

The Planning Board for the Town of Derry held a public meeting on Wednesday, June 04, 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; Michael Fairbanks, Town Council Representative; Randy Chase, Town Administrative Representative; Jan Choiniere (7:20 p.m.), Darrell Park, Ann Alongi, Members; Marc Flattes, Lori Davison, Alternates

Absent: Jim MacEachern, Frank Mazzuchelli

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

Mr. Granese called the meeting to order at 7:00 p.m. The meeting began with a salute to the flag. Mr. Granese noted emergency exits, the location of meeting materials and introduced the Board members and staff.

*Ms. Davison was seated for Mr. MacEachern  
Mr. Flattes was seated for Mrs. Choiniere.*

## Escrow

### #14-08

**Project Name: 8 lot subdivision of 2 Beaver Lake Road**

**Developer: Donahue Family Trust, LLC/Paul George**

**Escrow Account: Donahue Family Trust**

**Escrow Type: Cash Escrow**

**Parcel ID/Location: 09045, 2 Beaver Lake Road**

The request is to establish cash escrow in the amount of \$16,168.90 for the above noted project.

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

## Minutes

The Board reviewed the minutes of May 21, 2014, meeting.

Motion by O'Connor, seconded by Bartkiewicz to approve the minutes of the May 21, 2014, meeting as amended. The motion passed with Alongi and Chase abstained.

The Board reviewed the draft minutes of the joint Town Council and Planning Board meeting held on May 28, 2014.

## **Correspondence**

Mr. Bartkiewicz read into the record a Notice of Public Hearing from the City of Manchester advising of a Planning Board public hearing to be held on June 5, 2014 at 6:00 p.m. The proposal is for a 100 foot tall mono-pine telecommunication structure site plan to be located at 235 South Mammoth Road.

## Other Business

### Review of proposed signage at Hood Commons

Mr. Sioras advised the copy of the proposed signage was being provided to the Board as information only. No approval by the Planning Board is required. Hood Plaza is now owned by a real estate development company in New York. The new owners are making changes to the Plaza. The first improvement is to the main pylon sign. At some future date, they intend to update the façade and landscaping and will come before the Planning Board for review and approval of those changes. In the short term, they are replacing the sign located on Crystal Avenue. He was seeking comments from the Board on the proposed signage. He noted the top space noted in the rendering provided will not be trees. It will be space for any of the tenants to provide an electronic message. What is shown this evening is just a place holder. The new sign will be a bit shorter than the existing sign and will not exceed the current square footage.

Mr. O'Connor asked if the owner is aware of the new sign requirements, specifically those related to electronic message signs. Mr. Sioras advised Mr. Mackey had been in discussion with the owner and they are aware they need to comply with our regulations. Mr. Fairbanks confirmed Mr. Mackey reviewed the proposed signage. Mr. Mackey was the one who brought this to Mr. Sioras' attention and asked that the Planning Board look at it. The proposed signage meets the current ordinance. Ms. Alongi asked if the new sign will be illuminated. The Board noted the current sign is illuminated.

### Storage Building at Derry Police Department, 1 Municipal Drive

Mr. Sioras advised the Police Department will be constructing a new evidence storage building. The Town of Derry is exempt from its own regulations as stipulated in RSA 674:54, but does need to give notice to the governing body, in this case the Town Council and the Planning Board, at least 60 days before construction begins. The Department went before the Town Council last evening and is before the Planning Board this evening. Any comments on the proposal will be forwarded to Chief Garone and Captain Feole. No vote is required. There were no comments from the Planning Board.

### Reminder of Site Walk

The Board will hold a site walk on Saturday, June 7, 2014 at 70 Fordway. The site walk begins at 8:30 a.m.

Other

Mr. Sioras reported the Planning Board had a great workshop with Town Council last Tuesday evening. The message from the Town Council with regard to zoning in the area of Route 28 is that there be no housing in the General Commercial zone and no mixed use. The Board will be moving forward with zoning changes in that area.

