

The Planning Board for the Town of Derry held a public meeting on Wednesday, January 15, 2014, 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; John O'Connor, Vice Chairman; Frank Bartkiewicz, Secretary; Randy Chase, Administrative Representative; Darrell Park, Member, Lori Davison, Alternate (7:02 p.m.)

Absent: Ann Marie Alongi, Al Dimmock, Frank Mazzuchelli, Jim MacEachern, and Jan Choiniere

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk; Robert Mackey, Code Enforcement Office, Mark L'Heureux, Engineering Coordinator; Chief George Klauber; Marlene Bishop, Animal Control Officer

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.

## **Escrow**

### **#14-01**

**Project Name: AEC Office/Garage**

**Developer: American Excavating**

**Escrow Account: Seven Hills Development**

**Escrow Type: Letter of Credit**

**Parcel ID/Location: 31013, 5 Madden Road and 31011, 15 Madden Road**

The request is to approve a replacement Letter of Credit #22413 for the above noted project in the amount of \$22,137.51 drawn on Enterprise Bank. The new expiration date will be December 23, 2015. Please release the expiring Letter of Credit #5520513070,2 which is drawn on People's Bank.

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

*Ms. Davison was now present and seated for Mrs. Choiniere.*

### **#14-02**

**Project Name: Subdivision of 2 Howard Street**

**Developer: McMaster Development LLC**

**Escrow Account: Same**

**Escrow Type: Cash Escrow**

**Parcel ID/Location: 31088-001, 4 Howard Street**

The request is to approve Release #1 in the amount of \$8,942.40 plus any accumulated interest for the above noted property. This is the final release. The amount to retain is zero.

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

**#14-03****Project Name: Gennaro Estates****Developer: Robert Allen****Escrow Account: Gennaro Estates LLC****Escrow Type: Letter of Credit****Parcel ID/Location: 04074 and 04075, Gulf and Bartlett**

The request is to renew Letter of Credit #216930-3 in the amount of \$89,072.78 for the above noted project. The new expiration date will be January 2, 2015.

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 December 04, 2013, meeting.

Motion by O'Connor, seconded by Bartkiewicz to accept the minutes of the December 04, 2013, meeting as written. The motion passed with Granese abstained.

**Correspondence**

Mr. Bartkiewicz advised the Board has received a copy of the 2013 change in use list. The Board has also received the monthly activity list and 2013 annual report from the Southern New Hampshire Planning Commission.

**Other Business**

Mr. Granese noted there are some nice new businesses coming into Derry. Mr. Sioras advised the Town Council approved the proposed changes to the sign ordinance at their meeting last week. The sign ordinance is now more business and user friendly. He thanked all of those who participated for their hard work on the ordinance. Mr. Granese thanked Mrs. Robidoux for drafting the minutes of the workshop held between the Planning Board and Town Council. Mr. Granese stated he was unsure of the date, but thought it had been in December; the ZBA pushed the Dumpster Depot matter back to the Planning Board because they upheld the appeal. Mr.

Granese, Mr. Sioras, and Mrs. Robidoux met with Mr. Budreau the Acting Town Administrator and sought advice of legal counsel on what to do; they utilized another attorney. He is currently awaiting receipt of a letter from counsel, but in conversation with him, his understanding is the Planning Board did everything it was supposed to do and the Zoning Board erred in its judgment. Public comments and statements to media will occur after receipt of the letter.

## **Public Hearing**

**Anthony J. DeRosa**

**PID 03084, 191 Rockingham Road**

**Acceptance/Review**

**Waiver Request, Site Grading and Construction Requirements**

Mr. Chase recused himself from this discussion.

Mr. Sioras provided the following staff report. The Board is in receipt of a letter from Mr. DeRosa dated December 30, 2013 relating to his approved site plan at 191 Rockingham Road. This is a garage located on the right hand side of Ryan's Hill. Some work has been done on the site. Mr. DeRosa would like to state his position on the work that has been done on site. The Board also has a copy of a letter sent to Mr. DeRosa from Mike Fowler regarding the DPW concerns.

