumpster and it was empty. He stopped and spoke with the employee. He was advised of the protocol they follow. The dumpsters are taken to the dump, they lift up and the material falls out. They do not spray the containers with water. Mr. Granese said with permission of the property owner, he went back a few days later to see what was in the dumpster and it had wood and shingles in it.

Ms. Alongi asked if there was any way to talk to the parent company, since this was a franchise, about any potential problems? Mr. Paul said he is the parent company of Dumpster Depot. The other franchise locations are owned individually. He owns the name. Ms. Alongi asked if there had been any backlash in any of the other three locations? There have not. They have been in existence for eleven years; he has been in business for thirteen.

Mr. Dimmock said he once rented a dumpster when he was roofing and re-siding his house. While it was in his yard one night, an individual put six rubbish bags in his rental dumpster. He had to take them to the dump himself. If he had been like most people, he would have covered it over and let the company get rid of it. He has spoken with many people and they all say the same things: "They (the dumpster rental companies) tell us we can't put certain things in the dumpsters but what are they going to do about it if we do? We put whatever we want in the dumpster." For someone tearing down a house that has cockroaches, 900 feet is not a large distance for a cockroach to travel. For health reasons, this cannot be allowed in this area.

Mr. Dimmock said he did not feel this was the proper place for this use. It is not healthy for the neighborhood. He related an experience he had with a commercial dumpster that was being used to hold debris from a commercial building tear down. The dumpster was left full on site overnight. When he pulled into the site in the morning, a rat as big as a Chihuahua ran over the side of the dumpster. A distance of 900 feet is nothing for a rat to travel when he is looking for food. Mr. Granese said he has seen rats in other parts of town and on the roadways. Mr. Dimmock maintained the rodents did not need to be brought into this neighborhood by a rubbish truck. He does not care where they put this business so long as it is not in Derry. He is not just a member of this Board, he is also a Town Councilor. He is here for the people. He does not want someone coming in from outside of town and making it rough for the people of Derry. This Board has no right to grant the applicant anything because the use is not allowed. Mr. Dimmock said he spoke with Mr. Mackey and did not receive a reply when he told Mr. Mackey this use was not allowed. The abutters have a right to ask the Board to look out for the people of the Town of Derry. The Board is not here to look out for the rights of one company; it is here to protect the people.

Mr. Granese said he would like to poll the Board. He noted under Robert's Rules, the Board is in deliberation and is not required to re-open the public portion of the hearing. But in the interest of this Board's tradition of transparency, he would like to poll the Board to see if the members would like to re-open the floor to the public. He has a list of seven people who have indicated they would like to speak. Members of the public would each have a four minute time limit. He stressed the Board is still in deliberation.

Chase, Park, Alongi, Choiniere, Dimmock, Anderson, Bartkiewicz and Granese voted to re-open the public hearing.

John O'Connor, 13 Arrowhead, had comments to be made for the record. He is aware the Board has a copy. At the last meeting, the TRC notes were not provided, and he asked the Planning Clerk to send those out. He had concerns with some items that were not previously discussed or brought up at the other public hearings. He disagrees with Mr. Tymula. The applicant has repeatedly stated he would bring back full dumpsters and this falls under the Solid Waste Regulations, RSA 149-M for Solid Waste Management, and Env-SW300. This is per his discussion with DES; this use is classified as a transfer station. At the November 9, 2012 TRC meeting, the applicant said he would have a 3200 SF repair area for vehicles and dumpsters and at the public hearing he said there would be no on site repair. The quantity of the dumpsters needs to be limited if this application is approved. The applicant also said he would break up the parcel into four lots. Will each of the lots be allowed to contain additional dumpsters or

vehicles? Is this a permitted maintenance facility; he had said he would have mechanics working a second shift. Will the wetlands and resources be protected from contaminants from the dumpster storage area? Mr. O'Connor read the full copy of his June 04, 2013 letter to the Planning Board into the record. A copy has been retained for the file. Mr. O'Connor said under RSA 674:44 and LDCR Section, 170-47, the Planning Board is charged to "provide for the safe and attractive development or change or expansion of use of the site and guard against such conditions as would involve danger or injury to health, safety or prosperity by reason of inadequate drainage or conditions conducive to flooding of the property or that of another; undesirable and preventable elements of pollution such as noise, smoke, soot, particulates, or any other discharge into the environment which might prove harmful to persons, structures or adjacent properties; and, inadequate provision for fire safety, prevention and control." And, "Provide for the harmonious and aesthetically pleasing development of the municipality and its environs." Mr. O'Connor thanked the Board for allowing him additional time to speak over the stated limit.

