

# HAMPSTEAD PLANNING BOARD

11 Main Street Hampstead New Hampshire 03841-2033

## Minutes 5 November 2012

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Chairman Randy Clark opened the meeting at 7:00 PM. Members present included Randy Clark, Proctor Wentworth, Paul Carideo, Neil Emerson, Bill Weber, Dean Howard and Priscilla Lindquist, Ex-officio voting member. Nick Cricenti, PE, SFC Engineering and Planning Board Secretary Susan Hastings attended. The signed list of persons attending is part of the record. Attendees included Bruce Worthen, David Rayment, Mark Gross, Richard Towne, Chris Holmes, Phil Towne, Julia Forbes, Karyn Ashress, Jeanne Murphy, Scott Hogan, Emily Rees, Janet Rabideau, Lauren Becker, Virginia Clark, Elizabeth Monteforte, Alexander I. Monteforte, Neil Balk, Michael Murphy, Kirk Bradford, Chad Bennett, Erin Bennett, Molly E. Allen, Suzanne Zakian, Patricia Huntington, Ross Huntington, Keith Stilling, Clare Stilling, Rosemary Kozdra, Joseph Kozdra, Joanne VanderSande, Margaret Gove, Jason Kimbell, Wayne Gove, Sharon Towne, Ryan Erherdt, Alicia Phillips, Michael Higgins, Anne Higgins, Priscilla Carr, Edward Barken, David Milz, Karen Yasenka, Penny Williams, Kathy Baget, Timothy Neale, Cynthia Neale, Judith Weber, John Kelley, Gene Handel, Kim M. Fabrizio, Barbara Gallant, Anthony Fabrizio, Robert Schuler, Margaret Mitchell, and William Mitchell.

### 1<sup>ST</sup> PUBLIC HEARING

#### **01-018 Depot Crossing Site, Rt. 121 & Derry Rd** Continued from 10/15/2012

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Chairman Randy Clark opened the continued Public Hearing for Depot Crossing. The Chairman had a few issues he wanted to make clear from the last meeting.

The Board was asked if the Town of Derry had been notified. The records show a certified letter sent, in July, to the Derry Town Planner, George Sirois. Their office was contacted and the discussion with the Town Planner was neither he nor the Town of Derry had concerns with the Depot Development proposal as shown on the plan provided. A copy is in the records.

The Board was asked if the plan had a regional impact. The 2001 plan of a two-story building with 6-7 units, of approximately 6,000 square feet, did not meet the criteria. The 2012 submittal has four units on one floor with approximately 4,800 square feet. The proposed gas station, convenience store, restaurant with take-out and a 1000 square foot office space, a smaller scale plan, was not submitted for a regional impact review. The single story proposal is not expected to create as much traffic.

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### 1<sup>ST</sup> PUBLIC HEARING

#### **01-018 Depot Crossing Site, Rt. 121 & Derry Rd** Continued from page 1.

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Abutters were concerned the traffic count was not accurate because Depot Road was closed to local truck traffic at the time. R. Clark contacted J. Worthen, Road Agent, and Jon said the road was not closed to truck traffic in 2011 because of the mild winter weather. The new traffic count shows similar volumes to 2001. The abutters were also concerned about the school busses and asked if they were counted. They were assured all busses were counted.

Chairman Clark met with the Code Enforcement Officer, Kristopher Emerson for clarification of a "failed intersection". Mr. Emerson was sure he had not described the intersection as failed. He said the "F" determination is a poor rating for the roadways; however, it was only applied to specific roads at certain times of the day on particular days.

R. Clark said the CEO did have three specific issues with the Ordway Park gravel parking lot. First, it is on the north side of Depot Road opposite Ordway Park. People parking there to go to Ordway Park have to cross Depot Road. Second, east traveling traffic may not see people crossing Depot Road due to the westbound traffic stopped at the traffic sign there. Third, K. Emerson said the gravel parking lot would be subject to water runoff and erosion into the traffic lane. R. Clark noted there is evidence of this erosion occurring.

Chairman Clark met with Joe Beaudoin, Police Chief, to go over the accident data reported at the intersection. The Chief assured him he had checked and double-checked the accident figures. The figures show 2004, 7 accidents; 2005, 6; 2006, 5; 2007, 4; 2008, 4; 2009, 4; 2010, 7; 2011, 6 for an average of 4.67 per year. For 2012, the reports show 3 to date 10/21/2012. The Chief explained the trouble with getting the figures is due to the old records being difficult to read and decipher. There are five different descriptions of the intersection in the two data bases used such as the Four Corners, Depot and Route 121, Route 121 and Derry Road, Route 121 at Ordway Park or Depot Road at Ordway Park. J. Beaudoin said there was even one accident that came in as Route 121. Reports are only for listed road and not all accidents are reported.