Anthony J. DeRosa (Mr. DeRosa) and Anthony V. DeRosa (Anthony DeRosa) spoke on behalf of the application. Mr. DeRosa confirmed Board members had a copy of his letter. He stated the change in site plan is directly related to what is in the letter. He is requesting a waiver from the Land Development Control Regulations, Sections 170-61 and 170-63. He has been waiting for a phone call from Mr. Fowler. He received a letter from him stating that Mr. L'Heureux had given him information relative to the fine grading, base course material, catch basin area, site grading, and inconsistencies in pavement depth. When he spoke with Mrs. Robidoux on November 26, 2013, the message was to have Mr. Fowler come to the site immediately so that he could make sure they were meeting the correct depth. No one came to the site after Mr. L'Heureux left the site that morning. They put the material down heavier than required. He is not sure what was meant by the letter from the Department of Public Works, which he felt had incorrect statements.

Mr. DeRosa said the site plan called for 2 ½" of binder; Meiser Brem, his engineer, put that on the detail sheet. There was to be 2 ½" of binder with 1.5" on top. While excavating, Mr. L'Heureux said the town specifications called for 2" of compacted binder and 1" of compacted wearing material. There are inconsistencies between what Mr. L'Heureux said and Mr. Fowler stated in the letter. Mr. DeRosa said he was not sure what he needed a waiver for. He has a letter from Continental Paving and one from Benevento regarding the paving and frost conditions on that day. Both companies felt the temperature had no bearing on the material that was put down that day. He has pictures of what was put down. The catch basin was dug out. He tried to explain to Mr. L'Heureux that the catch basin and street would not be dug out until the day they paved. On November 21st, Mr. L'Heureux asked him if he was going to be ready to pave and Mr. DeRosa told him no; they had to bring in extra material and they were waiting until

the day of paving to dig out the areas because of the water flows. They were scheduled to pave the following Tuesday.

Regarding the changes in the site plan, Mr. L'Heureux showed Mr. DeRosa where the stakes should be and discussed what needed to be done on the site. Mr. DeRosa did all of it. Mr. L'Heureux noted the peninsula shown on the plan had not been constructed. Mr. DeRosa explained they could not put the peninsula in because the engineer put it right in front of a 10 foot door, which is the drive through paint booth. So they eliminated the peninsula. They also increased the width of the drive aisle that is between the front right corner and the green space. With regard to that, the original plan lacked sufficient green space. It was suggested that the building could be made smaller, or he could purchase additional land to increase that area. Mr. DeRosa said he approached Mr. Kershaw and was able to purchase a piece of land from him. He came before the Board for the lot line adjustment and adjusted his site plan accordingly. His site plan approval included a waiver to allow him to decrease the drive aisle width from 24 feet to 18 feet. He was able to increase the drive aisle width after the lot line adjustment to 22 feet, with recommendations received from Mr. L'Heureux who suggested it be tightened to 22 feet rather than 24 feet wide.

Anthony DeRosa noted they had a book with them this evening that contained photos of the project from start to finish. The Board reviewed the pictures. A copy of the pictures has been retained for the file.

Mr. O'Connor asked if the Board could review the letter from Continental Paving as it was not in the Board packets. Mr. DeRosa said he had just received the letter. Ace Paving performed the paving; Benevento supplied the material. The letters are in support of his application. The letters were provided to the Board for review and copies were retained for the record.

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

There was no public input.

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

Mr. Granese asked Mr. L'Heureux for input. Mr. L'Heureux stated the Board has his memo detailing what occurred on site on November 26, 2013. Regarding the waiver request, the correct Section of the LDCR would be Section 170-75. Sections 170-61 and 170-63 refer to final plan submission requirements. Section 170-75 speaks to the reduction in pavement. He brought up the issue that 3" would be okay; Mr. DeRosa did not need the 4". The real issue is with the construction specifications which are found in Section 170-75. The site was not properly prepared prior to pavement. The site was reviewed by Mr. L'Heureux and David Blanchard. There were deficiencies of several inches in some places. The stakes were not put in the right spots for the break points and there were inconsistencies on site. This was explained several times. Mr. DeRosa was told that he needed a grader to have uniform thickness of gravel on site. Mr. L'Heureux reported he drove by on the 26<sup>th</sup> and saw the paving trucks after he

explicitly asked to be notified once the stakes were in and the site had been graded. That weekend, the temperatures were below freezing and there was 6-8" of frost in the ground, which is very hard to grade. He went and reviewed the site and the stakes were not re-adjusted and the site was not ready to pave; the applicant continued at his own risk. Mr. DeRosa should provide an as built showing the grades and have corings performed to prove the uniformity in thickness. An engineer should provide solutions to issues if there are variations of more than an inch in the pavement thickness. The other option is to remove the pavement and re-pave the site.

