

The Planning Board for the Town of Derry held a public meeting on Wednesday, January 21, 2015, at 7:00 p.m., at the Derry Municipal Center (3rd Floor Meeting room) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman; John O'Connor, Vice Chairman; Frank Bartkiewicz, Secretary; Michael Fairbanks, Town Council Representative; Randy Chase, Administrative Representative; Darrell Park; Ann Alongi, Members; Marc Flattes, ~~Lori Davison~~, Bob Jean, Alternates

Absent: Jan Choiniere, Jim MacEachern, Lori Davison

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Assistant; Mark L'Heureux, Engineering Coordinator; Robert Mackey, Code Enforcement Officer

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

Mr. Flattes was seated for Mrs. Choiniere

Mr. Jean was seated for Mr. MacEachern

Escrow

#15-03

Project Name: Parking Lot Expansion – Granite House

Developer: CCN Realty, LLC

Escrow Account: Same

Escrow Type: Cash Escrow

Parcel ID/Location: 29139 & 29140, 33 and 35 West Broadway

The request is to approve Release #1 in the amount of \$34,065.36 for the above noted project. The amount to retain is \$4,406.40.

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 January 07, 2015 meeting.

Motion by O'Connor, seconded by Bartkiewicz to approve the minutes of the January 07, 2015 as amended. The motion passed with Park abstained.

Correspondence

Mr. Bartkiewicz advised the Board has received a copy of a letter addressed to Galen Stearns, Town Administrator, regarding Natures Remedy of NH, an Alternative Treatment Center. The letter is from Attorney John Cronin of Cronin, Bisson and Zalinsky. His office represents Natures Remedy of NH, which is in the process of establishing an Alternative Treatment Center on A Street in Derry. The approvals are being pursued according to RSA 126-W, the New Hampshire Medical Marijuana Act. The intent of the letter is to advise that as part of the process, the applicant, together with NH Department of Human Services and the Town Council, is to hold a public input session. Attorney Cronin is asking to combine the Planning Board public hearing with the input session. He acknowledges this entire process is new and the state and local officials are working through the process. He also included an excerpt from Chapter 126-W.

Additionally, the Board has been provided a copy of the proposed changes to the Central Business District. Board members should review this document and be prepared to discuss it during a workshop that will be scheduled for February 4th.

Mr. O'Connor asked to continue discussion regarding the Alternative Treatment Center. The applicant's process has started and there have been several Technical Review Committee meetings. He has a few concerns. Under the Medical Marijuana Bill, there are certain requirements applicants have to meet. Attorney Cronin's letter does not reflect State statutes which have been recently revised, or the recently revised Administrative Rules. The location at A Street is also a concern. Per the statutes, this type of facility is supposed to be non-profit. A Street is in the town's TIF district; exchanging a profitable use for a non-profit is a concern and Town Council should address that. There may be avenues around that. There is also the issue of the school which currently operates at this location. Per statute, an Alternative Treatment Center can be no closer than 1200 feet to a school or drug free zone. The Sports Zone is located across the street and has many children who use the facility. The State will be authorizing four locations statewide. For the record, he did vote for medical marijuana at the state level, but he does have concerns regarding this application.

Mr. Sioras stated staff has met with the applicant and his attorney to discuss the technical aspects of an application. The State law requires that an informational meeting be held with the local legislative body. Attorney Cronin did write the letter to Mr. Stearns requesting a meeting. The process is that the applicant should go to the local legislative body first and hold a meeting. This is new territory for everyone. The process should start with the Town Council. It is difficult because the State keeps changing the regulation. They are trying to determine the final rules. Mr. O'Connor noted applications are due to the State by January 23rd. Mr. Sioras said there have been several changes to the deadline for submission for the application and the State has also changed its timeline on when it would choose the four facilities. Currently, the State intends to choose two of the RFPs now and then another 2 in six months. This process is a moving target as the dates change, but he wanted to keep the Board informed.

Other Business**Review of Multifamily Amendments**

Mr. Sioras advised the Board has in its packet a copy of the proposed zoning changes relating to multifamily. The changes are highlighted in red. The major changes made at the suggestion of Town Council and the Planning Board are to the density requirement, the green space and open space requirement. Applicants will no longer be able to calculate recreation space as part of the open space. The two calculations need to be separate. The parking density calculations have been changed to increase the number of parking spaces required per unit. This will lower the density in West Derry and in some of the older neighborhoods in town. If the Board approves these changes, then they will move forward to Town Council for final approval. If the Board agrees with the changes as written this evening, this can be placed on the next agenda to schedule a public hearing.

The Board had no comments.

Public Hearing

John Cooper

PID 03152-005, 5 West View Drive

Bruce Radford

PID 03152-007, 23 Kilrea Road

Acceptance/Review, Lot Line Adjustment

Mr. Sioras provided the following staff report. The purpose of the plan is for a lot line adjustment between 5 West View Drive and 23 Kilrea Road. The parcels are located in the Low Density Residential District. No department signatures are required for this application. There are two waiver requests – one for HISS mapping and the other for Wetland mapping. He would recommend approval of both the waiver requests and the lot line adjustment plan.

James Lavelle, James M. Lavelle Associates, presented for the applicants. The plan is for a lot line changes on Kilrea Road (Parcel 03152-007) and West View Drive (Parcel 03152-05). He did notice an issue with the parcel numbering on Sheet 1; the parcel ID numbers are reversed. He will correct that. The purpose of the plan is to transfer 1.62 acres from the Radford lot on Kilrea to the Cooper lot on West View. The property on Kilrea will decrease from 15.82 acres to 14.2 acres; the property on West View will increase from 6.5 acres to 8.12 acres. Parcel A, the area to be transferred, is backland to both lots. It is a field. The area will be transferred to the Cooper property. There will be no changes to the road frontage and there are currently no plans to construct on either lot at this time.