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### 1<sup>ST</sup> PUBLIC HEARING

#### **01-018 Depot Crossing Site, Rt. 121 & Derry Rd** Continued from page 2.

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The parcel is in the C-1 Zone and has been since the inception of the original comprehensive zoning regulations adopted in 1968. The C-1 Zone allows gasoline stations. This lot, 1-18, surrounds a second commercial lot with two buildings. One building is used as a lawyer's office and the other is vacant. No variances or special exception is needed for Depot Crossing.

The overall design is that of an old train station, or depot. The building covers 2.8% of the usable land. The hours of operation shown on the plan are 5:00 AM to 11:00 PM. Deliveries are scheduled for off peak hours, generally between 2:00 PM to 5:00 PM. There will be no trash or snow removal before 7:00 AM or later than 5:00 PM.

The Department of Transportation has issued the driveway permits, one for Derry Road and one for Route 121. The approvals do not require or recommend any changes to the roads or streets.

The Planning Board was updated on the Department of Environmental Services status. The sub-surface permit is approved but will not be issued until the well is drilled and the water quality and quantity approved.

Randy Clark had checked the Town census statistics and U. S. Census figures. For the year 2000, the Hampstead population was 8297; for 2010, a population of 9022 showed an increase of 725 persons or a growth rate of 8% over the ten years. The new traffic study shows similar volumes at the intersection as 10 years ago.

R. Clark said his understanding of the Deering vs Tibbets case is it does not seem to apply to Hampstead. We have Zoning intended to "protect public health, safety and general welfare". Deering did not have a Planning Board. This ruling applied to Towns that do not have a Planning Board such as Deering.

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### 1<sup>ST</sup> PUBLIC HEARING

#### **01-018 Depot Crossing Site, Rt. 121 & Derry Rd** Continued from page 3.

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The question of “material difference” was brought up. R. Clark said his understanding was “material difference” applies to a Board of Adjustment or Zoning Board. He is unaware of any law or case law applying it to a Planning Board. The Planning Board did consider the reduction in the building size, the traffic reduction, and deletion of the second story office space.

Attorney Hogan questioned R. Clark’s opinion noting the cases of Fisher vs Dover and Brant Development vs Somersworth. S. Hogan said the finding was consistent to Zoning Boards. He said the 2011 Fisher standard applies to second applications where the circumstances apply or conditions of administrative relief. There is not a case from court yet on planning boards so you apply the appellate decision. Mr. Clark said in Boise vs Manchester the applicant had different enough circumstances to allow “material difference” as a common language use and it was relevant to the application.

Attorney Hogan said one of the abutters had brought to his attention a conversation on the DVD of the Planning Board meeting. He presented a letter, **Attachment # 1**, citing RSA 673.14 on the recusal of Board Members. Comments between Proctor Wentworth to Dean Howard “I’m glad you weren’t here in 2001 to listen to this...same old crap that went ten years ago.” D. Howard “Oh yeah”; P. Wentworth “Yeah.” Priscilla Lindquist to P. Wentworth and D. Howard “Nothing’s changed.” P. Wentworth to P. Lindquist “No, other than the style of the building.” S. Hogan said Mr. Wentworth should recuse himself from the Board since every Board member is held to the standard of sitting as a juror and there be no pre-judgment by a Board member. P. Wentworth said the statement made was about people who come and speak and letters, which do not have anything to do with the plan. The land has been commercial since the beginning. S. Hogan said the problem is the business not the commercial land. P. Wentworth said he understood the issues and he might prejudge people but not the plan.

Attorney Hogan said the application is the same and the Board had to address 4 separate bases for denial of the original application, which was structure size, nature of the business, diminished property values and detrimental effects to the area and Town in general. He further said the abutters and neighbors commissioned a review of the applicants Traffic Study and the discrepancies noted had to be addressed.

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#### **01-018 Depot Crossing Site, Rt. 121 & Derry Rd** Continued from page 4.