Mr. Granese asked if the existing grading is the same as the grading shown on the plan that was signed by the Board? Mr. L'Heureux said it is not. Mr. Granese said that is a problem. Mr. DeRosa said he did what Mr. L'Heureux told him to do. He told Mr. L'Heureux the previous Thursday that they would be paving on Tuesday. All the stakes were in place at the break points; material was taken out and some was brought in; the material that was taken out was piled on site. He did the elevation changes. The day Mr. L'Heureux came to the site the grade stakes had been changed to the correct elevations. He purchased \$12,000.00 of material. He does not have that kind of money if he needs to repave the site.

Mr. Granese did not think the Board would tell him to dig up the parking lot. The Board will need to make that decision. But if the grades are not the same as those shown on the approved plan, then there will be issues down the road. Anthony DeRosa said the paving was done on November 26<sup>th</sup>. Thursday, November 21<sup>st</sup>, was the day Mr. L'Heureux measured, lined the parking lot and put the stakes in. Those stakes were marked with white paint. Mr. Granese stated Benevento stated in their letter that on November 26<sup>th</sup> asphalt plants were in full operation. He read the letter addressed to the Planning Board into the record.

"Members: It is clearly in my recollection and in our records on the day of November 26, 2013, our asphalt plants were in full operation. On this day we had over 10 customers who were performing paving jobs in your immediate area including Derry. Our mix performs very well in cold weather well into December. We have no reason to believe that any job performed on November 26<sup>th</sup> would have any issues with our product. Ace Paving one of our most reputable customers was the contractor hired by Mr. Anthony DeRosa to complete this job. Having worked with them for many years I have no doubt that it was performed to the requirements of the project. Our operation remains open into early winter, most times closing just before Christmas and many jobs occur during this time frame. The question of frost conditions during that time period was non-existent due to the warm temperatures. Should you have any questions please do not hesitate to call me. Sincerely, Randy Luongo, General Manager, Asphalt."

Anthony DeRosa indicated those firms would know best with regard to the frost. Mr. DeRosa spoke with regard to the elevations. Mr. L'Heureux had said he shot the elevations on the left side; the ones on the right were low and would need more material; it was high on the corner. The grade stakes with white paint are where more material was needed. On the right side is where the catch basin is located. Mr. L'Heureux explained what to do there and at the entrance. They made changes on the right side elevation. With regard to using a grader – he asked several people about that. He spoke with Mr. Stanley of Ace Paving. Mr. Stanley said they use a Bobcat on a job this size and Mr. Stanley did not feel the area was big enough to use a grader. Mr. DeRosa said he followed the direction of the professional he hired and he felt Mr. Stanley

had the appropriate equipment to do the job. Mr. DeRosa said he has done everything that was requested of him. He put in a catch basin that was not even on the original plan; he brought in 40 mil material because they hit water. He has a lot invested in this.

Mr. Granese asked if all the pictures in the book were taken on November 26<sup>th</sup>? Anthony DeRosa said they were taken leading up to the day of paving. Mr. Granese asked Mr. L'Heureux to explain the site paving process. Mr. L'Heureux advised that the most important part of paving is the preparation of the site. All the work is in the preparation and the paving is the last thing. The grader takes the grades from grade stake to grade stake and carries them to ensure the paver follows the same path and the pavement is put down at a continuous thickness. It is standard procedure to never allow paving until the site has been graded and reviewed. This is standard protocol. There are various types of graders used for different functions. It is within the town's right to ask if a contractor has the correct equipment so that they know ahead of time if they will be able to get the right compaction. He had provided Mr. DeRosa with a list of six firms that have done work in Derry; he is not familiar with this particular contractor. The issue is not bias but if the person was equipped to do the job.

