

The Planning Board for the Town of Derry held a public meeting on Wednesday, December 04, 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: John O'Connor, Vice Chairman; Frank Bartkiewicz, Secretary; Randy Chase, Administrative Representative; Darrell Park, Ann Marie Alongi (7:07 p.m.), Members, Lori Davison, Alternate

Absent: David Granese, Al Dimmock, Frank Mazzuchelli, Jim MacEachern, and Jan Choiniere

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk; Marlene Bishop, Animal Control Officer

Mr. O'Connor as Chair Pro-Temp called the meeting to order at 7:00 p.m. The meeting began with a salute to the flag. Mr. O'Connor then introduced the staff and Board members present.

Ms. Davison was seated for Mr. MacEachern.

Escrow

#13-34

Project Name: Martin Gate, LLC

Developer: Same

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 30047, 1 West Broadway

The request is to renew Letter of Credit #19981 in the amount of \$45,961.34 for the above noted project. The new expiration date will be December 04, 2014.

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

#13-35

Project Name: Wetland Impact Plans – Driveway Crossing

Developer: Yvon Cormier Construction Corporation

Escrow Account: Same

Escrow Type: Letter of Credit

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

The request is to renew Letter of Credit #12101, drawn on SalemFive Bank in the amount of \$241,869.89 for the above noted project. The new expiration date will be December 03, 2014.

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

#13-36**Project Name: Pinkerton Place****Developer: Boomer Wolf, LLC****Escrow Account: Same****Escrow Type: Cash****Parcel ID/Location: 08275 & 08276, 17 & 19 Manchester Road**

The request is to approve Release #4, cash, drawn on TD Bank, in the amount of \$61,722.00 plus any accumulated interest. This is the final release. The amount to retain is zero.

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

#13-37**Project Name: Bunker Estates****Developer: JEMCO Building and Developer, Inc.****Escrow Account: JEMCO****Escrow Type: Letter of Credit****Parcel ID/Location: 02020-001, 65 Fordway**

The request is to renew Letter of Credit No. 20001082 in the amount of \$62,122.86. The new expiration date is December 11, 2014.

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

Ms. Alongi was seated.

Minutes

The Board reviewed the minutes of the November 20, 2013, meeting.

Mr. O'Connor asked with regard to the section that stated members were not allowed to discuss Dumpster Depot. Has any recommendation been received from legal counsel? Mr. Sioras advised the attorney has the file under review and as of today, there is no written comment; it is forthcoming.

Motion by Bartkiewicz, seconded by Park to accept the minutes of the November 20, 2013, meeting as written. The motion passed with Davison abstained.

Correspondence

Mr. Bartkiewicz advised the Board has received a copy of a renewal reminder letter written to Mr. Robert Allen with regard to Gennaro Estates. The current Letter of Credit will expire on January 2, 2014.

Other Business

Mr. Sioras reminded the Board members there will be no meeting on December 18, 2013. The next scheduled meeting of the Board is set for January 15, 2014. He noted that the joint workshop with the Town Council last evening was an excellent meeting. There was good discussion regarding future goals and he complimented those who participated. The Board will have a lot to work on in the coming year. Mr. O'Connor concurred, adding the Board has received input and direction from the Town Council which will lead the Board forward. The Planning Board Chair outlined some goals and objectives for the Board for 2014.

WORKSHOP – Proposed changes to Article XX, Livestock Ordinance

Mr. O'Connor stated plans to request of Mr. Granese that all further workshops be televised. He has heard from several constituents that they would prefer the workshops be televised. He advised this workshop would not be televised as previous workshops had not been televised. If the workshops were televised, those who could not attend the workshops could watch them at home and provide comment via email, in person, or via letter.

Mr. Sioras reminded Mr. O'Connor that the last workshop on this topic was televised and the public had been advised the following workshops would be as well. Marlene Bishop, the Animal Control Officer is here this evening.

It was determined the workshop would be televised this evening.

