

The Town Council for the Town of Derry held a workshop on Tuesday, December 03, 2013, at 8:00 p.m., immediately following the Town Council meeting, at the Derry Municipal Center (3<sup>rd</sup> Floor) located at 14 Manning Street in Derry, New Hampshire. The meeting consisted of members of the Town Council, and representatives from the Planning Board.

Town Council present: Chairman Michael Fairbanks; Bradley Benson, Neil Wetherbee; Albert Dimmock; Mark Osborne; Thomas Cardon

Planning Board present: Jim MacEachern, John O'Connor, Ann Marie Alongi, Jan Choiniere, Lori Davison, Randy Chase, Frank Bartkiewicz and David Granese

Also present: Larry Budreau, Acting Town Administrator, George Sioras, Planning Director; Elizabeth Robidoux, Planning Assistant; Robert Mackey, Code Enforcement Officer; and several members of the public.

Mr. Fairbanks advised the Planning Board (Board) and the Town Council (Council) had come up with topics for discussion. They were combined into the agenda before them this evening. The topics have been divided into three categories: Economic Development, Zoning, and Code Enforcement. He felt the best way to proceed was to take each topic, look for common goals and to develop action items.

#### Economic Development

##### *Vision for Route 28 South*

Mr. Granese explained the Board had changed the zoning and removed single family residential from the General Commercial zone. His own vision for this area of town is to see nice retail and a decline of the "auto mile". There are some good businesses in this area. As you come into town, there is Welcome to Derry sign, the gun shop, the new storage facilities that are being constructed and Rosencrantz. Then there is the auto mile. With the addition of water and sewer to this area, he feels we should be looking at more retail shops with mixed use. The Board is in the process of looking at mixed use in this area, as it had said it would once it was finished with the General Commercial rezoning. The idea would be to have some sort of retail to the front with homes to the back. Mr. Wetherbee asked if the final zoning change included buffers between the automobile uses? Mr. Granese explained the buffers were removed from the final draft; the Board had originally looked at a 1000 foot buffer. Mr. Sioras said the General Commercial zone goes from the Windham town line, there is limited commercial near the Robert Frost Farm, then it change to General Commercial again. Mr. Wetherbee confirmed the automobile buffers had been taken out because of public objection. Mr. Granese said the Board decided if the landowners wanted to compete for business then the buffers could be removed.

Mr. MacEachern felt they should be looking at a long term master plan. If the Council is going to make a commitment to construct water and sewer down Ryan's Hill, then the Council should ask the Board to look at General Commercial zoning again. If the intent is to change the character then they need to put in the infrastructure to draw that type of use. Septic systems and wells will not draw large retail or commercial uses; the town will end up with what it has in that area. If the town puts in the infrastructure, then the Board can be asked to rezone the area. As General Commercial exists, anything can go in the zone. The Board can create a GC B or a GC 28; but this would need to be done as a team. He suggests going back to the Master Plan

and looking at the goals and objectives. If the Council decides not to do water and sewer all the way down Route 28, then the town will get what can be sustained by leach fields and wells. Infrastructure expansion is a costly commitment. What do we want to see as a community and what are we willing to commit for it? If the town wants to change the look and feel of the area, he does not think it is a bad thing to change the zoning so that only five to ten things are allowed. Mr. Fairbanks noted they would want to avoid a situation where the town has invested millions of dollars in improvements and then have something they don't want go into the area. Mr. MacEachern thought the original estimate to bring water and sewer from Berry Road to the Windham town line was around \$10,000,000.00. That total included a water tower and pumping stations. Mrs. Choiniere confirmed the current phase of the project ended at Winter Hill Road. Next year the project will extend down Rockingham Road and south toward Berry Road and will end at the mobile home park. Mr. MacEachern noted the project will also extend north to Humphrey Road. He thought it might be wise to look at the zoning from Humphrey Road to Berry Road.