Mr. DeRosa corrected a prior statement: he put in the stakes that were painted white in the locations indicated by Mr. L'Heureux. Mr. L'Heureux did not put the stakes in.

The Board reviewed the book of photos provided by the applicant and photos provided by Mr. L'Heureux that were taken on November 26<sup>th</sup>.

Mr. Granese noted the letter submitted by Mr. DeRosa requests waivers from Sections 170-61 and 170-63; but the waiver should be from Section 170-75. Mrs. Robidoux advised the particular sections from the LDCR were provided to Mr. DeRosa from the Planning Office. Mr. Granese noted the waiver should be from the construction specifications. Mr. L'Heureux explained the town specifications concerning temperature, size of roller, and standard deviation mirror state specifications and they are to be followed during construction.

Mr. O'Connor asked Mr. L'Heureux to explain the compaction. Mr. L'Heureux stated the compaction results relate to the gravel. His office is recommending corings to verify the thickness of pavement. It needs to be consistent with no deviations so that the pavement does not deteriorate; it is supposed to be within the half inch tolerance. If it is not graded or paved correctly, there will be thickness issues. Compaction tests can be done on the core samples as well.

Mr. O'Connor had comments with regard to the pavement detail. Is that compacted? Mr. L'Heureux said it was. For 1 ½" they would place approximately 2" of material. Mr. O'Connor asked if Mr. L'Heureux would recommend a number of corings to be taken throughout the site. Mr. L'Heureux said there may be areas where the pavement will only require shimming. The onus is on the applicant to obtain the core samples and an as built. Mr. O'Connor asked what made Mr. L'Heureux believe there were variations in the site? Mr. L'Heureux said he knows where the deficiencies were in the site and did not see they were rectified so he expects to see deviations. Mr. O'Connor asked if Mr. L'Heureux could pinpoint where he would want to see core samples taken. Mr. L'Heureux advised a testing company can do the corings. He could

suggest areas for the samples. Mr. Granese said the Board is trying to come up with the least expensive remedy to the issue. Mr. L'Heureux stressed the intent is not to be punitive. He wanted to head this off as he knew Mr. DeRosa did not have a construction manager and he tried to help to make sure the site would comply with the regulations. Grading is very important to drainage and the longevity of the site. He has reservations about the site and feels Mr. DeRosa should update the plan and have an engineer come up with mitigation options for any deficiencies that are found.

Mr. DeRosa said based on his prior conversation with Mr. L'Heureux, the elevations on the right were less than one inch off. The area near the catch basin and green space was low by approximately one to 1 ¼". They corrected that. They did review the construction specifications and he cannot find where it states he needs to use a grader to get those elevations. He believes there is no place in the town regulations that say a paving company needs to use a grader to get the correct elevations. Regarding the site as it exists, all the water flows exactly as it should. All the elevations to the left are correct. The front catch basin is also working the way it should. This is evident from all the rain that has occurred recently. There is a one foot drop in elevation from the right side of the building to the catch basin. He said he was never far off on the elevations, he brought in material that was required based on the site plan, the compaction results comply and those results are in the packets. Mr. L'Heureux said the compaction for the gravel is fine; he is talking about the compaction for the pavement. Mr. DeRosa said they used a vibratory roller for the pavement and he feels what was done meets the regulations. They are not putting down the final top coat of pavement or curbing until the spring. They made sure the storm water was flowing correctly.

Mr. Granese stated the peninsula that was shown on the approved, signed plan has been eliminated. Mr. DeRosa revised an approved plan and the Board requires an as built of what is out there now. Mr. L'Heureux said the as built should overlay the approved plan so the Board can see locate the differences. Mr. O'Connor noted the waiver request should also be from Section 170-75. He asked if there could be any confusion because it references various codes and specifications? Mr. L'Heureux said they are specific to various sections; Mr. DeRosa should be asking for a waiver from the specifications.

