

The Planning Board for the Town of Derry held a public meeting on Wednesday, August 21, 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; Albert Dimmock, Sr., Town Council Liaison; Randy Chase, Administrator's Designee; Jan Choiniere, Ann Marie Alongi Members; Frank Mazzuchelli, Alternates

Absent: Jim MacEachern, Darrell Park, Lori Davison

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

Mr. Granese called the meeting to order at 7:07 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.

Mr. Mazzuchelli was seated for Mr. Park

Escrow

#13-22

Project Name: 2nd Building – General Office Building

Developer: Tsienneto Fourteen Development, LLC

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 08079-005, 14 Tsienneto Road

The request is to establish Letter of Credit #20005927, 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.

#13-23

Project Name: 2nd Building – General Office Building

Developer: Tsienneto Fourteen Development, LLC

Escrow Account: Same

Escrow Type: Cash

Parcel ID/Location: 08079-005, 14 Tsienneto Road

The request is to release cash escrow in the amount of \$233,094.67 plus any accumulated interest. The amount to retain is zero. This is the final release.

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

Mrs. Choiniere confirmed the Board was establishing a letter of credit and then releasing the cash held for the project.

#13-24**Project Name: Covey Run****Developer: Covey Run, LLC****Escrow Account: Same****Escrow Type: Letter of Credit****Parcel ID/Location: 31021, 81 North High Street**

The request is approve Release #3 in the amount of \$29,531.95 and request a replacement Letter of Credit in the amount of \$57,283.20 for the above noted project. Upon receipt of the replacement Letter of Credit, the Board will release the Letter of Credit #68059605 drawn on TD Banknorth, NA in the amount of \$86,815.15.

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 July 17, 2013, meeting.

Motion by O'Connor, seconded by Bartkiewicz to accept the minutes of the July 17, 2013, meeting as written. The motion passed with Chase abstained.

Correspondence

Mr. Bartkiewicz advised the Board is in receipt of information relating to the NH Municipal Association's Law Lecture Series. Sessions will be held across the state with sessions held at the Derry Municipal Center on October 2, October 9 and October 16th. If anyone has an interest, they should speak with Mr. Sioras or Mrs. Robidoux. Southern New Hampshire Planning Commission has sent its monthly update of activities. There is more information on their website at www.snhpc.org. The Board has received in their packets an updated Planning Board schedule. Also received is the latest edition of *The Source*, a newsletter published by NH DES and a Notice of Public Hearing from the Town of Mont Vernon regarding the replacement of a 180 foot cell tower.

Other Business

Mr. Granese reminded the Board the next meeting of the Planning Board will be on September 18th.

Schedule Public Hearing – Changes to the sign regulations

Mr. Sioras advised the Board held a workshop in July with Code Enforcement regarding proposed changes to the sign regulations. The changes are all incorporated in this document and the next step is to schedule a public hearing. The suggested date is September 18, 2013.

Motion by O'Connor, seconded by Bartkiewicz to schedule a public hearing for September 18, 2013.

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

Rezoning Requests

Mr. Sioras informed the Board the Planning Department received two rezoning requests. The first is from Priscilla Flynn regarding 19 Folsom Road. The property was owned by her mother, and is located across from the Police Station and car wash and directly abuts Monster Gas. The request is to rezone the land to commercial. The second request is from Merrin and Daniel Shovlin to rezone 67-68 By Pass 28. They would like to see the property rezoned from General Commercial II to residential. Normally, the procedure is that requests such as this are placed in writing and brought before the Board. The Board then schedules a workshop to discuss the requests. The Board discussed dates and scheduled a workshop on these matters for November 20, 2013. The landowners and residents requesting the change will be notified of the workshop date so that they can attend.

Mr. Granese advised he would take the agenda out of order and the Murdoch plan would be heard first.