Mr. Osborne asked if Route 28 has been zoned commercial and the intent is to bring in more commercial, why would the Board entertain mixed use in that area? Mr. Granese said the Board had been asked to look at mixed use in this area. The Board needs to look at the whole town for that and decide if it should be moved forward or not. Mr. Osborne felt if the area allowed mixed use and there are homes in the back with business in the front, it may set up a situation where there are incompatible uses. He acknowledged it is not unusual to have a NIMBY from time to time. Mr. Fairbanks thought people will also not want to be restricted in what they can and cannot do with their property. Mr. Chase believed that mixed use works well when the first floor is retail, the second floor is office and the third floor is residential. The Board has been asked to look at single family residential to the rear of the lots and retail to the front. The Board will do its due diligence and review it. His personal opinion is that it is doomed to fail.

Mr. O'Connor recalled the abutters were concerned when the Board rezoned the Route 28 area. The Board had been asked to look at a mixed use overlay; in order for that to work well, there needs to be a minimum of 30-40 acres of land. Woodmont is an ideal mixed use concept. He can't see how this will work in the Route 28 South area given the floodplain and other land conditions.

**Action item for Route 28 South:** Town Council will come up with a vision for Route 28.

Mr. MacEachern suggested taking a look at the Master Plan surveys. Mr. Fairbanks read the survey results from Section 4.0 of the 2010 Master Plan (Economic Development Chapter) which provided the results of a survey asking residents the level of importance the town should give to economic development and what types of business should exist. Mr. O'Connor said the other thing to look at is the land that is left to develop. Citizens have given guidance and that should be considered.

#### *Vision for the Downtown*

Mr. Fairbanks reported the Council had a lively discussion regarding what they would like to see in the downtown. Mr. Granese said Derry has a great downtown. Derry spent a lot of money moving the utilities underground and installing street lights. It looks great. It looks even better at night when you can't see the overgrown lots, empty storefronts, or the people loitering. He felt they needed to look at ways to attract businesses to the downtown. It is difficult as there are some issues with a few landowners. Businesses leave the downtown because of the cost to lease buildings; it is a shame the people leave. People come forward with projects but don't

move forward with them because of the dilapidated buildings. Derry won't be a Portsmouth or Exeter, but it can be vibrant. There are great businesses in our downtown including the Opera House. There is plenty of parking and it is clean.

Mr. O'Connor said he was a member of the Downtown Committee. The members were frustrated as were business owners. Suggestions were made to the Town Council but the Council was too divided at the time and did not provide direction to the Committee. Good things came from this Committee such as the updated parking study and the Downtown Revitalization Tax Relief Program. The town has a Planning Department, but no Economic Development Department. There is no branding or marketing. There is a regional effort to do that led by Access Greater Manchester (Metro Center). Mr. Sioras explained the Metro Center is attempting to market region so that people from out of state will look at southern New Hampshire. Derry would benefit from growth in that area.

Mr. Chase thought Portsmouth would be a good study, but Derry lacks a waterfront. Derry needs to work with what we have. We have properties that are left because owners do nothing. There is plenty of parking but it is not user friendly; it is dark and people hang out in the parking lots, which is a deterrent. The image is bad. We need to overcome these three things. People need a reason to come here and they need to feel safe. The downtown revitalization effort was lost in the 1980s. Railroad Avenue used to be commercial, now it has apartments. The town needs to get back to what revitalization is. We can look at Portsmouth for that but we don't have a big draw item like a waterfront. Sometimes the draw can be an investment to make the area attractive to people.

Mr. Cardon felt Derry was fortunate to have a downtown. Lack of a "draw" has been an issue for decades. We have the Opera House which could be an anchor. It would be nice to help them out with ways to add venues. There are eight or more vacant storefronts in the downtown. Londonderry has Planning and Economic Development. It makes sense to have them as one unit. Mr. Sioras said that as a Planner, he does not do marketing. The Planning office has tried to make our process business friendly. When he looks at his colleagues, Londonderry had land adjacent to the airport and is off an exit. Woodmont will be on 600 acres of land. Derry does not have that. We have tried to make our process easier, but we need someone to market the town. There are good real estate brokers who bring people to us. The downtown is frustrating. If property owners don't cooperate, we can't get the business here.

Mr. Cardon felt the Chamber of Commerce should be involved more in the downtown. A park in the Sawyer Court area would be a method to bring people to the downtown. Revitalization will be an uphill battle.