Mr. Sioras advised Mr. Mackey could not attend the meeting this evening, but had provided a memo to the Board so that they could review his comments. Mr. Bartkiewicz read the memo into the record. A copy of the memo is attached to these minutes. Mr. O'Connor noted Ms. Bishop was present and the Board has before it a document that has been updated with the changes suggested at the last workshop. They are discussing Article XX, Livestock Ordinance, which originally went into effect in 2008.

Ms. Bishop said she brought suggested changes forward because the last ordinance was inefficient to enforce with regard to the specifics of what can and cannot be allowed. The Town of Salem requires five acres; Londonderry requires two acres. She feels this version is fair to the animals, animal owners, and non-animal owners. A few individuals reviewed the proposed changes and had no issues with them. The main issues she faces concern chickens running loose, roosters crowing at all hours, unruly pigs, and loose horses.

Mr. O'Connor asked if there were any particular points Ms. Bishop wanted to discuss? Ms. Bishop said that some dog kennels have been placed next to property lines because there is nothing on the books prohibiting it; they aren't sheds. People are not always diligent with livestock manure or dog feces. She has done the best she can to bring something forward that is acceptable to all.

Mr. Park said there are problems with regulating specific issues. There is a certain percentage of owners that will be a problem no matter what. Ms. Bishop agreed, but stated this would give her something to go forward with. If people don't comply, what she can do is in writing. Nine out of ten people are compliant. In many instances, education takes care of the problem. Mr. Park asked if she could enforce without adding any additional regulations? Ms. Bishop said that there are those who will always say, "There is nothing in the rules that say I can't do this." This gives her the opportunity to say, "You need to comply or there will be enforcement action." Mr. Park had comments regarding fowl and roosters and their containment. He suggested changing the wording in Section 165-154 from "Fowl pens will be permitted" to "Fowl pens will be required" Regarding the requirement that roosters are only allowed on lots of three acres or more, he did not feel an acreage limitation would help. A person can have ten acres of land and put the coop on the property line and it is a problem; or a person could have two acres of land and keep the coop in the middle of the property. The hours they are contained is another point. He felt the Board should not be limiting the acreage. People are farming for food. Someone on one acre of land could self-propagate their flock without going beyond the initial investment for chickens and a rooster. They could manage the animals properly, but would not be allowed to because of the acreage restriction. Someone could have three acres of land and be a nuisance where the person with one acre of land would not. Ms. Bishop said either way it can't become a nuisance. If she receives a complaint about a rooster crowing, she would go speak to the person. Each situation needs to be addressed individually. Occasionally, there is an issue because someone is not properly educated on how to care for the animals, but once there is education, the problem is resolved. Mr. Park said he did not want to give neighbors a reason to call Ms. Bishop because of land restrictions.

Mr. Chase questioned limiting roosters to three acres and suggested adding if the lot is under five acres, they must be kept in a coop. Mr. O'Connor felt there was a conflict in the wording of Sections 165-154 and 165-155 with regard to "condensed residential area". His interpretation of the wording is that roosters are not allowed in Derry on lots under 3 acres. It would depend on what section of the Ordinance you were looking at. Mr. Park asked why does the rooster need to be confined for an extra hour and a half? He feels between 9:00 p.m. to 6:30 a.m. is sufficient for non-crowing hours. During summer it will interfere with the animal's nocturnal cycle. Ms. Bishop acknowledged that roosters generally don't crow after dark. Mr. O'Connor stated they will if there is a light.

Ms. Alongi felt the suggestion in Mr. Mackey's memo took away that conflict. She still feels there is an issue with the acreage requirement.

Mr. O'Connor said he wanted to look at the document from the beginning and look at the ordinance as a whole. He commended Ms. Bishop on her work. He stated that the title "Livestock" has nothing to do with fowl or domestic animals. This draft ordinance talks about

dogs, cats, and poultry and fowl. He feels the title should be changed to "Livestock/Fowl", and asked if the ordinance should discuss domesticated animals. There is already an ordinance related to animals under Chapter 20 of the Town Code, and they should review Chapter 20 of the Code and make sure there are no conflicts. Under Section 165-154, he did not feel that each type of animal had to be added because the animals are already defined under Section 165-5, Definitions.