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The Board was presented a Transportation Engineering Peer Review done by GPI Greenman-Pederson, Inc. **Attachment #2.** The letter addressed Existing Traffic Volume: requesting additional 24-hour directional counts, seasonal adjustments and pedestrian and bicycle counts. Crash History: a collision occurrence compared to traffic volume to determine relative safety of the intersection in relation to other intersections. No Build Traffic Volumes: suggested Hampstead/Sandown/Derry verify no planned substantial developments. Site Generated Traffic: no trip-generated calculations were done. Trip Distribution: agreed site trips evaluation done by *Traffic impact and Access Study* reasonable and consistent. Site Distance Evaluation: suggested a speed study and confirmation of the type of field measurement done. Nick Cricenti commented on the GPI Peer Review: the school information was not correct, pedestrian and day care information was not current. He further stated this was not a “traffic study” but a general review of Stephen Pernaw’s traffic study.

David Raymend, legal counsel representing Depot Development, spoke saying he considered the issue of member disqualification was handled properly and the non-disqualification was proper. Material difference applies only to a Board of Adjustment deciding on a variance or special exception. The Planning Board met its regulations. When considering 2002 Superior Court case, the decision only applied to that application and he would argue this point in Superior Court.

Stephen Pernaw advised the Board the “traffic letter” was not a traffic study. He emphasized the TIAS were done to engineering practices for a real traffic study. Mr. Hogan is not a traffic engineer. Chairman Clark asked Board members if they had any questions and there were none.

Mark Gross, MHF Design Consultants, said the Office of State Planning shows a net population migration out of state. The count for 8/2009 to 9/2010 showed 2300 persons migrated out of state. Bill Weber countered saying that might be true state-wide, but there are some pockets showing an increase. M. Gross added that the new Route 111 connector, in Salem, to 93 has taken some traffic that way. Mark read his letter detailing the site plan changes into the record: the current plan has three retail uses with 4837 square feet compared to the two story building which had 6400 square feet; a decrease of 33 percent. The building volume is reduced by 50 percent as well as the building height.

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#### **01-018 Depot Crossing Site, Rt. 121 & Derry Rd** Continued from page 5.

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The architectural design has been changed to a railroad depot design to be more in harmony with the surrounding neighborhood. The existing traffic flow is lower based on automatic traffic recorder counts supplied by NHDOT, comparing 1999 to 2010 counts. The size and scope of the project reduces the amount of traffic projected to travel to the site. The number of parking spaces and associated access aisles are less, meaning less pavement thus reducing the amount of runoff from the site. Mr. Gross pointed out inconsistencies with the GPI letter presented. The Pernaw traffic study details peak AM and PM traffic counts on page 6. Bike and pedestrians were noted in the study count. The possibility of a school in the area is no longer viable. Addressing methodology, the ITE numbers used were from Dunkin Donuts as a standard traffic count and were accepted by the NHDOT. Mr. Pernaw said the NHDOT set the study limits at the SCOPE meeting. The Traffic Director accepted the numbers and the methodology. The driveway permits have been issued meaning the traffic study for the four directions of travel at the intersection are accepted. Trip generation is based on the capture rated. Steve Pernaw added since-GPI is out of Massachusetts Mr. Plourde may not be aware of the New Hampshire standards.

Randy Clark said the Department of Transportation has issued the permits for the driveways. There are no changes to the travel lanes at the intersection. Mark Gross said the state stop sign on the Derry Road as you drive east is a good distance from the intersection and is against a telephone pole. The developer intends to ask the state for permission to locate the stop sign closer to the intersection.

Bill Weber addressed the 2002 plan saying the square footage of the three high volume businesses have all increased in size on this submittal, and the office is larger. Mark Gross said they cannot omit the upstairs to the one story building.

Chairman Clark said he would like to summarize. The C-1 zone for the lot allows gasoline pumps and station. The remaining area of the four-acre lot surrounds a second commercial lot which has a lawyer's office in one building and another empty building. The proposed building is a single story designed like a train depot and is 3 percent smaller than the 2001 structure. Delivery vehicles will be allowed between 2:00 and 5:00 PM. Trash pickup will not be before 7:00 AM and no later than 7:00 PM.

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### 1<sup>ST</sup> PUBLIC HEARING

#### **01-018 Depot Crossing Site, Rt. 121 & Derry Rd** Continued from page 6.

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The DOT permits are issued and no road changes are required. The neighbors have concerns with public safety noting the "f" rating of the intersection by the DOT. Other issues are gasoline tank failure, a loss of property valuation and the general welfare of the area. They are requesting a denial of the site plan for Depot Crossing. The Town sees opportunity for jobs and tax revenue. The lowering of property values because of the C-1, has been considered in the current assessments. The structure may expand by 1200 square feet without coming back to the Planning Board. (Town regulations allow a small addition "1200 square feet" to be permitted by the Building Official.) Buffers are provided for in the Zoning and Subdivision Regulations. Randy Clark asked Board members if they had any questions or comments. There were none.