Mr. Fairbanks asked why the applicant is asking for the two waivers. Mr. Lavelle explained that these are fairly large parcels. They did the topography on the Radford lot for the subdivision that

was approved a few years ago. They are not creating a new building lot or anything that needs HISS mapping. This is just a land transfer.

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

Mr. O'Connor noted with regard to the waivers, there are no wetlands on the parcels and he does not have an issue with either of them.

Mr. L'Heureux advised Public Works has no issues with this application.

Motion by O'Connor to accept jurisdiction of the Lot Line Adjustment application before the Board for John Cooper, 5 West View Drive, PID 03152-005 and Bruce Radford, 23 Kilrea Road, PID 03152-007, seconded by Bartkiewicz.

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

Motion by O'Connor to grant a waiver from the following sections of the LDCR, Section 170-26.A.12, HISS Mapping and Section 170-26.A.13, Wetland Mapping, as after review of the waiver requests, the Board finds that strict conformity to the regulation would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations. The motion was seconded by Bartkiewicz.

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

Motion by O'Connor, seconded by Bartkiewicz to approve the Lot Line Adjustment plan pursuant to RSA 676:4,III, Expedited Review, with the following conditions: Subject to owner's signature; subject to onsite inspection by the Town's Engineer; establish escrow for the setting of bounds or certify the bounds have been set; establish appropriate escrow as required to complete the project; obtain written approval from the IT Director that the GIS disc is received, is operable, and it complies with LDCR Section 170-24.C/170-61.C; note approved waivers on the plan; subject to receipt of state or local permits relating to the project; the address for PID 03152-005 to be corrected to "5 West View Drive" on all plan sheets; the address for PID 03153-001-017 to be corrected to "17 Squamscott Avenue"; the above conditions to be met within six months; a \$25.00 check, payable to the Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirement; submission of appropriate recording fees, payable to the Town of Derry.

Mr. Fairbanks confirmed the change to the address on Squamscott is to correct a typo for a listed abutter.

Chase, Fairbanks, Park, O'Connor, Jean, Flattes, Alongi, Bartkiewicz and Granese voted in favor and the motion passed.
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Workshop #1 – Proposed Zoning Amendments, Building Codes

Mr. Sioras advised Town Council approved the proposed Property Maintenance Ordinance at its meeting last month. There had been a subcommittee formed to develop the proposed changes. On the subcommittee were Chief Klauber, Mr. Mackey, Mr. Wentworth, Councilor Katsakiores, Councilor Cardon, Mr. Sioras, and John O'Connor.

Mr. Mackey advised a subcommittee had been formed at the request of the Town Council with the intent of creating stronger regulations to assist with blighted properties with a concentration of the downtown area. The 2005 Code contained the Property Maintenance Code; they amended that to meet Derry's needs. The Property Maintenance Ordinance was adopted by the Town Council on January 16th. As a result, there are some housekeeping items to be taken care of in the Zoning Ordinance to alleviate conflicts. The Building Code is mentioned in the Zoning Ordinance. The Zoning Ordinance used to contain a long list of construction items that are now covered under the Building Code. Since 2005, a few things have changed. The State Building Code has adopted the International Residential Code and Energy Conservation. They have added verbiage to the Property Maintenance Code about this being in effect. The Code has been adopted. By updating the references related to the Building Code, it makes it easier for people to see what the town has adopted. These proposed changes essentially update references of the Building Code which should be in compliance with State and town building codes.

Mr. Mackey reviewed the proposed changes. The International Residential Code was in an odd place, so it was moved under general construction requirements. The IRC is now part of the State Building Code so it does not need to be listed on page 5. He is happy to answer any questions the Board might have.

There were none.

Mr. Granese asked since there are no changes, what is the next step. Mr. Sioras explained that with no changes, this can be brought to the next meeting of the Board and the Board can schedule a date for the public hearing. It can then be forwarded to Town Council for their approval. This proposed change is pretty straightforward. It is likely this could be scheduled for public hearing on February 18th, along with the multifamily changes.

Mr. Fairbanks asked if the Board knows that it is okay with this wording, why can't the Board schedule the public hearing tonight. Mr. Sioras advised per the Board's policies and procedures, there needs to be a workshop on the changes, a clean document is then brought to the next regular meeting where an available date is noted, and the Board schedules the public hearing.

Workshop – Visioning Session for Route 28 Zoning

Mr. Sioras said the last time the Board met it decided to not move forward with the public hearing on the proposed changes to the zoning along Route 28 and to essentially stop the process and look at the zoning and vision for this area. The Board had elected to hold an informal workshop discussion. Attorney Hollis had sent the Board a letter that was reviewed at the last public hearing and that letter was forwarded to Town Counsel. Mr. Sioras advised he and Mrs. Robidoux met with Town Counsel. He felt that Attorney Hollis had made some good points in his letter, but the changes reflected the goals set forth by the Town Council and were consistent with the Master Plan with regard to the extension of water and sewer to that area of town which would further economic development. That goal has always been a priority.

A question was asked with regard to the proposed changes to the CBD that the Board had in their packets. Mr. Sioras indicated the Town Council had asked the Board to look at the zoning in the downtown and refine the uses so that they could put forth an RFP for the town owned properties in that area. The subcommittee finalized the changes and that is what the Board has in its packets. A workshop on the drafted changes will be scheduled for the next meeting so that the Board can look at the proposed changes in detail.