Ms. Davison was seated for Mr. O'Connor.

Brenda Wilson, 4 Greenwich Road, thanked the Board for allowing the public to speak again. She had pictures of dumpsters that a neighbor had taken that showed Dumpster Depot dumpsters at the following locations: Auto Zone, Five Guys Burgers and Fries and EZ Pool. A copy was not presented to the Board, nor was a copy retained for the record. She has received a copy of the TRC minutes and had several questions. The owner had stated that the hours would be between 5:30 a.m. and 6:30 p.m. and that some of the maintenance workers work later hours. Mr. Paul had then said there were no mechanics on site. 5:30 a.m. is an unreasonable start time. She also believes a fence should be required around the detention pond. The Alteration of Terrain permit has not been approved yet. The dumpster area should have the required paving, not an alternative. She feels there should be more of a buffer. During the January 11, 2013 meeting, the applicant said the garbage will come back to the facility, which means that a landfill permit is required. That use is not allowed in the zone. The facade of the building should adhere to the aesthetics of the neighborhood. Sprinklers should be required in the building. What about the fair share assessment? She does not feel this proposal meets any of the uses allowed in the zone. EPA requires spray booths for painting. The dumpsters appear to be spray painted since they have overspray on them. She feels that if the dumpsters are coming back to the facility either partially full, or full, then a Solid Waste permit is required for a transfer station. Mrs. Wilson said she has an issue with the inconsistent statements that have been made. She attended the last Conservation Commission meeting and members had questions. There were a lot of questions from members on a plan that is already approved. One member spoke to her after the meeting and said there was a lot about this plan they did not know about, but the Commission was only concerned with the wetland impacts. Mr. Tymula has said the building would have "truck storage"; he did not mention vehicle maintenance. He also said the outside storage area will have empty dumpsters and that they will be cleaned out at the transfer station before being returned for use. These are also inconsistent statements. Someone needs to look at this plan in its entirety. Boards are being told different things. She feels that people are reaching to make the use fit in the zone. She does not agree this is a contractor's yard. There will be garbage on site and that is a violation of the Zoning Ordinance.

Mark Flattes, Linlew Drive, said he is opposed to this project locating here because of environmental justice reasons. This use will have damaging effects on the neighborhood, there are general environmental concerns and will have impacts when Exit 4A is built. He is concerned regarding the route the trucks will take to get to the facility. Many trucks cut through Linlew Drive and he is concerned for the children and the future. He does not feel that Dumpster Depot needs to be located here. Maybe it should be in Londonderry or near the transfer station. He has been around this industry for many years. People will throw anything into a dumpster. He asked the Board to look toward the future. This will also be an open building. How will that work with the fire load if they have material on the trucks and they are under the overhang? Mr. Chase explained the Fire Department reviewed the plan during TRC and there were no concerns. There is no fire load to be worried about since the fire load will be the same no matter where the dumpster goes. It makes no difference if the dumpster is at a home or at this facility. The fire load is the same. The applicant only has seven trucks and he doubts that all seven trucks will be full at the same time.

Bruce Wilson yielded his time to Mr. O'Connor. Susan Salvaggio had nothing further to add. Margaret Berg had nothing further to add. Kenneth Berg had nothing to add.

Mr. Granese confirmed there was no further public comment.

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

Mr. Tymula asked for time to clarify some points. His client had a conversation with Wayne Wheeler at DES who informed Mr. Paul that his business would be classified as trash hauling and he would just need to be registered; he did not need a permit. This site is not a transfer station and it is not a landfill. There are certain requirements based on the tonnage, the cubic yards and how long they sit. Under Env-SW 408.06, no permit is required. Mr. Tymula read the following from the New Hampshire Code of Administrative Rules: "Waste In-Transit Storage Areas: subject to ENV-SW 408.02, no permit shall be required to temporarily store waste while in transit to an authorized facility, provided that: (a) the waste shall arrive at the storage facility in covered container(s) to include a waste collection vehicle; (b) no waste shall be removed from or added to the container(s) while at the storage facility; (c) not more than 150 cubic yards of waste shall be stored at the storage facility; (d) the waste shall be stored no longer than 4 days from date of receipt..." Mr. Tymula said his client has 30 yard dump trucks. If he had five vehicles with a full load, that would calculate to the 150 cubic yards. He does not anticipate having that many on site at one time, but designed the site to accommodate it as a precautionary measure and in an effort to allay any potential concerns. His client stated that he would have full dumpsters on site for no longer than 24 – 48 hours. That is the code established by DES and was part of the conversation his client had with Mr. Wheeler. His client is a hauling company.