**Public Hearing****Proposed changes to the Town of Derry, Land Development Control Regulations, Article IV, Application Submittal Requirements, Section 170-24, Final Application Phase Submittals and Article X, Application Submittal Requirements, Section 170-61, Final Application Phase Submittals**

Mr. Sioras advised the IT Department has proposed changes to the information required on the GIS disk that is received as part of an application. The IT Director, Doug Rathburn, is present tonight to answer any questions. The Board approved the proposed wording at its last workshop.

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

There was no public comment.

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

Mr. Sioras advised staff would recommend approval of the proposed changes. Mr. O'Connor confirmed that the changes do not need to be approved by Town Council and if approved by the Board this evening, would become effective immediately.

Motion by O'Connor to approved proposed changes to the Land Development Control Regulations, Article IV, Application Submittal Requirements, Section 170-24, Final Application Phase Submittals and Article X, Application Submittal Requirements, Section 170-61, Final Application Phase Submittals, seconded by Bartkiewicz.

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

**Gennaro Cella  
PID 04075 and 04075-005  
4 and 8 Cella Drive  
Acceptance/Review  
Lot Line Adjustment**

Mr. Sioras provided the following staff report. The purpose of this plan is for a lot line adjustment between 4 and 8 Cella Drive. The lots are located off Island Pond and Gulf Roads. There are no town department signatures required and no waiver requests. He would recommend approval of the lot line adjustment plan.

James Lavelle, of James L. Lavelle, LLS., presented for the applicant. In this Lot Line Adjustment, 46.3 feet of frontage will be added to lot 04075. This is a minimal change between the two parcels. Parcel 04075-005 is the smaller of the lots and will remain over the 3 acres required in the zone. The reason for the change is to give the larger parcel of 19 acres enough frontage to subdivide it. There are no state approvals required with this application. The lot sizing by soils is still met. The frontage on the smaller parcel is 360 feet, which is more than adequate.

Mr. Fairbanks asked if the larger lot will be later subdivided? Mr. Lavelle said at this time, they are only proposing 2 lots and that is the next application. He explained how they were moving the lot line in response to a question from Ms. Alongi. She confirmed the entrance to will be off the existing cul de sac. Mr. Lavelle said they will subdivide the 19 acre lot, creating a 3 acre lot. The frontage after the lot line adjustment will be 259 feet. Mr. O'Connor confirmed frontage requirements for that zone is 200 feet. Mr. Lavelle noted they did receive a variance to allow the subdivision.

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

There was no public comment.

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

*Mrs. Choiniere entered the meeting.*

Mr. L'Heureux had no issues with this plan.

Motion by O'Connor to accept jurisdiction of the lot line adjustment plan before the Board for Gennaro Cella, 4 and 8 Cella Drive, PIDs 04075 and 04075-005, seconded by Bartkiewicz.

Chase, Fairbanks, Park, O'Connor, Flattes, Davison, Alongi, 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; subject to on-site inspection by the Town's Engineer; establish escrow for the setting of bounds or certify the bounds are set; obtain written approval from the IT Director that the GIS disk is received and is operable and that the NH NAD83 coordinates are located on the plan; the above conditions are to be met within 6 months and a \$25.00 check, payable to the Rockingham County Registry of Deeds is to be submitted with the mylar, along with the appropriate recording fees. Bartkiewicz seconded the motion.

Mr. Fairbanks asked that Mr. Lavelle comply with the new GIS requirements. Mr. Lavelle said he would do so.

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

**Gennaro Cella**  
**PID 04075, 8 Cella Drive**  
**Acceptance/Review**  
**2 Lot Subdivision**

*Mr. Granese advised Mrs. Choiniere would be seated and Mr. Flattes would be stepping down.*

Mr. Sioras provided the following staff report. The purpose of the plan is for a two lot subdivision in the Low Density Residential zone. All town departments have reviewed and signed the plan. There are no waivers requested. The ZBA granted a variance on November 1, 2012 to allow the subdivision of the existing lot into two (2) lots, leaving the existing parcel with 15.91 acres and 59 feet of road frontage. The new parcel is 3.01 acres with 200 feet of road frontage. He would recommend approval of the plan.