With regard to the proposed zoning changes in the General Commercial zone, Mr. Sioras said there were three primary issues. The Town Council had asked the Board one and half years ago to look at the zoning because sewer and water were going to be extended along Rockingham Road from Shute's Corner, to Webster's Corner, and then south to Ryan's Hill ending near the former Dollar Bills. Over the course of the meetings, the Board decided to expand the zoning changes down to the Windham town line. The Board removed housing as a permitted use in the General Commercial zone one and half years ago. This set of proposed changes contemplated removing car sales and auto garages as a permitted use. There had been some discussion from the residents during the public hearing that the zone should be left as it is, auto uses added back in, others felt that housing should be put back into the zone as a permitted use, and mixed use should be added as well.

There is a separate issue that is unique to the Palmer parcel. He suggested the Board consider changing the zoning to the rear of the property where it has frontage on Stark Road. Currently, the commercial zone on that lot extends to Stark Road. This property is very unique. The State is completing the installation of a traffic signal at the corner of Kilrea, Route 28, and Windham Depot Road. The project should be completed by this summer. The rear portion of the Palmer lot extends to Stark Road. He would propose to not have the commercial zone extend that far back. He would recommend the frontage remain commercial and the rear be residential. For now, what would people like to see as permitted uses in this zone? Do people want to leave the zone as it is, add housing, add auto? On the flip side, there is also the consideration of the goal of the Town Council, staff, and the recommendations of the Master Plan which is to extend water and sewer to that zone to increase the tax base on the commercial side.

Mr. Fairbanks stated from the Town Council viewpoint economic commercial development is the reason for the water and sewer bond. The vote for the bond would not have passed if that had not been the reason to extend water and sewer to this area. There had been a comment made during the public hearing that there was little or no direction from the local legislative body. However, that goal goes back three to five years. Mr. Sioras recalled the Town Council had asked the Department of Public Works to do a feasibility study to determine the costs of the infrastructure expansion. The second year, Mr. Fowler came back to the Town Council and the Council authorized his department to go ahead with the project. The goal, as per the Master Plan, is to expand the tax base via economic development, which is why the town expanded the infrastructure. Town Council (past and present) asked the Board to look at the zone and the permitted uses and the decision was made to look at this all the way to the Windham town line.

Mr. Sioras reviewed the zoning map. Route 28 goes by the Hess/Rite Aid at the intersection of Rockingham Road, Crystal Avenue and Kendall Pond, travels east on Rockingham Road to Webster's Corner, goes north to the Butterfield and Siragusa properties, and south past Clam Haven, and Alan Coal to the town line. There had been initial discussions about only changing the zoning to Berry Road, but then later in the year, Town Council suggested the Board look at all of Route 28 south which would include the Palmer and Brown tracts and Promises to Keep, down to the Windham town line. The Board looked at the zone during the last round of discussions and decided to create a General Commercial IV zone because of the very distinct characteristics of the different areas of the existing commercial zone. General Commercial on Crystal Avenue and Birch Street is very different from the General Commercial character on Ryan's Hill and this area of Route 28. The sewer and water expansion currently ends at Berry Road. In order to expand the infrastructure to the town line there would need to be booster pump stations.

Ms. Alongi asked why was housing taken out of the General Commercial zone. Mr. Sioras explained the general consensus in terms of economic development and the tax base is there are limited commercial zones in Derry. The town does not have large commercial lands to expand the tax base but it does have a lot of residential. Town Council suggested taking housing out of the commercial zone. Single family residences used to be permitted in the General Commercial (GC) zone. The town can't say there can be no housing at all, it needs to maintain its fair share for the region, but because the town has so much housing, the thought was to limit commercial zones to commercial uses. Mr. Granese noted that on November 19, 2012 he polled the Board and the Board (Chase, Milz, Bartkiewicz, Alongi, Choiniere, O'Connor and Granese) wanted to leave single family residential out of the GC zone.

Ms. Alongi asked if there is any reason mixed use can't be included. Is there a problem with the school capacity? If the Board adds single family, can the school handle the capacity? Mr. Granese did not think there was an issue with the schools as there had been some rumblings about closing a school. Mr. O'Connor said a recent analysis by the Superintendent showed an enrollment drop of approximately 2100 students during the period of 2000 to 2013. The trend seems to be for a future population decline for New Hampshire that will continue to 2025; the decline in student enrollment will be beyond what we are seeing now. Unless commercial business increases in New Hampshire, the state is in a rapid downward trajectory. Ms. Alongi felt housing would bring in more students if the town allowed mixed use. Maybe the Board

could say that the lots need to keep a certain amount of area to the front as strictly commercial use and then a house could go to the rear of the lot. These are all frontage lots. If the landowners wanted to keep the entire lot in a commercial use they could do that as well, but at least if the front area was commercial and beyond that the landowners could do what they want for example, housing, then people could build homes and bring more kids into the school system. She knows larger companies won't come to this area because of the lack of access to Route 93.

Mr. Sioras said the reason they are here tonight is to focus on the permitted uses. He agreed that this portion of Route 28 is a distance from the highway. There is no exit off the highway in Derry, which means there are no large corporations. But the town might get office buildings, such as those on Tsienneto Road or Route 111 in Hampstead and Danville. That is what the town will likely get for development. There are some smaller properties that have septic issues and the infrastructure expansion allows them to upgrade their properties.

Mr. Flattes believed Ms. Alongi was saying she would like to see something similar to what Mr. Sioras suggested for the Palmer parcel where the frontage on Route 28 remains commercial but the back of the property along Stark Road can be something else. Ms. Alongi said she would like to see all of Route 28 commercial and then say at least a certain distance has to be commercial before a landowner could sell their property for a different use.