Regarding kennels, Mr. O'Connor said there are three types of kennels defined under state law. He felt the Board should address those. He also does not feel the roosters needed to be restricted period. He felt Section 165-155, Nuisance, needed to have some teeth added to it. He suggested amending that section to read, "At no time should roosters be allowed to create a nuisance." He agrees they should not be allowed to crow between certain hours. He would like to change the shelter description. When discussing kennels in 165-154, he felt the Board was combining two different RSAs that are not part of livestock or poultry.

Mr. O'Connor said this all started with roosters crowing. Now the Board has opened it up to livestock, fowl, and domestic animals. Should this be added under the existing Town Ordinance or should the Town Ordinance be absorbed into this one? There is already a state law (RSA 467) regarding Running at Large. Ms. Bishop pointed out the RSA does not cover chickens, only large animals including bulls and stallions. Mr. O'Connor noted this Article says "Livestock". RSA 467 covers livestock but not poultry which is found in the Administrative Rules. He feels that Section 165-161 is prohibitive and feels the penalty section should be re-written. He would also re-write the grandfather section. Our current definition of "livestock" is what is defined under state law. He feels there is a lot more work to do on this document.

Mr. Chase asked Ms. Bishop if she wanted dogs included in the Zoning Ordinance? Ms. Bishop said this is not about dogs, other than kennels that are not kept clean being located too close to the property lines. There are state statutes in place regarding barking dogs and she does use them. Mr. Chase felt it would be better to move "kennel" into the definition of "structure" under Section 165-5 as structures have to meet setbacks. Mr. O'Connor felt the Zoning Ordinance would then be in conflict with Chapter 20 of the Code. Mr. Sioras said legal counsel would ensure it was not.

Ms. Bishop said that in the statutes they refer to a certain number of dogs as a "kennel". Mr. Chase was referring to the structure that could be used to also house chickens. Mr. Chase said any municipality can use the state statute, but the municipality can also be more restrictive. If the Board wants to do that, it can, it just needs to reference the state statute and strengthen it. Ms. Bishop noted the draft ordinance also deals with horses running at large, and ducks and geese in areas where they should not be. Her issue is not just with crowing roosters. This is the first time she has attempted to put something like this together. Mr. O'Connor said that livestock and chickens need to be defined correctly so that Ms. Bishop can do what she needs to do. Ms. Bishop suggested discussing the definitions with the state Veterinarian. Mr. O'Connor said that what she wanted to do in this ordinance, he felt she could not do. The ordinance needs to be labeled fowl etc. He does not want to go down the path such that the town does not follow state statute. The Board is talking about livestock and because they are adding poultry, it is not

covered. Mr. Chase suggested changing the title and defining it. Mr. O'Connor suggested naming it "livestock/fowl/domestic animals".

Ms. Bishop explained dogs are covered under state statute and those have teeth. In regard to dogs, she only needs to cover kennel setbacks in the Zoning Ordinance, and the nuisance odor of feces. Mr. Chase felt that could be done here, but the main point of the Ordinance should be for livestock and fowl.

Mr. O'Connor stated Section 165-5 does not define 'kennel'. Would we define it as a place where dogs and cats are bred, or the abode of the dog? Ms. Bishop said the state's definition speaks to the number of dogs being kept; we are discussing structures in this ordinance. Mr. O'Connor said a kennel can be a house or structure for a dog or cat. He asked Ms. Bishop to request Dr. Crawford provide a definition of kennel as a structure, so that the town can enforce the structure setback.

Ms. Alongi felt the time restrictions needed to be addressed in this draft. Ms. Bishop said she could see what Mr. Park was saying but most people don't want breeding stock. Some people don't know they don't need a rooster to get eggs from a hen unless you want to breed them. Ms. Alongi said if the intent was to not have roosters crowing between the hours of 8:00 p.m. and 6:30 a.m., do the roosters need to be confined for an extra hour? Ms. Bishop felt that was something neighbors could work out together. The times in the draft ordinance can be adjusted.