Regarding on site repair, Mr. Tymula said his client wants to do what is legally allowed at a contractor's yard. If a fleet mechanic can come into the site and work on Mr. Paul's vehicles he would like to be able to do that; if he can't do that, then he won't. He does not want to do anything that is unjust or illegal.

Mr. Granese asked how Mr. Paul handled repairs in Manchester now? Mr. Paul said he does not employ a mechanic. The repairs are outsourced. If there is a problem with a truck in the evening when the truck comes back, things like mirror repairs are done then. If it is something larger than that, the repair is done off the premises including oil changes. They will add fluids to the trucks in the morning when they are doing their truck checks. The oil is changed in the vehicles every 15,000 miles.

Ms. Alongi felt he did have another business. Mr. Granese explained Mr. Paul is renting in Manchester and wants to move the business to Derry after purchasing this property.

Mr. Paul said they are a hauling company and haul trash and demolition. Regarding the definition of “garbage” and “trash” and “construction” and so forth; they do not go house to house and pick up garbage which is considered Municipal Solid Waste (MSW). That is the difference; they don’t do that.

Mr. Dimmock noted these trucks have hydraulic lifts that might hold 10-15 gallons of hydraulic oil. If something is damaged on the road, they might come in the next morning and find oil all over the ground. Or will he send the truck somewhere else? How does the town enforce the fact that he has trucks leaking all over the property? He has six trucks, with 10-15 gallons of hydraulic oil; that is a lot of oil. Mr. Granese noted a hose can blow in any vehicle at any time. Mr. Dimmock said he did not want it happening here. Mr. Tymula said they have been through the process as needed. Mr. Mackey has the jurisdiction to decide whether this is an allowed use. He listed the remainder of the uses allowed in the zone which include bulk fuel storage and distribution, printing establishments, contract cleaning establishments, breweries and bottling facilities, enclosed recycling of non-hazardous materials and wireless communication facilities. This is an Industrial III zone. They are considered a contractors yard or freight and trucking terminal. The use is allowed in the Industrial III zone.

Mr. Dimmock said that Mr. Mackey works for the town and he does not have the grace to make the rules. The rules need to be made by this Board and approved by Town Council. He does not see in the regulations that Mr. Paul can use this property for this use. Mr. Tymula respectfully disagreed, stating Mr. Mackey is the Code Enforcement Office and he says the use is allowed under the Industrial III zoning; they would not be before the Board if they were not allowed to be here.

Mr. Chase said he appreciates accurate answers. Right now, he believes that Mr. Paul does not employ a mechanic but hires outside vendors to come on site to perform repairs. That is common for large construction companies. Would Mr. Paul be comfortable with a condition that any repairs to the vehicles must be done inside the building, no matter if it is his mechanics or an outside vendor performing the repair? That way the trucks could be pulled inside and things can be contained. Mr. Tymula said his client would have no issue with that.

Mr. Sioras advised his office had received an email from Councilor Wetherbee who asked him to read the email into the record. The email was received on May 29, 2013 and was in response to his viewing of the meeting on May 15, 2013, and the various emails and phone calls he has received from the neighborhoods abutting the proposed project. Mr. Sioras read the email into

the record. A copy is retained in the file. Councilor Wetherbee has concerns regarding potential environmental impacts, possible state permitting for the facility, monitoring of the site for long term impacts, maintenance at the facility and on site storage, as well as a determination if this is an allowed use. He expressed his understanding that if the use was allowed that the Board had little leeway in granting an approval, but hoped the Board would impose appropriate conditions. He also thanked the volunteers on the Board for their time and effort in working through these complicated issues. The Board's hard work is appreciated. Mr. Granese stated all Town Councilors are welcome to come to meetings of the Planning Board and participate.

Mr. Chase felt one of the largest issues is dumpsters coming back with loads in them. He would propose, since there seems to be confusion over what the DES rules actually are, to put a condition on [any approval] that until this issue can be resolved with DES, either through town counsel or however else, that no dumpsters will come back with loads on them.