Mr. Chase did not feel this concept would work. What happens is people build the housing first and then those residents fight the commercial growth. The Board sees this all the time. Anytime there is a commercial application before the Board, the room fills with abutters who want nothing to do with it. Then the commercial never gets built. He has seen this happen for decades. Boards have been shortsighted in the past and have allowed residential uses in commercial zones. There is no other surrounding town that allows residential use in a commercial zone – Derry is the only one. The issue is not the school capacity. The average home provides between \$5-6000.00 in taxes. The cost to educate each child is about \$5000.00 per year. Homes with more than one child are tax negative. The town has invested millions to put infrastructure in to promote commercial growth that would be lost if the Board allowed housing in this area. He is not opposed to mixed use, but he would want to see it situated over the commercial uses (vertically). He is not a proponent of single family or multifamily residential in this zone. Zoning was originally established to separate residential uses from commercial uses because those uses don't get along. People don't want to live next to a store or an office. This Board saw one neighborhood get very animated over an apartment building – what would happen if a box store wanted to go on that particular lot? Ms. Alongi said many towns with a main street have neighborhoods behind them; that is what she is suggesting. Mr. Chase said that is what the Board is proposing. Ms. Alongi clarified she would like to see commercial uses along the frontage. Mr. Chase said the landowners can subdivide their properties and obtain the same result. Ms. Alongi said that is what she is asking for. Mr. Chase continued by stating the properties along Route 28 used to be in a split zone and it did not work. There are already residential neighborhoods on the outskirts of this area of Route 28. Mr. Flattes suggested instead of all of Route 28 being commercial, perhaps they could go back to breaking it into two sections keeping the commercial uses, but have the area be from Clam Haven to Berry Road. Mr. O'Connor said that is where the Board had been two years ago. Mr. Granese thought

the Board may have previously discussed something similar to what Ms. Alongi is suggesting, especially for lots like the Palmer lot with frontage also along Stark Road.

Mr. Sioras said in his mind, there are two things for the Board to look at. The first is that previously, the commercial zone on Route 28 used to go 600 feet on either side of the centerline of Route 28. There was a break at the current Rockingham Acres to the Robert Frost Farm and then again at the Smith property/Dollar Bills. As Derry developed residentially, Ryan's Hill gained residential lots that ended in the Commercial zone. The town cleaned up the zoning and had it follow the property lines. The Board at that time did not feel it was good planning to have split zones and it gave the town more commercial land. In his opinion, it is not good planning to have commercial uses on Stark Road which is a designated Scenic Road, nor did he feel it was the past Board's intention to have commercial uses on Stark Road. He suggested keeping the commercial area on the frontage along Route 28 and on the Stark Road side, have the area residential. But that is a separate issue. Mr. Flattes said he would like to take that parcel out of the commercial zone entirely. Mr. Sioras said the Board could do that; the justification is that Stark Road is rural, and designated as Scenic. Mr. O'Connor asked if that parcel is considered agricultural land. Mrs. Robidoux advised it is assessed as farm land.

Mr. Sioras said housing is not allowed in the GC zone. His thought process is that the larger parcels would need to be subdivided to allow housing to the rear. The rear of some of these parcels abut farm and conservation land. The lands could be subdivided and the new parcels moved into residential leaving the front of the parcels commercial. He does not want to single out lots. The Board will need to decide in which direction it wants to go.

Melissa Polk asked how the workshop process will work tonight. Mr. Sioras said normally the Board holds a discussion then the Chair opens the workshop up to the public for coming. He is trying to give some background on the area for the newer members of the Board. Mr. Flattes did not feel it was practical to split all of the parcels into different zones. If they looked at individual pieces (other than the farm) would it be considered spot zoning? Mr. Sioras said the policy is to never single out any particular parcel for special treatment. However, the Palmer parcel is very unique. Even if this zoning does not change, Stark Road was never intended to have commercial use; it is a Scenic Road. Commercial use should not be allowed that far back on this lot. The Board can't pick out individual lots; it needs to be consistent in its treatment of the parcels. One suggestion would be to limit the number of lots in a subdivision. Mr. Flattes said he agreed with Mr. Chase that the town may create issues if it allows that. Ms. Alongi did not see a problem with placing the commercial line 600 feet back and allowing people to develop the back of the lots as they chose. Mr. Flattes asked if there were any notes or minutes available from when the previous Planning Board changed the zone. Mr. Sioras said it took place in the late 1990s and there should be minutes available. That would need to be researched. Mr. O'Connor said in 1997 there was a town wide rezoning. Mr. Fairbanks thought it would be hard to manage issues on a lot that had two zones; that may be why they moved the zone to the rear property lines.

Mr. Granese said the original discussion began with proposed changes to Section 165-32, the General Commercial zone. The Board then discussed creating a new zone along Route 28; at the last public hearing, the Board decided to stop the process and start over. Mr. Chase said he did

not recall the Board was starting from scratch; it was stopping to see where they were at so that the Board did not make any rash decisions.