Mr. Granese asked Mr. DeRosa to request a waiver from Section 170-75. Also, what is constructed is not what was approved and signed by the Board, so the Board needs a revised plan/as built. He asked Mr. L'Heureux if that would show the grading? Mr. L'Heureux said the engineer can do spot elevations and verify the pavement thickness with corings. He advised Mr. DeRosa could use the same company he used for the gravel compaction testing. There would need to be at least three to four core samples taken throughout the site, the thickness of pavement verified and the samples tested for compaction. That can be put on the plan as well. Those samples would need to be observed by DPW. There should be at least three to four core samples.

Mr. Granese asked Mr. DeRosa to go back to his engineer, or hire a different one, and ask for an as built and the test corings. The Board won't ask him to dig up the pavement; this is an unfortunate situation but Mr. DeRosa needs to try to correct the issue. This protects him in the long run.

Mr. DeRosa stated that in good faith, he did everything that Mr. L'Heureux asked. Mr. L'Heureux approved the change in the peninsula and the widening of the drive aisle. Mr. L'Heureux noted that is not being disputed. Mr. Granese stressed the Board needs to see the as built. Mr. DeRosa said he will have the as built done to show the changes and will do the corings. His issue is that he never received a call back. He feels this all could have been avoided if there had been a site visit as requested on the day of the paving. Mr. Fowler would have seen they had done what they were supposed to do. They put down 142 tons of asphalt; Mr. Stanley had been told to make sure the pavement was the right thickness. Mr. DeRosa advised he does not agree with the issues outlined in Mr. Fowler's letter.

Mr. Granese asked when Mr. DeRosa thought he would be able to come back to the Board? He did not want to delay him unnecessarily, but he will need to provide the Board with an as built, coring results from the samples which will be observed by DPW, and an amended waiver request. Mr. DeRosa felt he could have the items for the Board in time for the February 5<sup>th</sup> meeting.

Motion by O'Connor to continue the waiver request application for Anthony J. DeRosa, PID 03084, 191 Rockingham Road, to February 05, 2014, seconded by Bartkiewicz.

Park, O'Connor, Davison, Bartkiewicz and Granese voted in favor and the motion passed.

Mr. Chase was reseated.

### **WORKSHOP – Rezoning of 19 Folsom Road and 8 Laconia Road**

Mr. Sioras advised the Board has looked at the Dors lot located at 19 Folsom, adjacent to the Monster Gas station, and across from the car wash on Folsom Road. There had been a request to rezone this lot from Medium High Density Residential to General Commercial. The Board was generally in favor of the change, but asked staff to contact the neighbor located at 8 Laconia Avenue to see if they would also be in favor of a zoning change for their property. Mrs. Robidoux spoke with the landowner and he was in favor. If the Board has no objection, the change would be for Parcels 35020 and 35027 to be rezoned to General Commercial from Medium High Density Residential. The Board has a map of the area in their packets. Parcel 35016 is the gas station; parcel 35014-002 is the Police station, and parcel 35014-005 is the car wash. The recommendation from staff is to rezone the two properties. At the next meeting, a date can be made available to schedule a public hearing; abutters would be notified. The Board was in favor of moving forward to the public hearing.

### **WORKSHOP – Changes to the LDCR, Section 170-30, Fire Protection**

Chief George Klauber presented the proposed changes. The reason for the proposal is to comply with recent changes in the state law regarding the requirement for sprinklers in one and two family buildings. In the past, it was an option for a builder and was included in the town

regulations. There has since been a change that prohibits towns from requiring sprinkler systems, although the town can allow it. The revisions are proposed to Section 170-30, Fire Protection. He feels the regulations can be shortened and comply with the state statutes. The Board has a packet showing the suggested changes and the reasoning behind each change.

The language regarding cistern specifications has been removed and applicants would now need to come to the Fire Department for review and approval of a cistern plan. Products and types of equipment change and this allows the Fire Department the opportunity to review the plans prior to construction. This is a simple change. There are still requirements in place for subdivisions where a developer can put in a cistern. They can opt to put in sprinklers, and the applicable standard 13R or 13D has been referenced. Chief Klauber explained the difference between the two types of systems.

