

The Planning Board for the Town of Derry held a public meeting on Wednesday, November 02, 2016, at 7:00 p.m., at the Derry Municipal Center (3<sup>rd</sup> Floor Meeting Room) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman; Michael Fairbanks, Secretary; Charles Foote, Town Council Liaison; Frank Bartkiewicz, Lori Davison (7:05 p.m.) Members, Mark Connors, Marc Flattes, Elizabeth Carver, Alternates

Absent: John O'Connor, Randy Chase, Mirjam Ijtsma, Jim MacEachern

Also present: George Sioras, Planning Director, Elizabeth Robidoux, Planning Assistant, 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. He noted the emergency exits, the location of meeting materials, and introduced the Board members and staff.

*Ms. Carver was seated for Mr. MacEachern, Mr. Connors was seated for Ms. Ijtsma, and Mr. Flattes was seated for Mr. O'Connor*

## **Escrow**

### **#16-35**

**Project Name: Beaver Lake Lodge Assisted Living Facility**

**Developer: 21<sup>st</sup> Century Development Corp.**

**Escrow Account: Same**

**Escrow Type: Letter of Credit**

**Parcel ID/Location: 09090, 38 North Shore Road**

The request is to approve the final release of Letter of Credit #2-4853-11, drawn on Franklin Savings Bank in the amount of \$51,435.65 for the above noted project. This is the final release. The amount to retain is zero.

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

**#16-36****Project Name: Medical 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 approve the release of cash escrow in the amount of \$46,000.00 plus any accumulated interest for the above noted project. This is the final release. The amount to retain is zero. The funds were retained as the Fair Share Contribution toward the installation of a future traffic signal at this location on Tsienneto Road. Pursuant to RSA 674:221, V(j), the funds are being returned to the applicant, as the contribution will not be utilized by the town prior to November 17, 2016.

Motion by Bartkiewicz, seconded by Flattes to approve as presented. Discussion followed.

Mr. Granese asked what would happen if it was found at a future date that a traffic light was needed at this location. Mr. Sioras explained the reason the town is releasing these funds is that the town cannot hold onto the money after 6 years. This is state law. If a development comes in on the other side of the road, the developer will be required to submit a traffic study to determine if the development warrants the traffic light being constructed. They would then be required to make a fair share contribution. Exit 4A may also trigger some improvements along this roadway. He is unaware of any proposed future development on Tsienneto Road at this time. Mr. Connors noted the backup documents provided shows other businesses that were to contribute. Did the town collect the money and then have to return it? Mr. Sioras explained The Goddard School submitted a fair share contribution and it was returned last year. One is being released tonight. Nickerson's contribution was estimated to be \$92,000.00. That will be reviewed if that property is developed. The other property owners cannot be asked again to contribute.

The motion passed with all in favor.

*Ms. Davison was seated.*

**#16-37****Project Name: Bunker Estates****Developer: JEMCO Builder and Developer, Inc.****Escrow Account: JEMCO****Escrow Type: Letter of Credit****Parcel ID/Location: 02020-001, 65 Fordway**

The request is to release Letter of Credit #20001082 in the amount of \$62,122.86, drawn on TD Bank for the above noted project. The amount to retain is zero. This is the final release.

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

## **Minutes**

The Board reviewed the minutes of the October 19, 2016 meeting.

Motion by Bartkiewicz, seconded by Fairbanks to approve the minutes of the October 19, 2016 as amended. The motion passed with Flattes, Granese and Connors abstained.

## **Correspondence**

Mr. Fairbanks read a memo from Mrs. Robidoux with regard to a survey prepared by Municipal Resources Inc. The survey is intended to gather input from individual members of the Planning Board, Conservation Commission and Zoning Board of Adjustment. The questions relate to procedures, communication, adherence to regulations and implementation of the Master Plan. The surveys should be returned to Mrs. Robidoux. Mr. Fairbanks asked who initiated the survey. Mr. Sioras said last year, the Town Council asked for an audit or review of the smaller departments. This is part of the review of the Planning Department. He believes the information is provided to the Town Administrator.

## **Other Business**

Mr. Sioras advised that there will be a light agenda on November 16<sup>th</sup> and it is possible there will be only one meeting during the month of December.

There will be a joint meeting of the Zoning Board of Adjustment, Planning Board and Conservation Commission on November 17<sup>th</sup> to consider an application at 4 Tinkham Avenue. Mrs. Robidoux will send a copy of the application to the Board members in advance of the meeting. The use is proposed in the Ground Water Conservation District. Mrs. Robidoux stated the applicant is EVO Cycle. They are moving from Londonderry to Derry. They can operate the repair business but would like the opportunity to sell any motorcycles they receive in trade. Because the lot is in the GRCD, they need a special exception for the use.