Mr. Granese said at this point, single family residential is not a permitted use. The biggest issue is auto uses. In the big picture, if the area is rezoned and auto uses are taken out of the proposed General Commercial IV, then all of the auto uses will be concentrated in one area of town and that area would be saturated. The Board needs to look at this. Do any of the Board members want to remove any of the currently permitted uses? Should the Board keep the area General Commercial and just change the list of permitted uses, changing some of the definitions? Or should the Board create a whole new General Commercial IV? Mr. Chase felt there were some things in the current General Commercial zone that the Board did not want and vice versa. Mr. Fairbanks said there should be an ability to treat the different types of property separately. There is the downtown general commercial area and the Route 28 general commercial area; they have very different characteristics. His recollection was the Board was putting a hold on the process and taking the time to think about what it had, get some input on the document it had, and how it was going to move forward with it. The Board was taking the time to regroup and obtain more input. With regard to the residential hurdle, housing is not allowed. Gas stations are still listed as a permitted use. Auto sales needs to be addressed. If the Board addresses the residential component, it will put the zone back ten years. Mr. Granese thought that auto had been taken out last time, along with housing. Mr. Fairbanks said there has been a lot of discussion about residential use in this zone; but it is not a permitted use. Residential as a mixed use is not a permitted use; the Board had decided not to move forward with mixed use. Mr. Chase had no issues with mixed use over a commercial use. Mr. O'Connor felt that type of mixed use fits in the downtown but not in a growing commercial area. Mr. Chase recalled that was how the Board felt about it and that is why the mixed use discussion did not go anywhere.

The Board asked the public to provide input and it will then go from there.

Sheldon Wolff, 224 Rockingham Road, thanked the Board for holding a workshop. He wanted to address Mr. Chase. It appears Mr. Chase is adamant about having a new General Commercial IV zone to correct the sins of the past. He believed they were here tonight because the Board agreed to start over because there was so much dissention in the room. Derry's tax rate is high. This Board wants a commercial zone. What is the Board going to do to promote this? A few years ago, there had been some discussion about adding some parcels from the medical/business district. Mr. Sioras said that was correct; the parcels are located between Shute's Corner and Webster's Corner. Mr. Wolff felt adding these parcels in the General Commercial zone was a great idea. He does not hear what the Board is doing to help the landowners help the town to develop the commercial zone.

Mr. O'Connor said the town has established Tax Increment Finance (TIF) Districts. The money made on the taxes for the new development goes to pay the bond so that there is no burden placed on the taxpayers. Once the bond is paid, the funds then go into the general coffers. Other funding mechanisms are available for landowners through the state and town. Mr. Fairbanks said one of the things the town did specifically for the landowners along Route 28 is the town invested six million dollars on Route 28 to add water and sewer for the primary purpose of economic development to make the land more valuable.

Mr. Wolff said as a landowner the people in town without water and sewer are supporting the people who do have water and sewer. He feels part of the tax rate goes to pay the bond that funded the infrastructure. The Board prepares for the future of the town. He is a proponent of auto in this area. If someone owns a property they should have the right to do what they want with it. The landowners should not be dictated to by 8-10 people telling them what they can and can't do. Woof Meow was an auto dealer and the landowner spent money to turn it into something else. Route 28 has Mickey Mouse little places all over it that pays the rent and the taxes. With water and sewer, the uses will change. He understands the reason the Board does not want to see split zones but there are parcels in this area that are very large. There may not be large commercial development to the rear of those lots. Maybe the town should allow limited housing to the back of these lots. The Board needs input from the landowners.

Mr. Granese said the Board wants to hear input from the landowners; the purpose of the workshop is for the landowners to tell the Board what they want to see on their property. At a previous workshop, a landowner had stated he would like to see gas stations as a use. That is what they are looking for, that type of input.

Mr. Wolff said he wants to see the Board help him develop his land and prosper Derry. He wants to see water and sewer to the Windham town line. Mr. Granese thought that water and sewer will eventually go to the Windham town line and asked Mr. Fairbanks for confirmation.

Mr. Fairbanks said that is the reason he pushed to have the zoning change go to the town line. He is not sure what the time frame will be, but it is in the Master Plan. Mr. Granese said the properties will become more valuable with water and sewer. The owners can sell their land. What is in the current list of permitted uses that the landowners would like to see? Mr. Wolff said he would like to see the Board add uses and not take out anything that is permitted now. The list should remain the same and auto sales should be added as a permitted use.

Mr. Granese asked the residents to tell the Board what they would like to see for permitted uses so that at the next workshop, they can be added into a document. Mr. Wolff repeated the Board should take nothing out of the current zone and add viable, valuable uses and look at an overlay zone that has a residential component.

Attorney Morgan Hollis advised he represented the Browns, Palmers, Smiths, Butterfields, Taylors and the Siragasas. He thanked the Board for holding the workshop. Since the last public hearing, he has learned more of the history of the zoning changes in this area. When those changes occurred and followed property lines, there was clear thought with regard to not having split zones. That is one theory. Some communities have split zones but when a line is drawn, there are conflicting uses. In 1997, the town drew the line at the property lines but they left in residential as a permitted use. The intent was to not have split zones but to keep in the residential component. He knows why residential uses were removed recently as there is a concern of the conflict between residential and commercial uses in the same zone. If commercial is a permitted use and occurs in a zone, that is different from when it is not permitted and occurs. He can tell the Board that all commercial developers understand that abutting residents will always object to commercial use next to their property. It does not matter where that line is