James Lavelle, of James L. Lavelle, LLS., presented for the applicant. He advised state subdivision approval is required for this subdivision and is pending. The intent is to create one new 3 acre lot with the required frontage on Cella Drive. The remaining 15+ acre lot has a 50' wide entrance. Because they are fronting on the curve of the cul de sac, the frontage is a bit more than 59 feet.

The plan set shows the topography and test pit locations. They are creating one new three acre lot. They do have a variance to allow the creation of a lot with less than sufficient frontage. Mr. Granese asked if the Board has seen this plan before? Mr. Lavelle advised the parent subdivision was approved by the Board a few years ago. Ms. Alongi asked if Cella Drive is the property the Board held a site walk on a few months ago? The Board noted that was off of Bartlett Road and abuts this parcel to the rear.

Mr. Lavelle said Cella Drive received a final coat of pavement and the bounds have been set for the parent subdivision.

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

Mr. L'Heureux had no issues with the proposed plan. He advised he did have a comment regarding the driveway profile. The driveway meets the specification. He encourages modifying the profile to reduce the amount of ledge. It will carve into the ledge slope and he suggests maximizing the slope to the lot to avoid the ledge. The modification can be made to the final plan. Mr. Lavelle said he was happy to hear the suggestion as it will relieve the condition. Mrs. Choiniere asked if there would be blasting for this lot? Mr. Lavelle said it was possible. Mr. L'Heureux thought it was more likely they would use a hammer so as not to damage the existing pavement. Mr. Lavelle said there was a bit of blasting done for the parent lot. There were no issues with the neighbors at that time that he is aware of. There is a new home in the area now and if they had to blast they would take the necessary precautions such as a pre-blast survey. There are no immediate plans to develop the new lots. Mr. O'Connor confirmed that the new neighbors were on the current abutter list and that this subdivision requires state approval.

Mr. Granese asked if the proposed house for the three acre lot is shown on the plan. Mr. Lavelle said there is 20 square feet of wetland in the corner. The house could go anywhere on the lot within the building setback. The land gets steep toward the rear of the lot. The plan shows the proposed well radius; it will be the builder's choice. They will use the existing driveway curb cut. The septic could be placed anywhere; he assumes they will build closer to the cul de sac. Mr. O'Connor confirmed the homes will have fire protection. Mr. Lavelle said the homes will be serviced by residential sprinklers; there are notes on the plan to that effect. Mr. Granese asked as to the type of home that might be constructed. Mr. Lavelle thought a four bedroom colonial style might be likely as it would be in keeping with the rest of the neighborhood.

Motion by O'Connor to accept jurisdiction of the two lot subdivision plan before the Board for Genanaro Cella, PID 04075, 8 Cella Drive, seconded by Bartkiewicz.

Chase, Fairbanks, Park, O'Connor, Choiniere, Davison, Alongi, 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; subject to on site inspection by the Town's Engineer; establish escrow for the setting of bounds or certify the bounds have been set; obtain written approval from the IT Director that the GIS disk is received and is operable and that the NH NAD83 coordinates are located on the plan and that the submittal meets the recently revised regulation; obtain state subdivision approval; the above conditions are to be met within 6 months and a \$25.00 check, payable to the Rockingham County Registry of Deeds shall be submitted with the mylar along with the applicable recording fees. Bartkiewicz seconded the motion.