Public Hearing**Richard Murdoch****PID 05074, 23 Lane Road****Acceptance/Review, 2 lot subdivision****Continued from July 17, 2013**

Mr. Sioras provided the following staff report. The plan was continued from the July hearing. The purpose of the plan is for a two lot subdivision located in the Low-Medium Density Residential District. One new building lot is being created. All town departments have signed

the plan and the NH DES Subdivision approval is pending. He would recommend approval of the plan. There had been questions raised at the last meeting from the abutter Mrs. Rendo regarding drainage. The landowner and abutter worked together on a solution to the issue.

Tim Peloquin of Promised Land Survey presented for the applicant. The parcel contains 4.64 acres and there is sufficient frontage and acreage for the two lots. They have performed HISS mapping and a wetland survey. This used to be two lots that were voluntarily merged a few years ago. Now they would like to re-subdivide. This is a straightforward subdivision application. They did run into an issue when the abutter notified them the owner prior to Mr. Murdoch had improperly re-graded the site some years back which caused increased runoff onto Mrs. Rendo's property. They asked for a continuance to this meeting in order to address the issue. The wetland scientist has been out to the lot and they have met with the abutter. He believes they have satisfactorily resolved the issue that was pending before the Board.

Mr. Granese asked Mrs. Rendo if she was satisfied? She indicated she was. Patricia Norton, Mrs. Rendo's daughter advised they are satisfied that the current owner will address and resolve the issue. Mr. O'Connor confirmed this was an amicable resolution.

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

There was no public comment.

Motion by O'Connor, seconded by Bartkiewicz to close the public hearing. The motion passed in favor and review of the plan returned to the Board.

Motion by O'Connor to accept jurisdiction of the subdivision plan before the Board for Richard Murdoch, PID 05074, 23 Lane Road, seconded by Alongi.

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

Motion by O'Connor to approve pursuant to RSA 676:4, III, Expedited Review, with the following conditions: subject to owner's signature, 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; subject to receipt of appropriate permits relating to the project; the above conditions are to be met within six months and a \$25.00 check, payable to Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirement, along with the appropriate recording fees. Bartkiewicz seconded the motion.

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

**Accurate Transport, Inc.
PID 08017 41 Ashleigh Drive
Review of Site Plan – The Dumpster Depot
Continued from June 19, 2103**

Mr. Granese advised the Board was still in deliberation on the motion from the last meeting on June 19, 2013.

Mr. Sioras advised there are several items of correspondence from abutters attached to the staff report from Brenda Wilson, which is self-explanatory, Janice Del Pozzo and Kathy Beliveau. The Board was also just handed information from Mrs. Wilson regarding collection, storage and transfer facilities.

Mr. O'Connor recused himself from review of this plan as he is an abutter to the project.

Chris Tymula of MHF Design presented for the applicant, David Paul, who was also present.

Mr. Tymula thanked the Board for allowing them to continue the plan from the June 19th hearing so that they could discuss some of the conditions that had been brought up. They have since received their AoT permit from the state and VHB, the peer review consultant, has approved the changes to the plan that were made based on the Board's feedback at the last meeting. They have added a 6 foot fence around the dumpster area which they would like to discuss further and a 6 foot fence around the basin area which was not required by DES. They have revised the dumpster storage pad to utilize millings as suggested by Mark L'Heureux in Public Works and have revised the landscape plan to show the buffer area. There are two items of concern remaining relating to operations that they would like to address with the Board to include hours of operation and the ability to bring back full dumpsters to the site on occasion.

Mr. Tymula stated Mr. Paul would like to keep to the following hours of operation: They would like to start the trucks at 6:00 a.m. and have the ability to bring them back as late as 7:00 p.m. They would like the trucking hours to be 6:00 a.m. to 7:00 p.m., Monday through Friday, with office hours from 7:00 a.m. to 5:00 p.m. On Saturday, they would like the hours to be 6:00 a.m. to 2:00 p.m. Those are the hours Mr. Paul needs to be able to operate his business. He would like no restrictions but understands the sensitivity of the surrounding neighborhoods. As part of their preparation for this meeting, they reviewed the Walmart site plan conditions relative to truck delivery and traffic. There were no restrictions placed on truck delivery for that project and Mr. Paul is still ok with reasonable restrictions.