drawn, the residential abutters will object. By removing residential as a use, it will not remove the objections. He has learned the 600 foot corridor when it was changed, was changed with the intent of removing split zones. He felt Ms. Alongi had a good idea to define a corridor. He felt when the Board was planning development in a zone, the Board should look at the area lot by lot. People with large lots will be punished by what was changed a year and half ago and by what was recently proposed. On the smaller lots, it won't make a difference. His clients have large lots. He understands the town wants commercial growth. It has always been a commercial zone, so commerce can go there. The perception is that with residential use, it will prohibit commercial growth. His clients would like to see a defined commercial area within the corridor with specific allowed uses. If there are split zones, the commercial needs to be to the front. There can be mixed use, residential or commercial to the rear. If the town takes the lots, no matter what size, and says they will be treated the same as the other smaller lots, then it creates an inequality. The smaller 100 foot deep lots will have lots just behind them that can be developed residentially. The larger, deeper lots cannot do that and will be stuck with commercial only with residents all around them. No matter where the line is drawn, there will be conflicts. The Board should look at this area and maybe bring in Southern New Hampshire Planning Commission and say, "Here is what we have. We have removed automotive and residential uses and we drew a line. Is there a better way to do this?" He suggests sitting down and taking a look as to what kind of properties are in the zone, what does the Board want, and how can the Board make it work. Maybe the line for commercial use is at 200 feet, as suggested by one of his clients. If the Board says the entire lot has to be commercial that leaves very large lots that will not get developed. The town won't get commercial development that goes back three acres, adjacent to the surrounding residential. The Board should bring in the regional planners and see what they say. It does not seem right that the larger lots can't have residential uses when the whole lot will not be developed commercially. The Board has time to look at this. Housing is out of the zone; they would like the Board to consider adding it back in some fashion. This is an opportunity to make a better plan and to plan wisely. Hopefully, water and sewer will bring more commerce to the area. This may be the chance to promote commerce without harming the residents who own the real estate.

Mr. Granese reiterated he would like to hear what the residents would like to see specifically for uses. Attorney Hollis said he has told the Board what his clients would like to see. Mr. Granese said the Board had no documents to work from this evening and he would prefer to have one from which to work.

Elizabeth Siragusa said the Board needs to listen to their representative. He is telling the Board what they want. Mr. Granese said he would still feel more comfortable with a draft document to work from. Attorney Hollis said he has looked at the proposed GC IV and what they understood the Board wanted to go forward with. If the Board is moving forward with that document (GC IV) then they are asking the Board to add residential back in the permitted uses in some form. Maybe the Board puts a line at 200 feet from the centerline of the road that is commercial and allow residential behind that line. Residential should be allowed in some form in his clients' back yards.

Mr. O'Connor noted two members of this Board are on the SNHPC and these proposed changes were not just done in an envelope consisting of the Board. The whole town attended the Civic

Profile which led to the development of the TIF District and the expansion of water and sewer to this area. There was also the Moving Derry Forward effort. The 2010 Master Plan shows the analysis and the surveys. Residents wanted housing removed from this area. The Board is listening to the entire town.

Mr. Chase said he performed a quick calculation utilizing the 200 foot line. One parcel is 40 acres. That would leave 30 acres for development if the 200 feet are taken out for commercial. This could result in 100 homes being developed on ¼ acre lots and the commercial land would be lost to residential use.

Melissa Polk, 2 Kilrea Road, stated Mr. Chase has indicated mixed use in the horizontal fashion does not work; it only works vertically. That vision is not shared with SNHPC. She has spoken with David Preece, the Executive Director of SNHPC. If SNHPC advocates Smart Growth, why can't the town take that approach as far as this area of Derry? Mr. O'Connor said in some areas, Smart Growth works well. Ms. Polk reported Mr. Preece suggests performing an analysis to make sure the best and highest uses are proposed, and a mixed use, similar to Londonderry's Woodmont Orchards, might bring in more tax revenue. She would ask the Board to invite SNHPC look at this and see what might be better uses to suit everyone, and to review the pros and cons of mixed use, within this GC IV proposal. Mr. Granese advised he does not have a copy of the proposed GC IV zone in front of him, so it looks like that was taken off the table. What is the Board doing if the GC IV is gone? He does not have the information and feels the Board is wasting everyone's time. Mr. Sioras said the Board is looking at this again and that is why this was labeled a 'visioning session'. The Board is looking for input. Maybe the Board will decide to not move forward with the GC IV zone. The Board should look at the GC zone and look at the uses and see what people want to see here. He originally suggested mixed use. With all respect, Mr. Preece does not know the land as well as the Board does. Mr. Sioras said he advocated for mixed use in the beginning of these discussions. He has seen both sides of split zones, that is why he went over the history. Mr. Butterfield's lots had originally been zoned residential and he had asked a previous Board to move them to the commercial zone. He has no issue with Mr. Preece coming to a meeting, but prior to that, the Board needs to know what the residents want to see. Housing is out and there is a list of commercial uses. Maybe the Board can look at the parcels and see where lines could be drawn. Not all of the lots are deep. He suggested the Board start over tonight and hear what people would like to see in the General Commercial zone.

Mr. Granese asked the residents to tell the Board what they would like to see in or out of the GC zone. He reminded those present that when discussing GC, they need to be mindful this means the entire GC, throughout all areas of Derry. What do the residents want to see added in and taken out of GC so that it can go into a draft and everyone can look at it at the next workshop. There may be uses people want to see that will work well in one area of town but not the other and that is when the Board looks at creating a new commercial zone. It is General Commercial now. What is not there that they would like to see added or taken out. The Board will take that list and then look at how the uses would work with the other areas in town zoned General Commercial. It may be that the Board needs to split the General Commercial zones.

Ms. Polk said it sounds like Mr. Granese is asking them to compile a list of commercial applications they would like to see on their property but it is more than that for these landowners. She did not believe General Commercial with only commercial uses will benefit Derry to its greatest potential. That is why she would like to see a mixed use application added in and to have SNHPC do an analysis to see if the suggested change betters Derry. Mr. Granese said he could have Mr. Preece and his staff look at the area and tell the Board what they think. Ms. Polk said commercial water and sewer have not gone all the way to the town line yet; commercial developers are not knocking on the doors of these property owners trying to buy their land. She does not see what the rush is to change the zoning. Mr. Granese said that gets back to what he was saying. If the residents provide a list of what they would like for uses, the Board can look at the uses and say something like mixed use would work well in one area of town but not the other and maybe create a new zone, like they did with GC IV. Then they could ask Mr. Preece to come in and look at the two scenarios and advise if they will work, rather than going forward blind. Ms. Polk said they are not opposed to commercial applications along Route 28 but would like the ability to put residential or mixed use to the rear of the properties.