Mr. Connors recalled the joint workshop with Town Council and the Economic Development Advisory Committee. It appeared to be a good session. As a Planning Board member, is there anything they should be discussing? Mr. Granese said that will be discussed at another meeting. The Board is going to have a busy year in 2017.

**Public Hearing****New Wave Development****PID 09081, 154 Hampstead Road****Acceptance/Review****2 Lot Subdivision**

Mr. Sioras provided the following staff report. The purpose of this plan is for a two lot subdivision located in the Low Medium Density Residential District which has a two acre minimum lot size. One new building lot is being created. All town departments have reviewed and signed the plan. There is a waiver request letter from Promised Land Survey. Two waivers are being requested. One is from the fire hydrant and water main requirement, the other is a request to allow a common driveway. NH DES State Subdivision approval has been obtained as well as a State driveway permit. The driveway falls under state jurisdiction as this is a state road. Staff would recommend approval of both the waiver request and the subdivision plan. The ZBA granted a variance to allow a lot with insufficient frontage.

Timothy Peloquin, Promised Land Survey, presented for the applicant, Gal Peretz, who was also present. The intent of the plan is to create two lots on Hampstead Road. In March of 2015 the Zoning Board of Adjustment allowed the creation of a flag shaped lot with right of way access off Hampstead Road. One is a three acre lot, the other is a two acre lot. The parent lot has a building that is in need of repair. That building will be restored and a new home constructed on the new lot to the rear. The Zoning Board of Adjustment granted the variance request and imposed a condition that a 30 foot no cut buffer be maintained. The applicant will also plant a 200 foot line of arbor vitae along the property line of the abutting resident who lives on the driveway access to the east. That is depicted on the plan. The intent is to have a septic and well. The septic plan has been approved by the State. For waivers, they would prefer not to extend the water line. The water utility is privately owned by Pennichuck Water Works. The water line stops 1000 feet from this parcel. They would like to not connect to Pennichuck Water Works. This lot and the abutting lots are on wells. The second waiver has to do with two driveways with one access point. The driveway location is regulated by the State of New Hampshire.

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

Joan McKay, 150 Hampstead Road, said she has lived at this location for 42 years. Her concern is that when the newer home was constructed a few years back, her driveway flooded. Someone took care of the issue and that does not happen any longer. However, she would like some assurance that the flooding will not happen again. She is on the corner of Hampstead Road and Meadowbrook. When she moved there, there were three homes in the area. Some of the property was sold and a home was built (currently owned by the Norton family) and it caused water to flow over her driveway. That issue was taken care of. Her concern is that she will have water again. There are wetlands in the area. This is another subdivision.

Gregory Dunton, 160 Hampstead Road, asked when the agreements with regard to the tree buffer were made and approved. Mr. Peloquin said at the ZBA meeting; the notes are on Sheet 3. Mr. Dunton said he was not at the meeting at which they agreed to the trees. He attended two meetings. He recalls a compromise being suggested that the applicant would extend the trees and the 30 foot buffer along his property line. Mr. Peloquin confirmed there was a discussion at the ZBA meeting with regard to a treed buffer and he placed the buffer on the plan. He advised he was not present at the ZBA meeting; the applicant was represented by Attorney Cronin who negotiated the buffer. This is a good faith effort to meet the needs of the abutter, based on the conversation held at the ZBA meeting. Mr. Dunton asked that the trees be extended at the very least along the property line up to the point where the lot line takes a 90° angle to the west. Mr. Peloquin estimated that to be an additional 75 feet. He confirmed the trees should be arbor vitae. Mr. Dunton requested further confirmation of the driveway construction details. What is paved and what is gravel? If the plan it to have gravel, Mr. Dunton said he would prefer the entire driveway be paved to keep the dust to a minimum. Mr. Connors advised the first 40 feet would be paved. Mr. Dunton explained they purchased their home for privacy and planned the lot accordingly. If this is approved there will be less privacy. Mr. Peloquin said the owner of the property cannot guarantee the driveway will be paved. It will depend upon who purchases the home. It is not known at this time what will happen. Mr. Granese advised the Planning Board cannot require the developer to pave the entire driveway. Mr. Dunton said he would like the owner to work on the old house first and make it a priority before construction on the new lot. This would enhance the look and feel of the neighborhood.

Mr. Connors confirmed the current owner plans to repair the existing home. Mr. Peloquin added he has been informed that repair had begun but was uncertain as to when that started.