The other item of concern is the ability to bring full dumpsters back to the site on occasion, which he has done for years. This is not something that would happen every day, they are not talking five to six trucks, and there would be no garbage. They are taking about trucks consistent with the requirements outlined by DES as a Waste in Transit facility. As discussed last time and confirmed by Mrs. Robidoux in her conversation with DES, Mr. Tymula said the business is not a transfer station or a landfill, but is classified as a facility with the right to temporarily store waste before sending it to an authorized facility. As a Waste in Transit hauler, Mr. Paul is

legally allowed by DES to have full dumpsters on site for four days. They would like the ability to do so, as allowed under DES rules, but Mr. Paul would concede and request dumpsters to be stored up to 24 hours, or if needed over a weekend; but he would do his best to not have dumpsters stored over a weekend. He would like the flexibility to do so as needed. This is no different from Walmart, the movie theatre, or Hannaford's having a dumpster on their property other than these dumpsters will not be full of garbage, nor will they be stored on the ground. These will be covered, on the trucks, and under a canopy, again, going above and beyond what is required.

With regard to the comments that this is not the right site for this business, what else is allowed? A manufacturing facility, bulk storage, fuel storage or wireless communications facilities are all allowed in the Industrial III zone. He believes there would be complaints that those were not suited for that area as well.

The current owner has owned this property for many years, looking for a suitable buyer. Now he has one and everyone, except for the reviewing agents, do not want this there. Don't the property owner and his client have rights too? They have not asked for waivers or variances and they have conceded to almost every request from the Board or abutters.

Mr. Tymula summarized by stating they have met all the requirements of the town for site plan approval, they have received the AoT permit, they have received sign off from the town's peer review consultant, have changed the plans based on the town's Department of Public Works comments regarding storage area surfaces, and added buffers and fencing. They are willing to perform rodent and mosquito control and annual groundwater testing. He is respectfully asking the Board to look at this application without emotion and to trust in the peer review and state; both of which have thoroughly reviewed the project, and to provide a legal, fair approval.

Mr. Granese asked for a review of the suggested hours of operation. It was confirmed the request was for Monday through Friday (business hours), 7:00 a.m. to 5:00 p.m.; with the trucks starting at 6:00 a.m., returning as late as 7:00 p.m. – even though he would like 8:00 p.m. – and Saturday hours of 6:00 a.m. to 2:00 p.m. with the office hours of 7:00 a.m. to 1:00 p.m. on Saturday. Mr. Tymula noted Walmart has truck deliveries at all hours of the night without restrictions.

Mr. Dimmock had a concern that the requested hours of operation had changed. He believed Mr. Paul had not originally requested Saturday hours and now he wants them. He assumes Mr. Paul changed his mind because he had said he did not like working on Saturday nor did he need Saturday hours. Now he is requesting them. Dumps aren't open on Saturday so he won't use his trucks to transport the rubbish because there is nowhere to take it. Why does he needs Saturdays?

Mr. Paul said that all of the [transfer] facilities they use are open on Saturday until 1:00 p.m. The reason he had stated that he did not want Saturday hours was that in most cases they don't work on Saturday. In the last six months they have not worked a Saturday, but it will happen on occasion when a customer needs a pick up. They worked last Saturday when they volunteered with a school in Londonderry with two dumpsters, and the school said the dumpsters had to be

picked up on Saturday. There are instances like that. He wants to be straightforward and say there might be an occasional time when they do need to work on Saturday. Mr. Dimmock did not know where Mr. Paul was coming from; one time he says he does not need Saturdays and then he says he does. Mr. Granese recalled that Mr. Paul had requested Saturday hours at the last hearing; it is in the minutes. Mr. Dimmock felt that all of a sudden Mr. Paul has changed it. He does not feel Mr. Paul needs Saturday hours.