Mr. Granese noted Section 170-30 pertains to subdivisions. What happens if someone has a lot of land that is not located near a fire hydrant or existing cistern and they want to construct a house are they required to put in sprinklers? Chief Klauber said the law says the town cannot require sprinklers for one or two family homes. Once a property becomes part of a subdivision, they would be subject to providing fire protection for the new lot or lots. With regard to cost, for a 2200 square foot, two story colonial, a sprinkler system would cost approximately \$5,000.00 where a cistern would cost between \$7,000 and 8,000.00. Many times, a contractor will opt for sprinklers for one or two lots. Sometimes it is more expensive to construct a cistern given the land conditions if for example, the land is very wet.

Mr. Granese asked what happens if a developer buys land, subdivides it into ten lots, builds on five lots and then sells off the remaining five to different people. If he did not put in a cistern with the original subdivision, and the new owner comes in for a building permit on one of the remaining lots, is that person now required to put in a cistern for their one house? Chief Klauber thought that was a good question. Up until one to two years ago, the town would have said put in a cistern. The Board has addressed this by adding a note on the subdivision plans regarding the type of fire protection for the subdivision and the individual lots that are created by that subdivision.

Mr. O'Connor asked how is the 1000 foot linear distance referenced in Section 170-30 measured? Where is it measured from and to: the driveway, the mailbox or the house? Chief Klauber said it is measured from the hydrant or cistern to the property line. The house may actually be located 800 feet from the property line, but the property line is within 1000 feet of the cistern or hydrant. NFPA regulations require that 1000 feet of hose be on fire apparatus. Mr. Mackey added in answer to Mr. Granese's question that the town could require either a cistern or fire sprinklers for the new home, or a building permit would not be issued. Mr. Sioras said that for the process, during TRC a specific note is requested to be placed on the plan regarding fire protection. Mr. Mackey gets phone calls all the time asking what people need to do and the developer has to comply with what is on the recorded plan.

Chief Klauber explained for subdivisions approved prior to the new law being passed, the town can require sprinklers. Since the change in the law in 2011, the town cannot require sprinklers. The town can say that a developer shall install a cistern. If the developer requests sprinklers in

lieu of a cistern, then a note is placed on the recorded plan. Mr. Mackey gave the following example. A developer records a 10 lot subdivision that has the standard sprinkler in lieu of cistern note on the plan. In ten years, if he sells a lot, the town would refer to the note on the plan. If the person building the house chooses not to use sprinklers, they would have to revise the plan, bring it back to the Planning Board and show the cistern. The town can make them do a cistern but not sprinklers.

Mr. Granese asked if there was a two lot subdivision, with no hydrants in the area, would the applicant need either a cistern or sprinklers? Mr. Mackey said if it is a pre-existing lot of record, the town can't require anything because the state removed it from the code. This would be for lots that predate the existing regulations. Chief Klauber noted the proposed changes to the regulations would clear up many of the questions.

Mr. Sioras said many developers would rather put in sprinklers than cisterns. Mr. O'Connor noted this question came up at a recent Southern New Hampshire Planning Commission meeting. There are some areas in New Hampshire that abut lakes. The towns allow the installation of pipes that go into the lake; would Derry do that? Chief Klauber said that is not allowed in Derry for many reasons. Sometimes the water levels are too low to provide adequate fire protection. He would add that for subdivisions with a cistern, the town ends up owning the cistern. The town takes over long term maintenance and care of the cistern. There is a cost to that because the town needs to make sure the cisterns work and that the pipes don't need to be replaced. They are generally granted to the town under an easement which is noted on the approved plan. Mr. Sioras reminded the Board of the recent waiver request on Taylor Brook Lane. The Board had noted that during the winter, it is impossible to get water from Big Island Pond because the lake is lowered.