James Kelly, 7 Penny Lane, said he has a concern with regard to the wetlands and the water. His property holds the drainage for all the other properties. There is a culvert on his property. He has two feet between the swamp and his French drain. If this development causes any issues he will have problems. His concern is that the septic and water will flow onto his property. Mr. Peloquin said the land slopes toward Penny Lane but it is hummocked in between. He viewed the wetland in between 7 and 6 Penny Lane and there is a wetland carved out, but it is off the subject property. There is another wetland on Mr. Kelly's property in his right of way. The land comes up as you head toward his property. The house is proposed is at elevation 440. The wetland is below that at elevation 428 and the back property line is also at elevation 428. Mr. Granese confirmed the house is located on the south east portion of the lot. Which way will the water from the home drain? Mr. Peloquin said it will go south and naturally trickle to the west. By the time the water hits the right of way, it will be a negligent flow. There is not a lot of impervious surface to create runoff. This project will not create erosion control issues. Mr. Kelley noted that is a 20 foot drop in elevation from the house to the wetland and property line to the rear. Mr. Peloquin believed the flow would go the other way toward Hampstead Road and reiterated there will not be a lot of impervious surface. There is 350 feet before the sheet flow hits Mr. Kelly's property line. He felt any stormwater flow would have a negligible effect. Most of the sheet flow will be going through the woods.

Mrs. McKay said if the water goes to the south and west, it will go to her lot. Her house is built on the ground level and they back filled because of the water. The sheet flow will cause problems along her property line and she does not want that. Mr. Peloquin said if this development was a parking lot outletting toward her property, it would be a concern. This is 600 feet from her house and the water would be traveling through the woods. Mrs. McKay said when the ground is disturbed for the foundation it will disturb the flow of water. She does not want her lot to be saturated with water.

Herb Goodrich, 6 Penny Lane, is concerned about runoff coming down the hill to his property. He has water in his basement already and has a concern for additional impacts. He believes the ZBA did a disservice to Derry in approving the variance and that the ZBA did not consider the residents. He wonders about the ledge that runs through the backbone of this lot. He believes the ledge is less than 38" deep and feels they may need to blast for the foundation. Mr. Goodrich explained he is concerned about damage to his foundation if there is any blasting. He already repaired a crack in his basement. He is also has no clear understanding of the method of fire protection. The plan talks about sprinklers and a cistern. How would a sprinkler system be supplied? It would be difficult if they use well water. A cistern would also create an issue. He feels this subdivision has a few problems.

Mr. Granese explained if any blasting is done, the developer must prepare a pre-blast survey which would include a survey of properties within a certain distance. He confirmed with the applicant that he intends to install a residential sprinkler system. Mr. Granese stated that for those types of systems, a 500 gallon tank is installed in the basement. Mr. Goodrich asked if the Fire Department will be able to get in and out of the proposed driveway. Mr. Granese said the Board will discuss that; there are regulations in place that have to be met.

Mr. Kelly offered pictures he took of his property. The Board reviewed the pictures and they were retained for the record.

Motion by Bartkiewicz, seconded by Flattes to close the public hearing. The motion passed with all in favor and review of the plan came back to the Board.
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Mr. L'Heureux had a few comments. With regard to the driveway, there is no town requirement to pave the entire driveway. There is a requirement for gravels which are fairly stringent with regard to width and depth. The Fire Department will oversee the majority of the length of the driveway to make sure it is properly installed with regard to the length and the turn around. With regard to the driveway profile, he asked that it be modified. He does not recommend a 0% slope; there should be at least a 1%-2% slope to aid in sheet flow. Mr. Peloquin said he will add a crown in the middle of the driveway. Mr. L'Heureux said for the tree buffer, the note on sheet 1 states the trees should be 4-5' tall with five foot spacing. There is another note that says the trees should be 3-5 feet tall. The notes need to be uniform and they should be specific. The height should be either four feet or five feet. There should not be a range of heights. There also should be a specific number of trees to be planted noted on the plan. The town has a hard time enforcing the residential buffers. Developers consistently try to change the approved buffer.

There needs to be something uniform with regard to height and spacing on this plan so that it can be enforced.

With regard to waivers, Mr. L'Heureux advised Public Works is generally neutral. The Board decides to approve or not approve the waivers based on the evidence. The regulations require that water and fire hydrants be extended if the development is within a specific distance of an existing water system. The developer has to prove the hardship as to why they can't do that. Public Works likes to uphold the regulations. They are in place for a reason. Mr. Connors stated the waiver request states the hardship is the closest hydrant is over 1000 feet away and it is the Pennichuck Water System, which has issues with water pressure. It would be expensive to extend the system. Mr. L'Heureux said he was not aware there were any pressure issues. It might be more of an issue with the volume of water. Mr. Peloquin said he was unaware of any correspondence with Pennichuck Water Works. Mr. Peretz advised he had been told by the Fire Department that they don't use the hydrant closest to his property because there is not enough pressure.