Attorney Hogan responded to Mr. Gross' presentation saying the state level has no relevance to this proposal. The Route 111 by pass is new. He does not consider the gasoline station/convenience store and the larger square footage as material changes. Randy Clark noted the second floor has been eliminated. S. Hogan said Mr. Pernaw told the Board in 2002 the retail businesses would have a minimal traffic impact. Scott said the increase of the square footage of the building and three magnet stores would increase the traffic. He added that Mr. Plourde also works in New Hampshire. His final argument was the site plan has already been litigated once. R. Clark said the building is now a single story. Mr. Hogan said the Board had been told by 3 realtors the property value would be affected. He said there is a lack of buffers to the neighbors. R. Clark said the lack of a second floor would reduce traffic volume. M. Gross added the elimination the of office space results in less trips to the site. S. Hogan questioned the impact of retail space. R. Clark said that had been accounted for. Attorney Hogan asked how the Board could allow a 1200 square foot addition without Planning Board approval.

David Mills said he was a former state representative and planning board member from Derry. He said the Derry Planning Board and the Derry Councilors had not been advised of the proposed Depot Crossing. Randy Clark said the Derry Planning Director, George Sirois, was notified by certified mail. He said they had no issues with the Depot Crossing site. When asked about the well, he said the applicant would have to get a permit. Mr. Mills said the Planning Board and Council were not aware of the proposal.

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#### **01-018 Depot Crossing Site, Rt. 121 & Derry Rd** Continued from page 7.

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Emily Rees, East Hampstead expressed concerns with safety especially with young drivers. She presented a petition with 250 signatures of persons against Depot Crossing. E. Rees said a group operated a Snack Shack at Depot Road Fields and they were concerned it would cut into their profits, which are used for the sports programs. All correspondence and the petition are part of the record.

Stephen Pernaw asked to answer the letter presented by Scott Hogan. He said the existing traffic volume is not directional. This was addressed at the SCOPE meeting and agreed to. The State did not require additional information. The manual count did not find any measurable difference with the recreational traffic. The raw data was shown and included date and time. There is a summary of the manual count. Pages three and four detail the seasonal adjustments. There were no adjustments made to figure 2. Pedestrian and bicycle was not done. The counters did observe minimal activity. The crash history compilation had a crash rate of ".06 per million vehicles," and this was not used. The crash history uses actual records, which showed a downward trend as expected. Mr. Pernaw said the vegetation on the north side of the Derry Road seemed to be a hazard factor in an accident resulting in no personal injury. He read the reasons for the accidents and the conclusion was driver error and not a problem with the intersection. The SCOPE committee used a 1 percent growth rate for the area. DOT agreed the trip distance was reasonable. The stopping distances and site distances rated excellent. There would be no property devaluation, Neil Emerson asked Nick Cricenti what his opinions were. He said most of the comments were settled at the Department of Transportation SCOPE meeting.

Chairman Clark reviewed the discussions. The previous plan and this plan have the same C-1 zone, the second floor has been eliminated, and traffic changes are minimal according to Stephen Pernaw's traffic study. Mr. Pernaw said the traffic changes are minimal. Randy noted the peak traffic according to the DOT is 600 vehicles per hour or one additional vehicle each half hour. He asked the Board for comment and there was none.

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### 1<sup>ST</sup> PUBLIC HEARING

**01-018 Depot Crossing Site, Rt. 121 & Derry Rd** Continued from page 8.

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Chairman Clark invited members of the audience to comment.

Attorney Hogan said the well that will serve the site poses concerns to the Derry Representative. Two hundred and fifty residents signed a petition addressing a number of issues on safety. R. Clark said it will be considered and is part of the record. S. Hogan discussed the crash history. The DOT does not see it as a high crash location. Mr. Pernaw said they use a best method, which considers five relative points. R. Clark added the Department of Transportation does not consider the history of the intersection. N. Emerson said the notification was sent to Derry and the man from Derry was representing his personal views.

Attorney Dave Rayment said the letter was sent and the Derry board member did not say he was speaking in his capacity as a representative. The Department of Transportation has jurisdiction over the state roads. He pointed out the C-1 use is allowed. There may be more traffic and more people. D. Rayment asked if there had been any attempt by the abutters or others to change the C-1 zone to Residential. Randy Clark said there had been two attempts and both failed.

Randy Clark asked for new information.