Dr. Timothy Butterfield, 2 Humphrey Road, thanked the Board for the workshop. The Board has worked hard on these changes. He agrees with Attorney Hollis. There are only a few things the Board can look at and make this all go away and everyone be comfortable. Regarding the history of the area, his lot was changed from residential to commercial. The town looked it and at that time it was spot zoned. He recalled Mr. Sioras felt it should be changed as well. Derry has a tax problem. That is not this Board's fault. He was here when the Sullivan's took the Fairways property out from under the town and developed it. That can't be changed. What the Board has done has been sound thinking to put commercial down Route 28. Ms. Alongi's suggestion was not well met by the Board but it was sound thinking given what the Board wants and taking into consideration the wants of the landowners of large parcels. This needs to be good for both parties. The Board could designate a commercial strip similar to other towns that is 200 feet wide.

Attorney Hollis said the area varies in each town. Not every piece can be "cookie cuttered" up. There may be lots in some towns where a commercial developer would say this lot would be a good site; some lots may need to be deeper. Other properties may have topographical issues that prohibit commercial development, but they could be developed in some fashion that will add taxes to the town. The Board needs to look at the properties and see how they could be developed. Not all residence is net negative. The town has excess school capacity. The costs go up as the student numbers go down. A 200 foot commercial strip is common in other communities. 200 feet in this day, for what the Board wants to see may not be advantageous. The residents are asking the Board to look at the areas, see what would fit on the properties and then see how the line should be drawn. Before it is put into writing, they wanted to have this vision discussion. They agree with the commercial vision. The commercial zone used to be 600 feet and when it was changed, the residential use was retained, but when the town used the lots lines to define the zone, it made the larger lots undevelopable.

Dr. Butterfield he felt Ms. Alongi's proposal was sound. The Town Council wants to further the vision of the Master Plan with a commercial strip. Maybe it will vary per lot or be consistent, but the Board can look at it during another workshop. Ms. Alongi also said that just because

there is a 200 foot minimum does not mean the whole parcel can't be developed commercially. It would give the larger landowners flexibility and the opportunity to realize the highest and best use of their properties. The residents want a nice town. Residential has been discussed as single family residential; in a mixed use overlay, that is not the case. Residential use can also be senior housing. Our community culture is changing and housing should be placed near services people can walk to. That would be included in a mixed use overlay. He feels there is another way to look at this. The housing developments have done a number on our town and our taxes but mixed use does not mean it would be all single family residential. Maybe it is one and two bedroom senior housing. It does not always have to be single family residential.

Mrs. Siragusa said she appreciated the vote at the last meeting. She understands the Board wants to see the commercial in this area. She does not understand why there can't be a mixed use overlay. It works in the downtown, why not here? Why not have a 200 foot commercial strip? They don't want to see major apartment complexes and they don't want restrictions on commercial uses. They want the ability to have residences. Both are now restricted by the General Commercial zone. They had a lease signed with a tenant for auto sales and had to let it go because the changes had been posted. Mr. Sioras explained that once a zoning change has been legally posted, anything that comes in for uses has to comply with the posted changes. Their tenant could not move forward with the auto use since the posted changes did not allow that use. This is not a Derry rule, this is state statute. Mr. Granese said he was not aware of that; he thought that the changes only took effect once Town Council voted to approve the changes. Mrs. Siragusa said this is one of the commercial uses that currently can't go in their space. Mr. Siragusa said from a residential standpoint, he does not envision housing along Route 28, but he would like to put mixed use with a residential component in this zone. Maybe the Board says a certain percentage of any building has to be commercial. There is so much vacant space.

Mr. Granese said he is not against mixed use, but has a fear that some of the larger parcels in the area might develop as a mini-Linlew or Fairways. Mr. Siragusa suggested restricting it so that half of the lot has to be developed commercially. The area now has water and sewer and no opportunity to look at developing the land. The zoning is restrictive. They were taken aback by the public hearing for the General Commercial IV zone. Maybe the town should restrict the parcels and say the first 200 feet has to be commercial or 60% of the parcel has to be commercial. He feels there is a way this could be done. Mrs. Siragusa said that is all they are asking. They understand the need for commercial development, but would like to see a mixed use overlay. Mr. Siragusa recalled they had been told prior that mixed use would be discussed.

Mr. Sioras said three years ago, when the Town Council made the decision to bring water and sewer to this area, they asked staff and the Planning Board to look at the zone. The directive was that the Council did not want to see housing, so that came out of the zone. The Board said it would look at mixed use; that grew into where the Board is tonight. Mr. Siragusa said he spoke with Mr. Sioras multiple times outside of the meetings and asked for mixed use. There are ways to do this by putting in restrictions. Mr. Granese said this is why the Board is having a discussion regarding the vision for this area. The town may need to create a new zone because they don't want spot zoning. Mr. Siragusa indicated this is why they have kept their smaller property. Language could be crafted to prohibit big residential development but allow some mixed use residential development. It may be this area experiences gradual commercial growth.

Mrs. Siragusa said the Board has had commercial business there and now the Board is restricting people who own auto sales or motorcycle sales; they are not allowed to grow or sell their business. If the Board takes auto uses out of the zone, these owners can't expand or sell their businesses. Mr. Chase said the Board had included a provision for that in the last draft. Mrs. Siragusa did not believe that provision was in the last draft.