Mr. Fairbanks asked if the driveway is going to be 14 feet wide or 12 feet wide. Mr. Connors said he had the same question but believed this applicant came to the TRC before the driveway regulation change. Mr. Peloquin advised Note 3 on Sheet 5 states the gravels are to be 14 feet wide with a one foot shoulder on either side. Mr. L'Heureux said the driveway has to be built to the town regulations. Mr. Fairbanks said he would like to know what the hardship is on the waivers.

Mr. Peloquin reviewed the waiver requests. The first one is the request to not extend water service. The closest water system is a private water system. The water would need to cross the state right of way and come up the driveways. There are wells on the abutting lots along Hampstead Road. Penny Lane has Pennichuck Water, but there is no access easement on these lots. It would be an issue to cross Hampstead Road and there is ledge in the area. This would be expensive and a lot of work. Mr. Fairbanks asked if the applicant knew all this when he purchased the lots.

Mr. Peretz said when he purchased the lot, he saw what was next to it. He could have asked for a three lot subdivision, but this is a larger lot than the others. The Fire Department said they preferred sprinklers and he agreed. He was also told there were pressure issues with the hydrant. Mr. L'Heureux repeated he was unaware of any deficiencies in pressure. He believes the volume and pressures would have been greatly improved when the water systems were connected five years ago.

Mr. Foote stated the abutters are here and have concerns with the project. Is it possible to do a site walk and look at the driveway location and property to get a more accurate view of what is being portrayed.

Mr. Granese said that was possible. Is the land marked out so the Board can see what they are looking at? Mr. Peloquin said he can freshen up the flags. The land was walked by the Conservation Commission. Mr. Granese said the Board can continue this discussion and accept

jurisdiction, which would start the clock, and continue the meeting to a date certain. Or, the Board can have a discussion and vote to hold a site walk without discussing jurisdiction.

Mr. Flattes asked if there was a permit in place to raze the garage. Mr. Peretz said it is a shed and he has not yet done that. Mr. Peloquin said they need to wait for the subdivision approval prior to pulling those permits.

With regard to the second waiver request, Mr. Peloquin explained the waiver has to do with access to the new lot. The regulations say access to a lot has to be through the lot's own frontage. They have an access agreement across the current driveway. One driveway goes to the original a lot, the second goes to the proposed lot. The single access is imposed by NH DOT. They want as few curb cuts as possible.

Mr. Sioras recalled walking this land when Penny Lane was constructed. He agrees the Board may want to hold a site walk. If the Board starts with continuing the plan, the next hearing on it could be either November 16<sup>th</sup> or December 7<sup>th</sup>.

Mr. Fairbanks noted he did not want to delay the applicant too long.

Motion by Foote to hold a site walk of 154 Hampstead Road, seconded by Flattes. Carver, Connors, Foote, Flattes, Bartkiewicz, Davison, Fairbanks and Granese voted in favor and the motion passed.

Motion by Bartkiewicz, seconded by Fairbanks to hold the site walk on Saturday, November 19, 2016, beginning at 8:00 a.m. Carver, Connors, Foote, Flattes, Bartkiewicz, Davison, Fairbanks and Granese voted in favor and the motion passed.

Mr. Granese advised this is the notice of the site walk. Abutters will not be notified by mail.

Mr. Peloquin asked if there is any liability to the landowner if someone gets hurt while on the site walk. Mr. Granese said the landowner would need to give permission for the public to attend the site walk. The Board members are covered while performing their duties under the town insurance policy. Abutters entering the land would be entering at their own risk. He would like to make sure the Board can see the driveway location, where the home will go, and the proposed buffer line. Board members should park on Olesen. They will also look at the McKay land and the Goodrich land. The Board will take pictures during the site walk.

Motion by Connors, seconded by Bartkiewicz to continue the public hearing for New Wave Diversified, 154 Hampstead Road, to December 7, 2016.

Carver, Connors, Foote, Flattes, Bartkiewicz, Davison, Fairbanks and Granese voted in favor and the motion passed.

Mr. Granese advised there will be no further notice of the continued meeting.



Mr. Fairbanks asked that ZBA minutes of all the meetings concerning this application be emailed to the Board members.

Motion by Connors, seconded by Flattes to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:08 p.m.

Approved by: \_\_\_\_\_  
Chairman/Vice Chairman

\_\_\_\_\_  
Secretary

Approval date: \_\_\_\_\_