Mr. Anderson said the Board can make a condition that no vehicles with trash can come ever back. That is within the Board's purview. Once a truck has a container full of trash on it, it becomes a transfer station. If the applicant wants to operate in Derry, he will not bring trash back to the site. Mr. Chase felt that might present a difficulty for the owner. It is possible he could make plans to not pick up the dumpsters if he knows he cannot make it to a transfer station in time. Mr. Tymula said they are regarded by the State as a Waste In-Transit Storage Area. He submitted the state guidelines for the record, as well as his client's phone log of his conversation with Mr. Wheeler.

Mrs. Robidoux advised she also spoke with Mr. Wheeler at DES to confirm and ask how this business would be classified since the question had come up so many times. Staff wanted to make sure they had the answer. She asked if they would qualify as a solid waste area or transfer station. Mr. Wheeler was very emphatic that they do not qualify as a transfer station. She confirmed the State qualifies this business as Waste In-Transit Storage Area and all they have to do is submit the Solid Waste Hauler form annually, and list what they have done. Mr. Tymula asked if Mr. Anderson was aware of this information and Mr. Anderson stated he was.

Mr. Dimmock had an issue with Mr. Paul stating, "Not at this time." If the town allows the use in, will Mr. Paul ask for permission to do the repairs? "Not at this time", is not an answer. Mr. Dimmock said he is unclear on the applicant's main plan. He is looking out for the benefit of the Town of Derry does not see any advantage to the town to allow Mr. Paul to run his business here under any circumstances. How will the rules be enforced and how does the town make sure he does what he is supposed to do? There is no way to enforce it, so don't permit it. Mr. Granese asked if the town has staff that enforces site plans and conditions of approval? Mr. Anderson said the town does.

Mr. Tymula reiterated his client wants to do what he is legally allowed to do as a contractor's yard. The uses inside the building are regulated by the Building Code. If they are not legally allowed uses; he won't do it. If he can legally maintain his fleet on site, he will do so.

Mr. Granese asked if the repairs can be done inside? Mr. Tymula said they have no issue doing that. Mr. Granese said maybe certain things could be fixed on site such as flat tires, broken

mirrors, headlights and blinkers. Those are all safety issues and they need to do those right away. He would not support things like fluid exchange, brakes, hydraulic repairs and things of that nature. He fully understood that emergencies needed to be dealt with right away but he would not want to see major repairs taking place at this facility such as engine repairs if a motor blew. He would like to see that towed away and repaired somewhere else. He would only like to see emergency repairs such as safety equipment, tires, windshields etc. If a hose snapped, that would be the exception to the rule.

Mr. Tymula said they would have no issue with that. He did speak to his client with regard to his statements of intent for the site and the “not at this time” comments. What Mr. Paul means when he says that is that he does not know what will happen in the future. The conceptual subdivision plan was included in the plan set only to show what could potentially happen to the lot in the future. Any future development or changes in operation would need to come back to the Planning Board, Conservation Commission, or Zoning Board. When he said “at this time” he meant he did not know what he wanted to do down the road. Mr. Granese said the Board could impose a condition that if anything was to change, it would have to come back to the Board for a public hearing.

Regarding the current hours of operation, Mr. Paul said the earliest one of the drivers or maintenance person would be on site to check the trucks is 5:30 a.m. The phones turn on at 7:00 a.m. The trucks roll out at 7:00 a.m. and the latest truck comes back between 6:00 and 7:00 p.m. The phones shut off at 5:30 p.m. unless someone is in the office later than that. The protocol is they try to leave the phone on if someone is in the office. The advertised hours of operation are Monday through Friday, 7:00 a.m. to 5:30 p.m., and 7:00 a.m. to 1:00 p.m. on Saturday. The latest a truck would get to this site is 7:00 p.m. In Manchester the latest is 7:00 p.m. In the last thirteen years, a driver has come back later than 7:00 p.m. The latest anyone ever came back was 8:15 p.m. and that was because of a breakdown; that would be the only reason.