Mr. Chase had questions regarding the 1000 foot distance. 1000 feet from the lot line is clean language but he would prefer to have the distance within one hose load on a truck. If the hose is short, that creates an issue. He suggested changing the distance from the cistern to the main traveled way rather than the "development". Is a cistern required every 1000 feet for roads that are longer than 1000 feet? It could be argued that there is a cistern within 1000 feet of the entrance to the development, but the road could then go another 1000 feet or more. Chief Klauber said the 1000 foot distance is from the cistern to every lot. Driveways are not always put in where they are approved. He would hesitate to change the distance requirement because cisterns are constructed before driveways. He felt it is cleaner to know where the lot corners will be. Typically, when cisterns are installed, they are placed in the middle of large subdivisions. Mr. Chase felt a developer could go to the lot line of a large parcel but the lot line for the first house might be 900 feet away. The regulation currently says "development" not "lot line" and does not say along the distance of the road. The development could be 50 acres. Mr. Granese asked if there is always 1000 feet of hose? Mr. Chase explained that in most cases, the Fire Department has to draft because the cistern is not pressurized. That means the Department needs to add trucks at every 1000 feet. The Chief further explained this is why there are typically 3-4 trucks at a fire scene. One feeds from the cistern, the next feeds the truck that is in the driveway; Mr. Chase added the truck in the driveway is the one feeding the hand lines in the house putting out the fire. Mr. Chase felt this was a good document other than making sure the distances are clear so that there are no further issues with interpretation. Mr. Granese thought the Board

should look at the distances. Chief Klauber said he can reword it and get a better definition of where to measure from and to.

Mr. Sioras said the Board can hold another workshop on February 5<sup>th</sup>, and then can schedule a public hearing at the next meeting following that. Chief Klauber said he will get a draft back to the Board. In closing, he asked the Board as it goes through its regulations to get in touch with him if there is anything his Department can help with in regard to how the Fire Department interacts with the regulations. He would be happy to review any questions and make sure the regulations comply with the state regulations and are simple to use.

### **WORKSHOP – Proposed changes to the Town of Derry Zoning Ordinance, Article XX, Livestock**

Bob Mackey, Code Enforcement Officer, and Marlene Bishop, Animal Control Officer were present to present the changes. Ms. Bishop said there have been changes made to the document and she has discussed them with Mr. Mackey. The document needs some tweaking but she can make good use of it. Mr. Mackey advised the Board has two copies in front of it this evening. One shows all the changes made so far to the document; the other is a clean version. He feels it is a pretty workable document. It is not a great change from the original. The most critical change is the wording regarding nuisance which makes it enforceable. This document needs to be reviewed by legal counsel. He reviewed the changes that have been made thus far.

The nuisance provision was tweaked; the Board seems to be staying with the one acre requirement; there are provisions for shelter and enclosures. The wording dealing with the responsibility of the owner if an animal causes damage is more of a civil issue. The town can't enforce damages. There are provisions for waste. Regarding grandfathered status, the wording has been changed to the more technical "Pre-existing non-conforming status". The definition for "livestock" has been amended and he also feels that emu and ostrich can be deleted from that definition as they are technically large fowl. Ms. Bishop had said it would be prudent to add a definition for "fowl". He would want the attorney to look at the definition for nuisance and make sure it is adequate. He noted Mrs. Robidoux added comments to the clean version. In Section 165-161, he is not sure the wording regarding how situations are handled should be in the Zoning Ordinance as that is operating procedure. It does not need to be spelled out in the ordinance. He also stated any enforcement of these provisions are handled by Code Enforcement as this is the Zoning Ordinance. Mr. O'Connor noted dog issues fall under Animal Control. Mr. Mackey stated Chapter 20 in the Town Code speaks to dogs and Animal Control. That language should also be tweaked.

Mr. Granese noted dogs and cats should not be covered under this ordinance. He feels that the wording regarding the first remedy should be kept so that people know what to expect and it can alleviate some of their fear of the process. He likes the change to the "pre-existing non-conforming status". Regarding penalties, he does not have a problem with the change referencing Section 165-132, but how do the fees work out? Mr. Mackey explained any zoning violation is treated the same; there can be a fine imposed of up to \$275.00 for each day of violation. The standard operating procedure is that a complaint comes into the Code