Mr. Dimmock stated the ZBA has renewed a variance approval for a business in the downtown several times. This particular business is having a hard time getting the financing to move forward as the bank does not want to lend money to a business located in that particular area. There are certain parts of downtown that need to be improved. He felt Derry needed an ordinance that protects other property owners. Why isn't the town looking at the property maintenance ordinance?

Mr. Fairbanks felt a goal regarding the downtown would be for the Town or Town Council to decide on a vision or to commit to the downtown. Mr. Wetherbee said if the town is going to make a financial commitment, it needs to be clear; he feels the issue has more to do with marketing.

Mr. MacEachern said this is a golden opportunity for the town to tie into the 600 acre project in Londonderry. Derry needs to understand what Londonderry is doing so that we can put the right things in Derry. There are things that could be done that don't cost a lot of money. The town has the ability to use eminent domain. If the downtown is to be improved, the town may need to make some tough decisions. If the town can't take the steps it needs to take, then nothing will happen in the downtown. He noted that in both Portsmouth and Exeter, the main streets are not on the waterfront. They look like downtown Derry. The Planning Board, Town Council and ZBA need to work together. Woodmont will have a dramatic effect on Derry. We need to decide if we want a park or an office building in Sawyer Court. Do we want to have lights for the parking lots and light the access to them? Properties can be taken over by ordinance or domain. The town needs to stand behind its code so that we have solid documentation if we end up in court over a matter. Everything has been laid out, but it will take the courage of this Board to make it happen.

Ms. Alongi agreed a change in focus would be helpful when Woodmont is built. Before the town takes over a property there would need to be warnings, additional fines and ordinances. She sat in a business on Saturday and looked across the street at a dirty, vacant space. Landowners should not be allowed to leave property vacant and untended. Properties need to be maintained and brought up to town standards. She suggested fining people who do not maintain their property.

Mr. Osborne said every day he sees some of the buildings that have been referenced tonight. He does not feel the issue is a lack of political will, but does not believe the town can constitutionally take a property by eminent domain for solely economic development purposes. What are the other tools available? Mr. MacEachern agreed there are other methods. Ms. Alongi felt Derry and Londonderry were at a good location on Route 93. People come off the highway and into Derry to eat at Maryanne's and they should want to stay here.

Mr. Granese inquired as to the property at Sawyer Court. Mr. Cardon explained the town owned three parcels of land that were adjacent to each other. Mr. Fairbanks noted the Town Administrator will have a goal regarding development in the downtown. Mr. Benson recalled that an RFP had been developed about a year ago, but nothing has been done with it. He suggested putting that out and seeing what someone might want to do with the property. He felt the town should market the properties.

Mr. Fairbanks commented that is one of the issues on the Council's list of items to discuss. They need to decide what they want to do in the downtown. Mr. MacEachern felt those particular properties could be a corner piece. Mr. Osborne asked how the RFP worked? Mr. Fairbanks explained the town could put out an RFP looking for developers to develop the property and they would respond with a development plan. But first, the Council needs to decide if they want to market the properties or not. Mr. Wetherbee said the Council needs to decide if the land should be kept as a park or put it on the tax rolls. If the decision is to put it on the tax rolls, then how do they do that? Mr. Fairbanks said he would put this issue on the agenda for discussion in January. Mr. Wetherbee recalled the town purchased those properties because it was felt there was benefit to controlling those parcels of land. Mr. MacEachern suggested that before the RFP is sent out, it would be prudent to look at the zoning and make sure what is allowed is what is wanted in the downtown. If it is marketed now, the town will get whatever is allowed in that zone currently. If that fits the vision, then that is okay. Mr. Osborne asked if there was anything in the zoning that causes concern? Mr. MacEachern said it had been a while since he looked at the zoning there. Mr. Wetherbee commented there is still elderly housing in that zone. Mr. MacEachern felt the town needed to have the courage to say it does

not want that type of use in the area anymore. Mr. Osborne commented when he drives through the downtown, he sees things on the second floors you might not want to see if you were sitting in a business on the first floor. He sees a lot of apartments that might not be consistent with the vision for the downtown.

Mr. Dimmock commented that if the town considers selling Sawyer Court, it needs to think about what is around it. The Halcyon Club is there and a parking lot. Kids vandalize the area and that is vandalism that would happen to a town park that the town can't afford. He agrees with Mr. Benson that it would be best to sell the land. Mr. Fairbanks suggested holding a Council workshop to see what the Council wants to do with the property. Mr. Dimmock said he would like the Planning Board to attend that workshop.