Mr. Granese said to be clear in the record, Mr. Paul did bring up Saturday hours and it was in the motion and the record from the last meeting. Mr. Dimmock again said he did not feel Mr. Paul needed Saturday hours and he did not feel the Board should give them to him.

Mr. Mazzuchelli asked what was the state rule number? Mr. Tymula advised it was Env-Sw 408.6. He added Mrs. Robidoux also spoke with Wayne Wheeler and reaffirmed this is a Waste in Transit storage area. Their conversations were consistent.

Mr. Granese asked if Public Works had any issues with the plan? Mr. L'Heureux said his department had no issues with the site design or utilities.

Mr. Dimmock felt that DES could say that Mr. Paul can do this and he can do that and he is allowed so many containers with rubbish in them. The Town can be more restrictive. DES is not the governing body that tells someone what they can do in the Town of Derry. DES says what they allow throughout the state. If the Board wants to be more restrictive and say that no containers with rubbish are allowed, the Board has the right to do that. What DES employees have to say does not supersede what this Board says. Mr. Dimmock said there should be no full containers on the site at any time.

Mr. Tymula indicated they did understand that, and they are trying to go by the state regulations for stormwater and the town regulations for site plan review and approval. What they have proposed is consistent with those requirements. DES says they are allowed to keep full containers on site for up to 4 days but they are only asking for one day or if they have to bring a dumpster back on the weekend; it is still more strict than what DES requires. Mr. Dimmock said DES will allow them to do that but DES does not make decisions for the Board; DES can recommend. The Board can be more restrictive.

Mrs. Choiniere stated one of the emails the Board received mentioned dumpsters at The English Muffin in Hampstead. Mr. Paul said he has a dumpster at the market in Hampstead but not at The English Muffin. Those belong to Cassella Waste Services. Mrs. Choiniere explained she was just trying to clarify what had been sent to the Board. Mr. Paul said Dumpster Depot, as a whole, will cater to that type of business but this facility will not deal with that type of dumpster. They are not dealing with garbage. Mrs. Choiniere asked if another one of the franchises does? Mr. Paul said they utilize small, front load dumpsters but they don't have the trucks to dump them. They sub that kind of work out. They use them on site themselves for storage or for new customers. They have hundreds of that type of dumpster but they are sub contracted out and might be found behind a convenience store, as an example. They are 72 inches wide with differing depths. They don't own a truck that can lift them. Those are usually used for garbage or recyclables. Mrs. Choiniere stated she is trying to confirm that he does not haul garbage. Mr.

Paul said they have dumpsters that they don't service themselves. They own the dumpsters, store the empty dumpsters at their facility, and when they get a new customer, they may deliver it to the location. Mrs. Choiniere confirmed he rents those types of dumpsters out and people come and take care of them.

Mr. Granese reprimanded the audience and asked that the members in the audience not interject. If there were any more outbursts, he would ask people to leave.

Mr. Bartkiewicz asked when that particular type of dumpster came back on occasion, are they clean? Now they are talking about food, even though they had been contracted out. Mr. Paul said they are empty. Regarding cleaning – they are not power washed before they come back to the facility. Mr. Sioras commented that normally they contract out for homeowner and construction debris which might leave wood chips and dust in the dumpsters; he wanted to make sure no food came back to the site. Mr. Paul said the dumpster are dumped and not cleaned before they came back. Mr. Sioras thought food might be out of the dumpster but there would still be some residue. Mr. Paul agreed there could be.

Mr. Granese advised the Board has a motion on the table and should accept the revised plans prior to moving forward.

Ms. Alongi asked if the Board accepted revised plans, where does the Board stand and what would be the next step? Mr. Granese said the Board can continue to discuss the plan as a Board, or move on to the conditions of approval and then vote. There will be no public hearing this evening because this is a continuation of the Board's deliberation. Mr. Sioras said the Board would accept the revised plans to build the record and next would be the motion to approve or deny the plan.