Mr. Granese asked if the trucks are plugged in and idling at 5:30 a.m.? Mr. Paul said the newer trucks are designed to shut off if they idle more than 5 minutes. The overhang is designed with the plugs. Mr. Granese asked when the earliest a truck would idle in the winter, with no leaves on the trees, at zero degrees? Mr. Paul said it could be 5:30 a.m. and would leave the facility at 7:00 p.m. Mr. Granese asked if the truck would idle between 5:30 and 7:00? Mr. Paul said no. Mr. Granese asked why would the truck start at 5:30 then? Mr. Paul explained the lead driver comes in and starts the trucks, brings them to a location and checks the oil. He planned this specific building design so that all the trucks will be under the overhang and block the lights and hopefully, he could eliminate some of those types of concerns. Mr. Granese asked why the trucks could not be checked (tires etc.) and then started at 6:30? Mr. Paul said could live with a truck start time between 6:00 and 6:30 a.m. on the outside the building. Mr. Granese confirmed that Mr. Paul would not have an issue with a stipulation on what time the trucks could start, leave the facility and come back. Mr. Paul said based on the hours he just gave the Board, no.

Motion by Anderson to accept jurisdiction of the site plan application before the Board for Accurate Transport, Inc. (The Dumpster Depot), 41 Ashleigh Drive, PID 08017. Bartkiewicz seconded the motion.

Alongi voted no stating that the homes are too close. The town has waited a long time for this area to be developed and there are some good businesses there. This is not the right area for this. Dimmock voted no stating he does not feel they have the place in mind and this is not an allowed use. Chase, Park, Anderson, Davison, Choiniere, Bartkiewicz and Granese voted in favor and the motion passed.

Motion by Anderson to approve, pursuant to RSA 676:4, I, Completed Application, with the following conditions:

- comply with the Vanasse Hangen Brustlin report dated April 25, 2013;
- 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;
- landscaping plan shall not include invasive or exotic plantings;
- removal of silt fence prior to final escrow release;
- no fueling allowed on site;
- hours of operation, to be determined, shall be noted on the plan;
- subject to receipt of state or federal permits relating to the project (Sewer Extension, Alteration of Terrain, NH DOT driveway permit, PSNH agreement);
- No onsite storage of Municipal Solid Waste;
- redetermination of the fair share assessment calculation;
- semi-annual testing of groundwater for VOCs, Chromium, Lead, Mercury, oil and grease;
- no washing of dumpsters ever allowed on site;
- rodent and mosquito control as outlined by the applicant, performed annually;
- limitation on the size and type of dumpster as outlined in the application;
- limitation on the maximum number of dumpsters allowed on site as stated in the application;
- only empty dumpsters are allowed on site;

Board members added the following conditions:

- all repairs shall take place inside the building;
- hours of operation shall be 7:00 a.m. to 5:00 p.m.;
- no vehicles shall be started prior to 6:45 a.m. to check fluids;
- no vehicles will return to the facility after 6:00 p.m.;

Discussion followed.

Mr. Anderson confirmed that when Mr. Granese said no vehicle starts before 6:45 a.m., he meant that the vehicle start was only to perform the truck checks and the trucks would not be running for an hour and half.

Mr. Sioras felt it was important to add the installation of the buffer at the dumpster storage area to protect the residents on Donmac. Mr. Tymula confirmed the intent is to install a landscape buffer to include three rows of spruce/fir, a minimum of 6-7 feet tall, planted.

Mr. Anderson said he was torn with regard to requiring a fence around the pond. The applicant will own the 60 plus acre property. People use that property for their own pleasure but it is private property. Mr. Granese noted the Board had a fence around the Walmart detention pond. Mr. Anderson said since it was the same area, he would be comfortable adding that condition.

Mr. Tymula advised he spoke with Ridge Mauck at DES, specifically with regard to the fencing. DES does not require fencing around detention ponds and it is more of a liability issue for the owner. The VHB comments state that it "should be". Typically, you see fencing in a retail application such as Walmart where people would be walking around or in a residential subdivision. There will not be customers walking up to it or people coming to this facility. The pond is located to the rear and he does not see the need to add a fence. Mr. Granese said the issue is that the area is well traveled by people who use four wheelers and walk. It would be in the best interest of Mr. Tymula's client for security purposes. If someone climbs over the fence, shame on them. The fence would be around the detention pond to deter people. He would also like to see a fence around the dumpster storage area because many people go into that area, including children. A fence would deter them and he feels it would be in the best interests of Mr. Tymula's client to fence the area. Mr. Tymula confirmed the fence is not in lieu of the tree buffer. Mr. Granese said he would like to see a six foot, chain link fence around the dumpsters. Board members determined that adding privacy slats would not be beneficial.