Jim Smith, 208 Rockingham Road, said he would like to keep his business and would like the Board to allow auto uses in the zone. They would like to continue to keep and expand their business in this area. Mr. Granese admitted he did not previously understand that once the changes were posted, what the effect was. Currently, the landowners can do any use permitted in the General Commercial zone. Mr. Smith requested if the Board moves forward with a General Commercial IV zone, that they don't take auto uses out of the zone.

Mr. Palmer, 91 Warner Hill Road, said he also owns property on Rockingham Road. His great, great, grandparents purchased the land back in 1856. Apparently, he has been breaking the law because of what is defined as agriculture or farming. His career has been farming. His family has farmed this land since 1856, and he has been farming it even after the zone change in 1996. What is farming? Is it vegetables, pigs, raising chickens, or raising forage crops? He would like to see the farming tradition carried on. The Conservation Commission pays to purchase land and he has been saving this land for his family. Now people are telling him what he can do with his property. He taught Agriculture at Alvirne High School for 41 years. Now he is being told he can't do what he did for his job on his own property.

Ms. Polk asked the Board to add agriculture back in as a use in this zone. Mr. Chase noted he is not against farming or agricultural.

Mr. Wolff said the Board and the public may have been on two different pages. The public thought they were here to discuss General Commercial IV and the Board thought it was here to discuss General Commercial. He would like to see trade schools and nursing homes and assisted living as permitted uses as well as automotive. Mr. Fairbanks thought some of those were already permitted uses in the GC zone.

Mrs. Palmer said she has been confused about whether they were taking about General Commercial or GC IV. It appears the Board is not prepared. At the last meeting the Board said this meeting would begin at 7:00 p.m. There has been no preparation for the Board or the public. Mr. Sioras said at the last meeting the Board said it would start over and hold a visioning session; that is why there are no handouts. General Commercial IV is off the table. This is not because they are not prepared; it is because they were starting over with General Commercial. Regarding the legal posting, any new businesses need to comply with what is posted for zoning changes. Mrs. Palmer said at the last meeting, the residents had asked to have this meeting noticed and highly publicized in the papers.

Harland Brown, 205/190 Rockingham Road, is a fifty year resident of the town. He said water and sewer has been brought down Route 28 and that is where they should focus. The parcels beyond the infrastructure expansion may not get that in his lifetime. Mr. Fairbanks noted it is in the Master Plan. Mr. Brown said he owns a parcel with 43 acres and other parcel with 11 acres;

they are located near Ezekial Pond and Promises to Keep. He can see the concerns the Board has. He wants nothing more than to increase the value of his property, but he does not have water and sewer as tools to do that yet. He asked the Board to look at each property individually and see what can be produced for the town and the property owner. He suggested keeping auto uses as a permitted use. Used car lots contribute to the tax rate and serve a purpose. Zoning changes should be done proportionately as the tools permit. Until the infrastructure gets to the town line, he felt they were rushing the change.

Mr. Siragusa thought the Board was starting over. He would like clarification, is that what they are doing? The landowners are spending money and need to know if the Board is starting over or taking what it had and moving forward. Mr. Granese said he would look at the minutes of the last meeting.

Mr. Flattes said he believed the proposed changes had been voted down and the Board decided to come back to workshop. He had wanted to take this to a subcommittee. He thought the Board was supposed to move forward with what it had and make sure what they were proposing was fair to the community and these landowners; it was not to throw out what they had drafted. Mr. Fairbanks stressed the document was voted down and what is legal right now is whatever is currently permitted in the General Commercial zone. Mr. Flattes said he did not feel the Palmer parcel should be included in any of the changes. Mr. Fairbanks asked how hard would it be to get a speaker to come to the Board and explain mixed use. He felt it would be beneficial to have an opportunity to ask questions and provide education to the Board. Mr. O'Connor said the build out analysis completed by SNHPC is in the 2010 Master Plan and that shows the growth down Route 28.

Mr. Wolff asked for further explanation of Mr. O'Connor's earlier statement that there is no exit off Route 93. Mr. O'Connor said Exit 4A is still on the NH DOT plan. Town Council voted to commit its original share of \$5 million. NH DOT will raise the remainder of the funding needed to do the work. He is not sure when it will be constructed, but the exit would come into town in the area of Ash Street/North High and come down Folsom. Originally, it was to be near Mr. Brown's property.

Mr. Granese said he had just reviewed the minutes of the last public hearing. Mr. Flattes had suggested taking this back to subcommittee, but the Board voted to bring the GC IV back to workshop to today's date. GC IV is not off the table. The Board should have had that document to review this evening. The Board has heard from everyone and has taken notes. The suggestions will be added to the last version of the proposed changes and a clean document will be made available for the next workshop and it will be discussed before it goes to public hearing. He is hoping all will be happy with the final draft by the time they get to public hearing.

Mr. Fairbanks asked that an expert in mixed use development make a presentation to the Board and perhaps the Town Council and public to go over the pros and cons of putting mixed use in this area. It would be helpful in making a more informed decision.

The next workshop will be held on February 18, 2015. Mr. Sioras will request Mr. Preece to attend and make a presentation.

Mr. O'Connor suggested having SNHPC look at the corridor and strips of land. He felt a corridor strip, adding a specific width, may land lock some parcels.

Mr. Sioras said the Board should first hear the presentation on mixed use and decide if it wants to move forward with it. The nitty gritty of the work would be after that; that is when the Board would look at perhaps establishing a line. Mr. Fairbanks commented it may be easy to say add mixed use without understanding all the implications.

Mr. Granese said the suggested uses would be added and the document will be placed on the Derry Planning Board webpage in advance of the next workshop.

Motion by Park, seconded by Bartkiewicz to adjourn. The motion passed with all in favor and the meeting stood adjourned at 9:43 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____