Motion by Choiniere, seconded by Alongi to accept plans revised as of June 27, 2013.

Chase, Alongi, Mazzuchelli, Dimmock, Choiniere, Bartkiewicz and Granese voted in favor and the motion passed.

Motion by Alongi to review the proposed list of conditions and determine a revised list of conditions as appropriate, seconded by Choiniere.

Staff advised this would just be a discussion item and did not require a motion. This would be where the Board would craft the actual motion.

The motion died on the table.

Mr. Granese listed the proposed conditions which were as follows, noting the applicant has complied with the VHB report as of July 24, 2013.

- Subject to receipt of appropriate permits (AoT permit has been issued, Permit Aot-0614)
- Potential conditions mentioned at the last meeting included a fence around the detention basin and that is on the revised plan dated 6/27/2013

- The 6 foot chain link fence around the dumpster storage area is also shown on the plan dated 6/27/13.
- The Board added a limitation on the number dumpsters and the plan states 350 (found on Sheet 4, Note 4)
- Any repairs to vehicles must be performed inside the building – major repairs to be performed off site
- Installation of the landscaped buffer at the dumpster storage area will include three rows of spruce/fir, planted a minimum of 6-7 feet tall
- No washing of dumpsters on site
- Mr. Tymula talked about annual testing of groundwater for VOCs, Chromium, Lead, Mercury, oil and grease
- No on site storage of Municipal Solid Waste
- No fueling on site
- Rodent and mosquito control as outlined by the applicant – he said he was going to do that.
- Limitation on the size and type of dumpsters as outlined in the application
- The Board talked about the following hours of operation at the last meeting: Monday through Friday, 7:00 a.m. to 5:00 p.m.; Saturday 7:00 a.m. to 1:00 p.m. Trucks may be started for safety checks at 6:45 a.m. The applicant is asking for 6:00 a.m. Monday through Friday, 6:00 a.m. on Saturday. There had been discussion about no vehicle returning to the facility after 6:00 p.m.; the applicant is asking for 7:00 p.m. on Monday through Friday and 2:00 p.m. on Saturday.
- There was discussion about only empty dumpsters allowed on site; he is asking for overnight storage if they can't make it to the transfer facility, but they would be fully covered and underneath the canopy and over the weekend if needed.
- No vehicle with trash can ever come back to the site – that has been discussed
- Replanting of trees along the perimeter of the parcel located at Donmac Drive.

This is what was discussed and the Board needs to figure out where it wants to go with this and what the Board wants to do.

Mr. Tymula said he did not recall the replanting of trees along Donmac as a suggested condition. Mr. Sioras said that would be along the Struthers' property. It was made as a suggestion that Mr. Cormier could replant near her property as there is line of sight to her house.

Mr. Granese asked the Board for its thoughts on the conditions?

Mr. Chase said he did not feel the requested hours of operation were unreasonable. He can understand the difficulty in getting a truck started, especially during the winter months. This is an Industrial zone. Regarding replanting along the perimeter; he felt that would take care of itself. In other words, it would grow back if left alone. Mr. Tymula added that because of the existing canopy any trees planted there would die unless they were continuously watered by the homeowner and the trees would be on the applicant's property. Logistically, it does not make much sense. The home is about 900+ feet away and they are providing a dense buffer along the dumpster storage area. He does not see the need for it. Mr. Granese thought it would be a good faith effort.

Mr. Tymula stated he and his client did talk about implementing a 40 foot no build buffer along the eastern and northern property line so that nothing can go there including buildings and pavement. That is two times the current required setback. That can be done as a restriction or conservation easement. The area will grow back. The wetlands to the east will provide a natural buffer. They could also restrict the use in the 40 foot area. Mr. Granese noted they could make that a condition of approval.