Mr. Chase asked Ms. Bishop if she had what she needed for enforcement power regarding times, why does there need to be a three acre minimum? A rooster can walk to the fence and crow in the neighbors window even its owner has ten acres of land. If Ms. Bishop has the enforcement power under the nuisance provision, he does not see the need for a land restriction. She said that was fine.

Mr. Sioras agreed. This discussion is intended to give Ms. Bishop more teeth on the enforcement end. This is about being able to prevent a nuisance and to handle noise complaints. He thinks they are about 80% done with the draft. He suggested tweaking what they have before them and present a clean version in January.

Mr. O'Connor looked at Section 165-154 which speaks to lot requirements. He suggested adding chicken coops to the wording. He would like it to say that fowl pens and coops, etc., should be enclosed with roofing. Ms. Bishop noted a complete enclosure could be cost prohibitive to some landowners. Mr. O'Connor suggested changing the wording to "required to have roofs or wire or poly mesh roofs." Mr. Park agreed but still felt the wording was overly restrictive. Based on what Ms. Bishop is saying it could read, "totally enclosed or totally contained" because a roof implies something solid.

Mr. Chase asked if the alternative wording provided under the penalty section would work? Ms. Bishop said she was taken aback when she read it; it is substantial. She does not think the fine needs to be that much money. She can tell people they will be fined but she is not sure she would be able to collect the money. She would prefer to start with smaller amounts and then increase the fines with multiple offences. That way they are reasonable and enforceable.

Mr. O'Connor felt a verbal warning, followed by a written warning, then fine, might be better. He suggested following RSA 466 because the public is familiar with it. Ms. Bishop stated she takes each complaint as an individual case and would look for penalties after attempting to educate the landowner. Ms. Alongi asked if Ms. Bishop would be comfortable with a tiered penalty system, rather than by day. She suggested beginning at \$50.00 with increases with each occurrence. Ms. Bishop said that would be better.

Mr. Chase asked if Ms. Bishop could draft what she feels is fair, or does she want the Board to come up with the next draft for the next workshop? Ms. Davison asked that the next draft include wording about the education component, and if the owner does not comply, then they get fined. Ms. Bishop said education can alleviate and prevent problems. She asked that the Board members write down ideas, questions, and suggested changes and get them to her. Mr. O'Connor suggested that the Animal Control webpage could be updated to include educational links for the public.

Mr. Sioras stated Ms. Bishop and Mr. Mackey will finalize revisions and bring them back to the Board at the January workshop. Mrs. Robidoux suggested any Board comments be funneled through the Planning Office so that they can be combined before being forwarded to Ms. Bishop.

Ms. Alongi asked if a covered doghouse was part of our Ordinance? Ms. Bishop said shelters for dogs falls under state statute. She is more concerned with health concerns caused by the kennel area.

There was no further business before the Board.

Motion by Bartkiewicz, seconded by Park to adjourn. The motion passed with all in favor and the Board stood adjourned at 8:11 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____

Memorandum

MM13-108

To: George Sioras, Community Development Director
From: Robert Mackey, Code Enforcement Director
Date: December 03, 2013
Re: Livestock Ordinance

As I may not be available for the Planning Board workshop on December 5th, I have the following comments regarding the latest draft of the Livestock Ordinance.

Section 165-154

No need to list specific animals – all are covered (and more) under the current definition of livestock.

Add the word “but” between “acres” and “shall” in the second to last sentence.

Section 165-155

Reword “At no time shall livestock or fowl create a nuisance that would interfere with nearby property owner’s rights. Roosters shall not be allowed on properties in condensed residential areas (lots under three acres) and must be confined to their coop until after 8:00 a.m. on properties containing under five acres. Roosters shall not be allowed to crow between the hours of 8:00 p.m. and 6:30 a.m.”

Section 165-158

Remove wording “on lots under two acres” from second to last sentence. (Regardless of lot size, manure cannot be stockpiled so as to create a problem.)

Section 165-61

Go with alternative wording

Possible definition of nuisance

“An act, object, or practice that interferes with another’s rights or interests by being offensive, annoying, dangerous, obstructive, or unhealthful. This includes an activity or condition that interferes with the use and enjoyment of one’s property.”