Ed Barker said the plan had a large footprint and asked how there could be less traffic. He asked why there were not less gasoline pumps and why not a smaller Dunkin Donuts adding there are more options to the size and scope. R. Clark said it was the landowners plan, it meets the zoning and he does have rights. E. Barker said it could fit better into the community.

R. Clark asked the Board if they felt there was a need for more conversation with the Derry Planning Board. P. Carideo said the regulations were met and the applicant and the Board had fulfilled the requirements.

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### 1<sup>ST</sup> PUBLIC HEARING

#### **01-018 Depot Crossing Site, Rt. 121 & Derry Rd** Continued from page 9.

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Julia Forbes presented the Board with photos of Ordway Park taken by Carl Murphy. She said they showed the character of the neighborhood. She reiterated her concerns with Depot Crossing and presented the Board with a letter and Trustee of Trust Funds documents, which are part of the record. An early planning board member had described the C-1 zone in west Hampstead as "ridiculous". J. Forbes said the back of the building faces Derry Road which, is a violation of the zoning.

R. Clark said the lot is a corner and this is allowed by definition. Nick Cricenti pointed out under the C-1 zone, 3-41:1 a service area is defined to include parking spaces. J. Forbes asked about the queue line and Nick said that is not parking.

Attorney Hogan reiterated the Planning Board's reasons for denial in 2001 and the Court upholding that decision which preserved the rural area.

Randy Clark reminded Attorney Hogan the Judge had only ruled on the traffic issue. Randy added this is a different board and a different application. "Material difference" does not exist for planning boards. Nick said there is not case law.

Chairman Clark asked for further comments from the Board. There being none he asked for a motion.

Ginny Clark asked Dean Howard if there were any complaints to the Highway Safety Committee. He answered none he could remember. Ms. Clark described her interest in Hampstead and her concerns with Depot Crossing. Randy Clark reminded her, the Town had voted twice not to change the C-1 zone to Residential.

Joe Decosta said he did not find the hours of operation appropriate for a residential neighborhood and it would affect their quality of life.

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### 1<sup>ST</sup> PUBLIC HEARING

**01-018 Depot Crossing Site, Rt. 121 & Derry Rd** Continued from page 10.

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#### MOTION

The Chairman called for a motion. Proctor Wentworth moved to grant a conditional approval to Depot Crossing Site, map 1 parcel 18 subject to the well certification being received, the septic approval receipt, and other normal conditions. Neil Emerson seconded the motion. Bill Weber said there was a material difference, the scale and scope were not the same, the traffic increase was greater than one percent and there was an adverse effect on the residents. Paul Carideo requested a note be added to the plan to address the 1200 square foot addition or less, not needing Planning Board approval. A stipulation on this plan is any enlargement or change to this accepted plan would have to come back to the Planning Board for review. This is to include the provision for 1200 square feet addition. Proctor Wentworth said he accepted the amendment and Neil Emerson said he would accept the change. Priscilla Lindquist pointed out the State of New Hampshire is not considering an update to the intersection until 2026. **VOTE YES Proctor Wentworth, Neil Emerson, Paul Carideo, Dean Howard; VOTE NO Priscilla Lindquist, Bill Weber; ABSTAIN Randy Clark. Conditional approval granted to Depot Crossing Site 01-018.**

Neil Emerson said the use is allowed in the C-1 Zone and the plan meets all the requirements.

### BOARD BUSINESS

#### Minutes

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The minutes of the 15 October 2012 meeting were edited as follows: Page 1, Paragraph 1, Line 2, add "Bill Weber"; Page 3, Paragraph 2, Line 3 change "premises' " to "premises"; Page 6, Paragraph 1, Line 3, change "and" to "an"; Line 4 change "Derry" to "Deering"; change "verses" to "vs"; Page 7, Paragraph 2, Line 1 change "Jack" to "Chad"; Page 8, Paragraph 5, Line 3, change "Town" to "town"; Page 9, Paragraph 4, Line 3 change "is" to "are".

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### BOARD BUSINESS

**Minutes** Continued from page 11.

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#### MOTION

Proctor Wentworth made a motion to approve the minutes of 15 October 2012 as amended. Neil Emerson seconded the motion and it was approved. VOTE YES: Proctor Wentworth, Paul Carideo, Neil Emerson, Priscilla Lindquist, Bill Weber, and Dean Howard. ABSTAIN: Randy Clark.

### Adjourn

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The Chairman declared the meeting adjourned at 8:50 PM, "without objection".

Respectfully submitted,

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Susan Hastings