Mr. Granese asked if they were planning to take trees down near the property line? Mr. Tymula said no. Their project will be at the Ashleigh Drive edge of the property. Any other development on this property would have to come back before the Board as a separate application. Mr. Granese noted the proposed condition meant add trees. Mr. Tymula said their proposed 40 foot no build zone would exclude planting trees and add 40 feet. Mr. Sioras said that proposed condition was to specifically protect the Struthers' property on Donmac Drive. Mr. Granese had thought that was suggested because they were taking trees down and he thought it would be good as potential neighbors to put trees back up.

Mr. Granese asked Mr. Chase regarding the hours of operation as proposed. They had been talking about 7:00 a.m. to 1:00 p.m. on Saturday, so was he suggesting 6:00 a.m. to 2:00 p.m.; Monday through Friday, 6:00 a.m. to 7:00 p.m., with no trucks after 7:00 p.m., and allowing truck starts at 6:00 a.m? Mr. Chase confirmed. Mr. Granese asked when trucks show up at Walmart? Mr. Sioras thought they could deliver at 2:00 a.m. The abutters may know. Mr. Chase said it was at all hours of the night with no limitation. Mr. Granese said if that is the case, there is not as much concern with starting trucks at 6:00 a.m. if Walmart has deliveries all night long without trees in between during the winter months. The audience commented they do not about the Walmart property.

Mr. Chase said the only remaining issue appeared to be whether or not the Board was going to require empty dumpsters. The Board needs to deal with that issue. Mr. Mazzuchelli asked if the Board should set limits such as the number of times the applicant can bring back full dumpsters or how many days? Mr. Granese noted the applicant is asking for the ability to have them on site for 24 hours, for one or two dumpsters. Mrs. Choiniere commented if a full dumpster came back on a Saturday, it would be on site for longer than 24 hours. Mr. Granese said if that was the case, they would need to get rid of the full dumpster on Monday. Code Enforcement would be able to address any complaints. He was sure the company kept records of when trucks came in and out and Code Enforcement would be able to check the log. Mr. Chase did not feel it was unreasonable to put limits on when there could be full dumpsters. He suggested overnight during the weekday and 36 hours on the weekend. If the dumpster came in full at 7:00 on a Monday, they should be able to get it out of there first thing Tuesday morning. If it came in Saturday night, they should be able to get it out of there first thing Monday morning. 36 hours would cover that.

Mr. Dimmock asked how Code Enforcement would enforce that? Will they be there 24/7 checking to make sure they are keeping to that? Mr. Paul could say he brought the dumpster in last night and it could have been there for three days. Mr. Dimmock said he did not want any full containers. This is not the neighborhood to store rubbish. He felt the Board had the right to

say they did not care what DES says. He says no. John Anderson had said under no conditions would he allow them to have full dumpsters on site. Now the Board is talking about giving him that opportunity. He objects to it. There should be no rubbish on that property whatsoever. He is transporting rubbish from someone else and bringing it into the Town of Derry. He says no. Code Enforcement can't handle what they have on their plate now; how can they oversee this situation? The best way is to say no rubbish whatsoever and then Code won't have to be bothered. Mr. Chase said no matter what they do, there would be enforcement involved; even if the Board said no rubbish.

Mr. Chase said the applicant has made concessions and it would be good faith to allow 24 hours on the weekdays and 36 hours on the weekends. He understands how that business works and some customers will want the containers gone now. The applicant is trying to run a business. He does feel four days on site is too long; but overnight is not. Mrs. Choiniere agreed that four days would be unacceptable. Mr. Tymula stated that four days is more than they would want or need.

Mr. Dimmock asked for an explanation of the document titled "New Information, Collection, Storage and Transfer Facilities". Mr. Sioras explained that is a document submitted to the Board from Mrs. Wilson prior to the start of the meeting. Mr. Dimmock asked does this not say the applicant becomes a transfer facility and that it is not allowed in the zone? Mr. Chase said that is not what it says. Mrs. Choiniere asked Mrs. Robidoux if she had confirmed the use with DES? Mrs. Robidoux advised she did speak with DES and was advised this would be a permit exempt facility. If the dumpster is on site overnight for storage they can't take anything in or out of it. All he had to do is send an annual report as part of that.