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

## Workshop

### To discuss proposed zoning changes in the area of Route 28 South

Mr. Sioras advised at the last workshop, they took out housing and mixed use. Three lots in the OMB will be moved to the commercial area and the zone will be called General Commercial IV. They have added a list of permitted uses. The Board held a discussion with Town Council and the decision and direction of the Council was that there be no housing or mixed use in this zone. The Board will need to look at the list of permitted uses this evening which include hotel, conference center, medical and professional office. Mr. Granese noted the Board should be looking at zoning all the way to the Windham town line. Mr. Sioras agreed, commenting the Town Council felt it made sense to extend the zone to the town line.

Mr. Granese said Derry is the 4<sup>th</sup> largest community in New Hampshire. He watched a replay of the workshop and Mr. Park made some good comments regarding Crystal Avenue and he appreciates what Mr. Park said. The town is going to grow and needs to keep the resident's income here and to bring in disposable income from other communities.

Mr. Fairbanks stated small businesses drive a large part of the economy in the town. Crystal Avenue has many small businesses. He can see many small businesses locating to this area as well. Mr. Granese felt people would go to a multitude of businesses rather than one large store. Mr. Fairbanks agreed that it was not likely a large box store would locate in this area; it is too landlocked. He strongly feels the zone should extend to the Windham town line, even though there will be a cost to the town with respect to time and abutter notification. Mr. Granese thought it was a great idea, otherwise, the Board will be holding this discussion again in five years. At some point, the town will have water and sewer to the town line. Mr. Fairbanks thought the planning for that was five to ten years out.

Mr. Sioras noted architectural design regulations would apply so the Planning Board can ensure there is a high standard and buffer and landscape the lots appropriately. There are nice plazas as one travels on Route 111 in Atkinson and Hampstead, he could see that type of development here. He would also encourage medical uses because of the proximity to the hospital; it would make sense that they would expand to this area.

Ms. Alongi commented that there had been a recent article in one of the local papers discussing Londonderry's projected commercial growth. Has the Town of Derry talked to Londonderry to find out what they are doing that Derry is not to attract business? Mr. Sioras explained it is not anything the town is not doing or did wrong. Londonderry has acres of land at the airport. The state constructed the Route 3 connector that goes directly to the airport and to land in Londonderry. FED EX and UPS are there because of the proximity to the airport. Ms. Alongi did not feel this area was too far off the beaten path for executives that use airports. Mr. Sioras stated Londonderry has 1000 Industrial acres at the airport and a direct ramp off the highway; Derry does not. Major retailers want a location like that. He feels it is inevitable that this area will be developed but did not feel something like Kohl's would locate here. Ms. Alongi said she

was thinking beyond retail, for example Oracle or other companies that have people on the ground. Derry is only 12 miles from the airport, why aren't we attracting these types of companies? They are in Salem right off the highway. Mr. Sioras said it is because they are right off the highway at Exit 2 that the companies located there. Derry does not have any exits off of I93. Exits 4 and 5 are located in Londonderry. He commented that Londonderry just approved 240 apartment units at Exit 5. Exit 1 in Salem has the mall and Exit 2 has Canobie Lake Park.

Mr. Flattes asked if the Board would be wise to look at recreational venues. What is Windham doing at the town line? Mr. Sioras explained all the earth disturbance at Exit 3 is for the highway and is not business development. Windham is envious of Derry because we have water and sewer. They are trying to get development and would like to connect to our infrastructure at some point in the future. Mr. Flattes asked what the Windham Master Plan is for that section of Route 28. Mr. Sioras said the value of land will be higher on Route 28 as the town expands. In Windham, it is much like Ryan's Hill. Mr. Granese did not think there was a lot of vacant land on Route 28 in Windham. Mr. Fairbanks said that is why it is important to push the zoning to the Windham line; that is where Derry has room to build. DPW would like to sell the utility to Windham. Mr. Sioras said the Master Water Plan shows expansion to the town line. Derry currently sells sewer capacity to Londonderry; the same thing could happen with Windham. Mr. O'Connor asked if Woodmont is tied to Derry's capacity. Mr. Sioras said it is. Derry has reserves for Londonderry. The water comes from Manchester Water Works.