Enforcement Office and it is reviewed. They attempt to speak with the person. They follow up with a letter asking the person to comply within a certain time frame. Once that time has passed, they re-inspect. They send a second letter if the person has not complied and advise they can be subject to formal enforcement action. If the person still does not comply, then legal counsel gets involved and sends a letter. The intention is to gain compliance not to fine people. Mr. Granese asked if there should be something that shows the fines? He felt it should be clean to say what the fine would be so that there is no misconception. For example, the fine is \$25.00 per day up to so many days and then it can be increased so that it is fair across the board. Ms. Bishop asked if that can be done in the Zoning Ordinance? Mr. Mackey said that is a question for legal counsel. If it gets to the point where they have to take someone to court, the town asks for the maximum penalty and for reimbursement of attorney fees. Any penalty may need to be subject to state statute; he is not sure if they can put fines in the Zoning Ordinance. Ms. Bishop said she would prefer to see the fines listed in the Zoning Ordinance so that they can go to that rather than involving an attorney. She feels a graduated fine would work better for the town. Mr. Granese suggested something along the lines of at 12 days there is a \$25.00 fine; after another 12 days the fine increases to \$50.00 and then after another 25 days the fine increases to \$75.00. After that point, the town can take legal action. Ms. Bishop gave the example that if she states a horse needs to be sheltered by November 1<sup>st</sup>, and she goes by on November 10<sup>th</sup> and there is still no shelter, she can say she will impose a \$50.00 fine. The person may say they are not going to pay the fine, and then where does the town stand?

Mr. Granese suggested speaking with legal counsel to see what can be done. Ms. Bishop noted that the state law for dogs says she can initiate court proceedings after a certain point. Mr. Mackey had a concern that since this was the Zoning Ordinance that the Board may not be able to get creative and may need to stay with the standard procedure. He was not sure the Board could legally incorporate fines into the Zoning Ordinance. Mr. Granese suggested if legal counsel advised that the Board could not, then the Board could use the wording found in Section 165-132. Mr. Mackey wanted the Board to make sure the verbiage regarding nuisance is enough so that they can enforce it.

Mr. Park said he likes things simple. He questions the wording in Section 165-157. The Board does not define "properly enclosed". Chickens and ducks on 10 to 20 acres can wander around during the day because they will stay relatively close to the coop. In Section 165-154, Lot Requirements, there is nothing in there regarding a requirement for a fowl pen. Mr. Chase felt chickens will self-regulate. If someone is on twenty acres there will likely not be an issue if the chickens are not continually penned. If the chickens are on someone else's two acre lot and there is an issue, then Code Enforcement can point to this regulation. Mr. Park said his concern is always unintended consequences. He does not like to give people ammunition to use against their neighbors. Someone could have well behaved chickens on a lot and their neighbor could file a complaint just because this regulation is in place - for the simple reason that they don't like their neighbor; not because there is an issue. Mr. Mackey understood Mr. Park's point.

Mr. Park noted the definitions added for Kennel/Coop/Pen actually limited people to three chickens or rabbits. Ms. Bishop stated kennel normally defines what is considered a commercial kennel or a hobby kennel. Mrs. Robidoux recalled the Board had asked for a definition of Kennel, so those were provided. They could be removed. Ms. Bishop agreed the definitions

regarding kennel should be removed and a definition for fowl added. "Nuisance" is the most important.

Mr. Mackey said he would look at the ordinance with regard to the penalties, the possibility of a tiered fine system and the inclusion of the procedural language.

Mrs. Robidoux asked for confirmation of the changes suggested this evening. Under Section 165-154, what was happening with the fowl pens? The suggestion was to state that fowl pens are required on lots under one acre and the pens are required to have wire mesh or poly mesh roofs, or a suitable cover. The distance requirement for buildings, pens, kennels and enclosures will remain at 20 feet, which is in excess of the 15 foot building setback. Under Section 165-157 the last sentence will be removed that speaks to damages. The definition of livestock shall be amended to remove emus and ostriches and a definition of fowl will be added. The definitions for the various types of kennel will be removed.

Mr. Granese asked that the changes be incorporated and the document forwarded to legal counsel for review. The document should be brought back to the Board for review at the first meeting in March.

There was no further business before the Board.

Motion by O'Connor, seconded by Bartkiewicz to adjourn. The motion passed with all in favor and the Board stood adjourned at 9:12 p.m.
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Approved by: \_\_\_\_\_  
Chairman/Vice Chairman

\_\_\_\_\_  
Secretary

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