Mr. Mazzuchelli asked how often Mr. Paul brought back full dumpsters? He would be okay with 24/36 hours for onsite storage of full dumpsters. Is there a frequency? Mr. Paul said it is a minimal amount since the start of this year. It is never known when something would be needed; they need to make sure that they have the ability to bring a dumpster back if they need to. It might be that they bring 3 back one month and none the next. He does not want to be tied to a number. He has said that he would only store them overnight; he has six trucks.

Mr. Dimmock said so now there are six trucks. How many will he add and will he have 26 trucks next year? Can the Board limit him to 6 trucks?

Mr. Chase said he would stick with his suggestions. They have suggested a 40 foot no build buffer which should be added as a condition, the Board can stick with the hours discussed, weekdays 6-7, weekends 6-2 for the company operation and those discussed for the retail operation; and the 24/36, retaining the rest of the conditions. He would also add any loaded dumpster must stay on the truck, covered, under the canopy. Mr. Tymula said they had no issue with that; they had previously stated that to be their intent.

Mrs. Robidoux noted there is a listed condition requiring no Municipal Solid Waste, but that would be covered under the 24/36 storage; can that be removed as it would be the same thing? Mr. Chase felt Municipal Solid Waste was different from demolition debris and the intent was to not have household garbage. Mrs. Robidoux wanted to make sure the wording in the motion was

clear because sometimes the definition of MSW is confused. Should the motion say no household garbage? Mr. Chase felt the Board could do that.

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

- 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 are to be noted on the site plan: Monday through Friday 6:00 a.m. to 7:00 p.m.; trucks are allowed to be started at 6:00 a.m.; Saturday 6:00 a.m. to 2 p.m.; office operational hours Monday through Friday 7:00 a.m. to 5:00 p.m.; Saturday 7:00 a.m. to 1 p.m.
- Subject to receipt of appropriate permits and outside approval relating to the project
- No on site storage of Municipal Solid Waste (household or restaurant garbage)
- Annual testing of groundwater for VOCs, Chromium, Lead, Mercury, oil and grease
- No washing of dumpsters on site
- Rodent and mosquito control as outlined by the applicant, performed annually with reports copied to the Derry Health Officer
- Limitation on the maximum number of dumpsters allowed on site (350)
- Any repairs to vehicles must be performed inside the building with major repairs being performed off site
- Installation of the landscaped buffer at the dumpster storage area will include three rows of spruce/fir trees, planted a minimum of 6-7 feet tall;
- Future development or changes in operation will require Planning Board approval
- Only empty dumpsters will be allowed on site with the exception of a 24 hour stay during the weekdays and a 36 hour stay on the weekends in the event that is needed. The dumpsters must remain covered, on the truck, and be parked under the canopy
- No vehicle will return to the facility after 7:00 p.m.
- Creation of a 40 foot "no build" buffer on the northern portion of the property line.
- The above conditions shall be met within six months
- Improvements shall be completed by December 31, 2014.

Chase: does not feel this is where this use belongs, but given that the applicant has met all the requirements as stated in the Zoning Ordinance and has made significant changes to the plan to accommodate the town, votes yes

Alongi: has a problem watching the town taxes go up. New roads have been built in the area as well as restaurants. She has a difficult time with that type of business in this area, because of what they are trying to attract, and she feels the truck usage will impact the streets

during the winter which will cost the town money to repair the roads which have just been built, votes no

Mazzuchelli: votes yes

Dimmock: votes no. If we allow this we are derelict in our duties and responsibilities to the people of the Town of Derry. He does not believe under any circumstances and conditions that the Board is doing due justice to the Town by using the rules. There should have been no rubbish; the hours are ridiculous and he does not feel the request is for proper hours for that business. He is dead set against approving this in this town. He thought that if the Board set up something and makes rules and regulations, Town Council had to approve it. So when the Board is finished with this meeting, and if they approve it, he believes the Board should also state "upon approval of the Town Council". The Board does not have the right to make rules and regulations without Town Council approval.