Mr. Granese reviewed the list of permitted uses allowed in the downtown, which are found in the Zoning Ordinance under Section 165-33, Central Business District. He stated the Planning Board will hold a workshop to review the list of permitted uses. Mrs. Robidoux will email a copy of that section of the ordinance to the Council.

#### **Action Items for the downtown:**

- Work with Londonderry to see how their project can benefit Derry
- Blight Ordinance – see how the town can deal with out of state property owners
- Town Council workshop re Abbott Court/Sawyer Court
- Review the zoning in the downtown
- Look at zoning on the Londonderry town line and see how Woodmont will affect us.

#### *Town owned property*

Mr. Fairbanks suggested looking at the inventory and holding a public hearing on the disposition of the town owned properties sooner rather than later. Mr. Budreau said the list of properties will be completed by mid-January. Mr. Wetherbee noted there is already a process in place. The town does not just take properties and sit on them. The list of properties is evaluated annually. Mr. Fairbanks added that the list is reviewed and periodically a determination is made to sell some of the properties. Mr. Benson did not believe there were a lot of them. The DiFeo lot is likely the largest issue. Most of the time, the properties are sold unless there is a complication. Mr. Cardon said he had an unofficial list that contained about 150 properties. Many are vacant and about an acre or half acre in size.

**Action item for town owned property:** The Council will get a list and decided what to do with them. Some of them are conservation lands.

#### Zoning

*Review targeted present and future development areas: Council/Board relationship; proactive vs. reactive zoning changes; proposed zoning or rezoning in the future*

Mr. Granese said a goal of the Planning Board is to look at all the zones in town and the definitions. There are some zones that contain generic definitions. The Board will look at specific definitions for each zone. It used to be that the Council got a synopsis of the Planning

Board meetings the day after the meeting. Currently the Council is just getting a copy of the draft minutes (which several Councilors noted were voluminous). That practice will be reinstated so that the Council is immediately aware of what was discussed and what the Board is working on. Mr. Wetherbee noted he did not know how long the process was to rezone an area. Mr. Granese said the Board has taken different zones and revised them. Mr. Wetherbee noted the TIF zone was created and it may be that it has not been thoroughly looked at with regard to what can and cannot be permitted in those zones. Mr. Granese explained when a rezoning request comes in to the Planning Board, the Board holds multiple workshops. The workshops are televised for contentious issues. In any event, the proceedings are all on record. The public is allowed to speak. If the Board elects to move forward with the change, then it holds a public hearing and then moves the matter on to Council. Mr. Wetherbee asked if the Board typically encountered resistance to zoning changes? Mr. Granese said occasionally. The last request the Board heard was a request to rezone two properties on the ByPass. The request came from someone other than the owner of the property, which is allowed. The owner did not want the change. In that particular case, the Board opted not to move forward with the request and he has been informed there has been some resistance to that decision. The rezoning in the area of the Robert Frost Farm started out as contentious, but the Board took in all of the input from the abutters and at the end, everyone was pleased. The Board tries to do the best thing for all of Derry.

Mr. Chase noted sometimes the Board ends up doing reactive zoning. The buffer zone in the CBD has been an ongoing issue the Board has yet to address. There is a 15' buffer requirement in a zone that has a 5' setback. The Board has been trying to work on that for two years. Sometimes the town gets things that are unintended consequences and then they need to address it. The Board tries to look at what it has and tries to make sure there are no conflicts elsewhere. The ZBA will sometimes bring things to the attention of the Board if it gets a lot of similar variance applications. The Board tries to be proactive, but there will always be reactionary zoning. Mr. Wetherbee agreed there will always be something the Board never expected. It sounds like the Board is doing a good job. Mr. Granese asked if there is anything the Councilors think the Board needs to look at, they just need to let them know. Mr. Fairbanks felt that was a two way street. Mr. Wetherbee said he wanted to make sure there is good communication between the Council and Board so that there are no surprises at the end of a process.

#### *Sign Ordinance*

The sign ordinance revisions have been through the Planning Board process and will be before the Town Council for review in January.