Mr. Sioras asked the Board to take a look at the draft before it and provide comment. He asked that any comments or suggested changes be forwarded to him or Mrs. Robidoux for the next meeting. Mr. Granese asked if the map could be updated to show the new zone. Mr. Fairbanks said the Board could look at the downtown zoning at another meeting.

Mr. O'Connor confirmed there would be no housing or mixed use in this zone, even with an overlay. Mr. Sioras asked the Board to conduct a straw vote to finalize the permitted use list. There had been other discussions regarding allowing a high end auto dealership to locate in this zone. There were some pros and cons. The town does not want to see a Route 1 or auto row, even if it was high end dealerships. Some felt the use should be allowed. When the town was creating the General Commercial II on Tsienneto Road, they wrote in a minimum size for a new building, which prohibited the smaller dealerships. Mr. Granese confirmed if someone wanted to do something that is not on the list such as a high end auto dealership, they would go to the ZBA for a variance. Ms. Davison asked if they could craft language that would allow a branded auto dealer with some used cars to go here. Mr. Sioras said there are many dealerships in town now. The higher end dealerships won't build a small building with cars on the grass. Ms. Davison felt the town should allow the higher end dealers with a small percentage of sales being used cars. Mr. Fairbanks said the key would be a building; but he was thinking of the auto action just off the exit. He is not sure how you can limit it. He agrees with Mr. Park that Derry won't likely see an auto mile because there is just not enough traffic. Mr. Granese commented he was aware of a company that wanted to locate a dealership in town and looked at various open properties, including the Grandview lot. Crystal Ave lots were too small and they were not sure they would get the appropriate traffic flow on Route 28.

Mr. Park said the chances are the town won't get a high end dealership but they should not make it so we can't get one. He likes the square foot idea. If Merchant's wanted to come to Derry, that would be a good business. He wondered if the town could preclude an auto auction. Mr. Fairbanks said he would want to see something with jobs. Mr. Sioras said the town did something similar on Tsienneto Road when it excluded drive throughs for everything but pharmacies. Gas stations had distance limitations. The Board can write language to limit things.

Mr. Flattes said he would like to see private educational facility/private school taken off the list as some are tax exempt. This is Derry's last frontier, maybe it would be better to have something like that go to the ZBA for a variance. Mr. O'Connor noted there are businesses that are nonprofit but they employ a lot of people who spend money in the town.

Ms. Davison asked for clarification between mixed use and mixed use overlays. Mr. Sioras explained the mixed use is a more generic allowed use. An overlay is like a conditional use permit where an applicant has to meet certain criteria and the Board can make that criteria more stringent. An overlay makes it tougher to meet and the Planning Board controls the approval.

Mrs. Robidoux did not agree with removing private educational facilities from the list of permitted uses. When looking at the definition it also includes uses such as a dance studio, music school or craft facility. Mr. Flattes asked how much of a hardship would there be for that type of business if they had to go to the ZBA. Mrs. Robidoux said hardship is related to the land and there would need to be a condition specific to that piece of land that does not exist elsewhere that would allow them to do what they want to do. If something like a cheer gym wanted to locate in the area, it would fall under this definition. A cheer gym uses a large, taxable building, and has classes on the hour which brings a lot of parents into the area who need a place to go for an hour while their child is in class. That would be a taxable use that generated a lot of traffic. If a use like that had to go to the ZBA, it would be very difficult to meet the hardship as that is tied to the land. There would be nothing unique about the land that would allow them to locate there. The ZBA would say that there are other places in town they could locate and deny the variance and would be within their right to do so. She can understand and agree with the argument that maybe the town would not want Pinkerton to locate here because of tax revenue, but the Board might be excluding other uses that fall under that definition. She is not sure how to address that. Mr. Flattes felt there needed to be a way to make sure that whatever goes there is taxable.