Choiniere: this is not the right space for the business, but the zoning is correct and there is not much more the Board can do than add conditions to the plan, votes yes

Bartkiewicz: feels the applicant has met the conditions; this is not the right business for the town, votes yes

Granese: yes

The motion passed by a vote of 5-2-0.

Mr. Granese welcomed Mr. Paul to Derry. The audience emitted several expletives and Mr. Granese had to ask for order in the chambers. He would not tolerate swearing during the meeting. A member of the audience wanted to know why Mr. Granese did not explain his "yes" vote. Mr. Granese advised he does not need to explain why he voted yes, the Board only needs to explain when members vote "no". Mrs. Wilson asked why no one addressed her being offered land if she "shut up and went away" and what about the bribe? Members of the audience made various uncomplimentary comments to the Board members. Mr. Granese asked firmly, several times, for the audience to vacate the chambers as they were disrupting the Planning Board meeting.

**Extended Realty LLC
PID 26232, 37 Highland Avenue
Condition Compliance Hearing
Location of Utilities**

Mr. Sioras provided the following staff report. The location of the project is at the former Floyd School. The project was approved previously by the Board in April with one of the conditions stating the applicant had to come back to the Board for a Condition Compliance Hearing to discuss the underground utility plan. The Board has a copy of the TF Moran letter dated August

6, 2013 which requests a waiver from the underground utility requirement. He would recommend approval; this neighborhood has overhead utilities.

Mr. Granese recused himself from this application as he is related to one of the owners. Mr. O'Connor stepped up as Chair Pro-Temp.

Mr. Sioras said the only issue on the table is the location of the utilities.

Nicole Duquette of TF Moran presented for the applicant. She advised they have received approval from the Board and want to comply with one of the conditions which was to let the Board know how they fared in discussions with PSNH relative to the location of the utilities. PSNH prefers/requires that they use the pole located in front of the building. In that location there is a retaining wall in between the pole and the former school building. To get underground, they would need to add a pole at the edge of the driveway or on site. In light of the ice storms, PSNH does not like adding poles. They can go off the existing pole. Either way, they are dealing with overhead wires. It is not a question of cost but what they are being told by PSNH. They did submit a waiver request letter requesting the utilities be placed overhead.

Mr. O'Connor believed the majority of the Board was at the site walk. He reconfirmed that during the site walk they observed an existing pole and overhead wires that went to the corner of the building. Now that is being changed to a location near the stairs and an addition of a transformer to the pole. Ms. Duquette explained they are using the same pole, just changing the connection point on the building to the northeast corner. PSNH was not in favor of underground utilities at this location. Mr. L'Heureux confirmed his office had no issues with the waiver request.

Ms. Alongi asked why PSNH objected? Ms. Duquette advised they did not want the addition of another pole that would require maintenance. This site does not require a pad mounted transformer so there is no need for PSNH to go underground.

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

There was no public comment.

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

Motion by Choiniere, second by Bartkiewicz to grant a waiver from Section 170-66.C of the LDCR to allow the existing overhead utilities to be replaced/relocated as after review of the waiver request the Board finds that strict conformity to the regulation would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

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

Motion by Choiniere, seconded by Bartkiewicz to determine there have not been any material changes to the property since the April 3, 2013 public hearing at which the plan was conditionally approved and to determine that Extended Realty, LLC has met the condition of approval relative to the location of the utilities.

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

There was no further business before the Board.

Motion by Choiniere, seconded by Bartkiewicz to adjourn. The motion passed unanimously in favor and the meeting stood adjourned at 8:33 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____