Regarding proposed or potential rezoning changes, Mr. Granese stated one of the goals for next year is to look at the industrial and commercial zones. The Board will revisit those in a workshop review the allowed uses and definitions. The attorney normally reviews proposed changes before the Board takes the changes to public hearing. Mr. Osborne asked where the Board gets the definitions. Do they come from other town's ordinances or the dictionary? Mr. Granese said the Board looks at other towns and then reviews proposed definitions as a Board. Then the definitions are sent to the attorney. Mr. Fairbanks suggested the Board look at entrepreneurial changes as well. There are occupations or other things that may not have existed 10 years ago that should be included or considered. Mr. Granese noted that the Ordinance still allows horse shoeing in the downtown.

Mr. Granese asked is there any area of town the Council would like the Board to review for rezoning? Mr. Wetherbee would like to see the uses allowed in the TIF district reviewed. Mr. Fairbanks would like the Board to review uses allowed on land that abuts Londonderry or the proposed Exit 4A corridor; he understands a majority of the current use is residential. Mr. O'Connor noted Londonderry has considerable acreage that abuts Ash Street. Mr. Dimmock shared a pet peeve he has with relation to the sign ordinance. He related an issue that had arisen over a seasonal sign. The property was sold but the prior owner had an agreement to be able to put his sign up after the sale of the property. The sign was down for a year. The prior land owner decided to rejuvenate the sign but was told by Code Enforcement he could not. The town attorney said it was illegal to put the sign up since a year had passed. Mr. Dimmock felt the town could put all the ordinances in the world into effect, but until Mr. Mackey is given some teeth to enforce them, they are a waste of time.

**Action items under zoning:**

- Planning Board will hold workshops to review the list of permitted uses and definitions in the following zones: Central Business District; TIF (IND III, IND IV)

**Code Enforcement***Blight Ordinance/Property Maintenance Ordinance*

Mr. Granese asked if there were any ordinances of this type in place? Mr. Mackey said the Fire Chief has a draft of a proposed Blight Ordinance that could be reviewed. The town can use the International Property Maintenance Code, which has been adopted by reference by the town. This is not a "blight" ordinance to use for tenant/landlord issues. It does address the basic upkeep of the property. It could be used for the downtown. But when does a building become "blighted" by definition? Just because a building is vacant does not mean it is blighted. This ordinance allows the town to determine the height of grass, etc. All around town there are vacant homes and he has used this code as a backup when the town wanted to require upkeep of a property. They can look at a blight ordinance or make the International Property Maintenance Code more particular to Derry. Everyone looks at Broadway Pet as an example of what is felt to be a blighted property. The building has been sided, the broken window repaired and the town can ask to have the sign taken down. The issue is when is the building "blighted". It is not blighted if it receives even minimal maintenance. Mr. Fairbanks asked how can this be pushed along? Mr. Mackey said he can get a copy of the draft Blight Ordinance to the Town Council and Planning Board.

Mr. Cardon asked what can be done to give Mr. Mackey's office more teeth? Mr. Mackey said there are fines and penalties, and there are provisions in the Zoning Ordinance that he can use. Mr. Fairbanks noted one of the items to discuss tonight is how to give Mr. Mackey more enforcement power. Is enforcement defined? Mr. Mackey said it is in the Zoning Ordinance. Regarding the sign issue mentioned by Mr. Dimmock, legally, the town had no evidence to show when the sign went up and down, so they could not enforce it. Mr. Granese spoke with regard to the blight ordinance. He felt the town needed something that allows the town to enter a building to determine if it is still structurally sound. Is there something in the draft ordinance that would cover that? Mr. Mackey said it gives the town the power to condemn a building. If the town suspected a building was that bad, it could seek an Administrative Warrant to enter the building. The Fire Department has some authority under the fire codes. Mr. Granese said he would not want the town to be in a situation where part of a building fell down and injured

someone. He thought there should be a way to go in and verify a building is non-hazardous to the public. Mr. Wetherbee agreed there may be structural issues in some buildings and the town needed a way to go in and look at the building and make sure it is not a hazard. Mr. Fairbanks noted the town can't force landowners to raise or lower the rents for their buildings.