Mr. Sioras mentioned the current businesses in the zone have failing septic systems. The expansion of the sewer and water will allow many of these businesses to upgrade. Dollar Bills had wanted to expand but could not because of their septic system. The town may now see some expansion of the current businesses. Hillside Plaza is in trouble with their septic; this is why businesses come and go in that Plaza.

Mr. Granese said he still has an issue with allowing gas stations with a buffer in this zone. What does the Board want to do? Mr. Park said he could agree to taking out the gas stations but could not agree to having a buffer if they are left in. He feels buffer zones are anti-competitive.

Ms. Davison had a question regarding buffering the gas stations and Mr. Granese explained what the Board had discussed with regard to distance buffers when it had amended the General

Commercial zone last year. Ms. Davison felt need would drive the number of gas stations in this area. Mr. Fairbanks said people might be surprised; he never thought he would see four pharmacies located near each other. Mr. Sioras noted the owners of the 7-Eleven at Hillside have permission from the state to put two new tanks back in. They are not increasing the previous number of gas pumps. On Route 28 there is an Irving, the gas stations at the Rotary, the proposed pumps at Hillside and Metro Plaza. Mr. Granese thought it was possible that there might be one more gas station in the future; when the Board discussed this previously, he had stated he did not want to see one gas station after another. If they take out the use, someone could always apply for a variance. Mr. Sioras recalled when Bill Zolla was Chair of the ZBA he had commented that most of the gas stations were located in one area of town. If they were put in the outlying areas people would not have to drive into town; and that is what has happened. Mr. Flattes suggested removing gas stations from the list.

Mr. Chase said they have been allowed for many years and there has not been an influx of gas stations. These uses are minimally depending on public utilities. The sewer and water upgrade won't change that unless they wanted a gas station with a car wash. Mr. Flattes said he worried that they would purchase large parcels of land and add a car wash or repair facility. The Board noted repairs would not be allowed by right. Mr. Chase recalled Mobile had purchased the land at Shute's Corner and never built a gas station there; it was finally sold.

Mr. O'Connor said he reserved judgment until the public hearing with regard to filling stations but did not believe that there would be fly by night operations given the stringent EPA regulations required to construct a gas station. Mr. Chase agreed, noting they had to be constantly monitored.

Mr. Granese asked if the Board wanted to leave the list as it is for the next workshop. Mr. O'Connor asked for a description of 'public use'. Mr. Chase noted that town uses don't need to abide by the zoning, so why are these uses listed here?

Mr. Flattes asked if there is a target audience to design the uses such as tourism or industrial. Ms. [Alongi-Davison](#) said she would like to see Trader Joes. Mr. Sioras said with no utilities, these lots were not attractive. They will be more attractive after the water/sewer upgrade; he believes the town will see more medical office uses. Mr. Flattes said most of the retail is on Manchester Road. He believed the supermarkets all belonged in that area of town. There are medical uses near Tsienneto Road and Parkland. He is not sure what industry the town should go after for this area. Mr. Sioras did not disagree but he was not sure the town would see a large office park because this land is so far from the highway. The Board needs to send this document for legal review. There can be one more workshop and then the Board can set a date for the public hearing. Property owners would be notified of the public hearing which will likely be in August.

Mr. Flattes asked for an explanation of "essential services", which were uses such as Public Service or a water utility. Mr. Granese confirmed the Board was happy with the current amended list of uses. Mrs. Choiniere noted that she would not really want to see something like Sonic, which would fall under drive in restaurant.

Mrs. Robidoux confirmed the Board was removing the buffer question from filling station, removing public use and retaining private educational facility. Mr. Sioras said the amendments will be sent for legal review, and brought back to the Board for final review. A public hearing date will be scheduled in July and the public hearing held in August.

Motion by Alongi, seconded by Bartkiewicz to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:28 p.m.

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

\_\_\_\_\_  
Secretary

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