Mr. Dimmock said he would like to see the colors on the building change. Mr. Granese noted that orange is a company color. The area colored purple on the rendering is glass windows. The building itself is tan/grayish.

Mr. Tymula said they don't have an issue with the conditions other than only having empty dumpsters on site. It is almost a deal-killer for his client. It is allowed based on the DES regulations. The applicant is taking every precaution by making sure the full dumpsters are covered, and shielded by the overhead canopy. That is a very difficult condition.

Ms. Davison asked why it was so difficult to bring only empty dumpsters back to the site? Mr. Paul explained that many of the transfer stations close between 3:30 and 4:00 p.m. If a truck is on the outskirts of that facility, makes a pick up, and can't make it to the transfer station by the time it closes, they leave the covered dumpster on the truck and dispose of it the next day. DES allows that up to 150 cubic yards. They will keep the dumpster(s) under cover. That is why the building was designed with a canopy. Ms. Davison asked if the client would have to pay for an additional day of rental if they could not pick up the dumpster? Mr. Paul said sometimes. Mr. Paul explained how they plan their truck routes. His customers would be angry if they called for a pick up and were told the dumpster could not be picked up because the transfer station was closed. Logistically, they can't handle not being allowed to bring back a full dumpster on occasion.

Mr. Tymula had a concern with requiring semi-annual testing. DES and the Derry DPW did not feel there was a need for it. DES regulations for the treatment pond state on page 60 of the New Hampshire Stormwater Manual, Vol II, that wet ponds if properly sized and maintained can achieve high rates of removal for a number of urban pollutants, including sediment and its associated pollutants, trace metals, hydrocarbons, BOD nutrients and pesticides. They also provide some treatment of dissolved nutrients through biological processes. Treatment ponds will treat the water prior to it discharging into a wetland. Mr. Mauck had no comments regarding concerns for the wetlands and pollutants. Mr. Mauck did have a comment with regard to what the facility was and Mr. Tymula explained to Mr. Mauck that the 350 dumpsters in the storage area would be empty containers. Regarding painting and spray booths, there are no spray booths proposed for this facility. If Mr. Paul wants to add one, he would need to come back to the Board. Mr. Mauck had no questions or concerns with regard to monitoring wells. Two people from DES and one person from the town have indicated monitoring wells are not necessary. What would be monitored and who is the governing authority? Conservation Commission did not have any issues with that either, unless he missed that.

Mr. Anderson said he would be willing to modify the condition to annual testing, but he did not care what DES said. This is the Town of Derry. The Board's job is to protect the citizens of the Town of Derry. This project is a bit of a public relations nightmare and without that condition, the plan may not pass. He is not willing to remove that condition altogether. Regarding the empty dumpsters, the state may allow it but he does not want it there. He has never wanted trash there. As the Town Administrator he is going to vote no and keep that condition in. If that means Mr. Tymula's client has to look at another location, he can't control that. He has to worry about what is best for the Town of Derry. Mr. Tymula said his client would like time to think about this prior to a vote by the Board. This is a key issue.

Bartkiewicz seconded the motion.

Mr. Granese said that in order to continue the plan, the motion would need to be retracted.

Mr. Anderson stated that in light of the request from the applicant and to allow the Board an opportunity to review the proposed conditions, he would agree to table the action on the conditional grant of approval. Mr. Granese noted it would put this plan out to the August agenda. Mr. Tymula said they had no issues with the extension. Mr. Sioras confirmed the August meeting would fall within the appropriate time frames since jurisdiction had been accepted. The proposed motions would be in the record for the Board to review.

Bartkiewicz removed his second and Anderson withdrew his motion.

Motion by Anderson to table review of this plan to August 21, 2013, seconded by Bartkiewicz. Discussion followed.

Mr. Granese stated that the hearing would be continued only to discuss the pending motion and to decide whether to grant approval or not. There would be no further public input. The Board was in agreement.

Chase, Park, Alongi, Choiniere, Davison, Dimmock, Anderson, Bartkiewicz and Granese voted in favor and the motion passed.

Mr. Granese advised the hearing was continued to August 21st. There would be no additional notification.

Motion by Park, seconded by Bartkiewicz to adjourn. The motion passed with all in favor and the meeting stood adjourned at 9:22 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____