Mr. MacEachern said there are multiple floors in buildings in the downtown that are condemned. If the town had a condemnation ordinance in place and if a certain percentage of a building is condemned, that would be a firm but fair way to deal with the issue. For example, if 66% of a building is condemned, then it has to be fixed or the owner has to take it down because it is a health and safety hazard. That is something the town could act on. There may be a building with health and safety issues in the downtown. What are the tools in place to correct the problem? He recalled the renovation of the Benjamin Chase Mill to condominiums. At one point, the town discussed condemning the building but someone came in with a vision and redeveloped them. Mr. Wetherbee asked what have other towns done? It must be common to have dilapidated buildings in the downtown. Mr. Mackey said he can check with other towns; he agreed it is a common problem.

Mr. Wetherbee asked with regard to enforcement actions. He knew enforcing the ordinances can cost the town money. Mr. Mackey said he spends more than half of his time on code enforcement and zoning. His office takes care of zoning enforcement, building inspections, plan review, and code enforcement. With any zoning infractions, for example unregistered vehicles, he sends a notice of violation, giving the person a number of days to address the violation. Then they go out and re-inspect. If the person has still not complied, a second letter is sent with a copy sent to legal, threatening legal action if there is no compliance. If that does not solve the problem, then the attorney will send a letter. In most cases, people will comply with his department. The attorney sends a letter as a last step before the person is taken to court. They ask the Superior Court to fine the person and award the town attorney fees. The town ends up spending more money on the attorney to recoup the fine than the town would get for the fine. Code Enforcement is not a money maker. Mr. Wetherbee thought most people would not be able to pay the fines or fees.

Mr. Fairbanks suggested if the town is going to attempt to enforce blight, it may need to invest to get the blight taken care of. Mr. Wetherbee said this is a recurring theme. This all costs money. Mr. Mackey noted his department consists of himself and one part time person to do all that needs to be done. When he started with the town, there were three full time people doing what one and half do today. Mr. MacEachern wondered if the town starts fining people, it is conceivable that someone can't pay the fines; would the town then be able to take over the building? Mr. Mackey said a lien could be placed on a property and the town can hope to get it recouped at some point once the property is sold. Mr. MacEachern said the town should be willing to explore all the options. Mr. Osborne thought it would take time to pass a strong ordinance. Is it time for government to discuss full time legal counsel? The Police Department has 2 full time prosecutors. He confirmed that code enforcement involves civil action. He said it was hard to take that the town is losing double or triple what it is trying to collect. They need to discuss how they will enforce the ordinances. Maybe that means hiring a full time legal counsel. They should at least discuss it. They all want ordinances, but they need to be enforced.

Mr. Wetherbee suggested starting with boots on the ground. How many cases go to legal counsel? Would there be enough to keep a full time person busy? Another person in Code would help chase down the issues more quickly. That takes Town Council action. Council had eliminated a position a few years ago. It may be time to reevaluate. Mr. Mackey said he could keep a full time person busy with code enforcement issues. Mr. Osborne agreed with what

everyone was saying. If the town gets many boots on the ground, they will be spending a lot of money on legal fees.

Mr. Dimmock discussed the impact of liens on property to future landowners. He did not feel liens were good if someone does not want to sell the property. Mr. Benson stated liens allow some rights and can force a sale of a property. Mr. Dimmock noted that leads to increased legal fees.

Mr. Wetherbee advised he has heard that the Town of Derry's process is a model for other communities. He has heard this many times. People like doing business in Derry. Mr. Granese felt this evening was a good opportunity and the Council and Board should do this more often. He asked the Council to let the Board know if there is something they should look at. The Board will keep Council in the loop as to what they are working on. Mr. Wetherbee said this meeting is mandated to occur annually, but he did not think they had to be held to that; they could meet more often. Mr. Fairbanks felt that if all do as has been discussed, they will all need to meet more regularly.

**Action items for Code Enforcement:**

- Provide copy of draft Blight Ordinance to Council and Planning Board
- Investigate feasibility of hiring staff for code enforcement
- Investigate feasibility of hiring full time legal counsel for land use issues

There was no further discussion and the workshop ended at 9:50 p.m.

Prepared by Elizabeth Robidoux, Planning Assistant