

**DOVER PLANNING BOARD
MINUTES OF MEETING
FEBRUARY 14, 2006**

MEMBERS PRESENT: Ron Cole, Donald Andolina, Frank Torr, Anthony McManus, Perry Plummer, Dean Trefethen, Doug Steele, John Swartzendruber, Marcia Colbath

MEMBERS ABSENT: Bryan Cahoon, Kirt Schoman, Ron Stock - Alternates

STAFF PRESENT: Steven Stancel, Planning Director; Jacqueline Freeman, Recording Secretary.

ITEM #1: Citizens' Forum.

No one spoke.

Chairman Cole welcomed Marcia Colbath, a new member, to the Board.

ITEM #2: Approval of minutes

Frank Torr made the motion to approve.

Perry Plummer seconded.

Donald Andolina questioned, on page 6, if Ron Schoman's statement should have been 2,000 employees rather than families.

VOTE U/A

Abstained – Marcia Colbath

Chairman Cole asked for a vote to unseal the minutes of the non-public session of the January 24, 2006 meeting.

Frank Torr made the motion to unseal the minutes of the January 24th non-public session.

Donald Andolina seconded.

VOTE U/A

ITEM #3: Consideration and acceptance of a lot line adjustment of land for Mike & Gerrienne Vining (Owner Burke & Deeann Nelson) Assessor's Map A, Lots 36-1E & 36-1F, Zoned R-40, located on Cordeiro Drive.*(P6-05)

Kevin McEaney explained that the lot line adjustment is an equal exchange of land and the frontages remain the same.

Tony McManus made the motion to accept the application.

Dean Trefethen seconded.

VOTE U/A

The public hearing was opened.

There were no comments.

The public hearing was closed.

Donald Andolina made the motion to approve with the staff recommended conditions of approval.

1. All all the owners' signatures to the plan.
2. Provide the Planning Department with a digital version of the plat.

John Swartzendruber seconded.

VOTE U/A

ITEM #4: Consideration and acceptance of a lot line adjustment of land for Brian Stern, Assessor's Map E, Lots 45 & 47, zoned R-40, located on Tolend Road.*(P05-70)

ITEM #5: Consideration and acceptance of an Open Space Subdivision of land for Brian Stern, Assessor's Map E, Lot 45, zoned R-40, located on Tolend Road.*(P05-71)

Brian Stern, 201 Tolend Road, asked that the lot line adjustment and the OSS be discussed together. He purchased 19 acres at 217 Tolend Rd. He is proposing to develop 5 acres into four lots – an existing house and three other lots. His plan is to preserve the back land. He had an appraisal done for a conservation easement that he submitted to the Open lands Committee. He is offering this land to the City at a discount rate for a conservation easement. He purchased this land to protect it and, unfortunately, he needs to do the development to pay for it. The yield plan shows four lots. He said that the development is on the upland side of Horne Brook so that the subdivision and the open space is all dry land and everything beyond that, he hopes, becomes conservation land, protecting Horne Brook and further back.

Brian Stern said he is requesting a waiver for the 100 ft. setback for the existing house. He had photos of the house and other houses along Tolend Road showing that many of the houses are right up to the road. He said that moving this house would be breaking up the character of the neighborhood. There is also a dip in the land that would make it very impractical to move the house. He would not like to delay this project by scheduling a site walk. He said that he is fine with all of the conditions except for #7 which states that there would be a no cut provision for the 50 foot setback. The OSS says to preserve the natural vegetation when possible but doesn't say no-cut. Brian Stern stated that he paid for a forestry plan on the entire 50 acres. He is a good steward and is working with a respected forester. To have a no-cut provision would not even allow a timber stand improvement and would not allow for the management of non-native invasive species, which he is a bit of an expert on. He spends an enormous amount of time on that and he does volunteer work outside of the City. He asked for a revision to that one requirement.

Biran Stern stated that a homeowners' association document has been prepared and is ready to be reviewed by the Planning Department. The deeds will have the easement for the open space and the maintenance of the driveway and the utilities.

Frank Torr asked for information regarding the request from Engineering for a utility easement for a possible future sewer main extension that would cross Map E, Lot 47.

Brian Stern stated that he only received the request today. He said that he wouldn't want to address that as part of this project. The easement is well back of this development and he hasn't had a chance to discuss this with Steve Stancel or the Open Lands Committee. It is something that can be addressed at some other time.

Frank Torr said that it is outside of this subdivision. How would you address that?

Steve Stancel said that it is outside of the subdivision but it is part of the lot line adjustment plan. He said that he agrees with engineering that the City should attempt to get this easement. The time to go ahead is while we are negotiating for the conservation easement.

Chairman Cole said that he has done business with Mr. Stern in the past but feels there is no conflict on his part and it would not affect his decision.

Marcia Colbath stated that she would vote on this tonight but when it comes to the Open Lands Committee and the Conservation Commission she would not vote.

Donald Andolina made the motion to accept.

Doug Steele seconded.

VOTE U/A

The public hearing was opened to hear both items.

Lauren Jacoby, 211 Tolend Rd., asked because the houses will be along her lot line, if it would be possible to have a barrier along that line. She said that the driveway will go right next to her back yard.

Steve Stancel felt that it was a reasonable request. He asked Brian Stern if he had any problems with having some landscaping along that boundary.

Brian Stern spoke of an existing natural tree line that begins two thirds of the way into Lauren Jacoby's property. The driveway will be at the same location as the existing driveway. The only difference is that instead of serving one house it will serve three houses. He said that he would be willing to work with Lauren Jacoby.

Discussion ensued with regard to what the barrier would be. Photos of the existing houses were passed around. Brian Stern stated that there will be only one lot that is going to abut Lauren's property.

Steve Stancel suggested if the Board decides to approve the project a condition can be added that reads as follows: Vegetation to be placed between the project and the Jacoby lot and be agreed upon by the applicant, Planning staff and the owners of Lot E/46. He said that they will go out on the site and locate where the houses will be and determine whether there should be pine trees or some other screening in place at specific locations.

John Crosier, 45 Willow Street, asked where the lot line was in relation to this project.

Brian Stern explained that the Willows Subdivision is beyond this subdivision plan.

Irv Sparkman, 232 Tolend Road, stated that he had no issues with the project. He said that he understands the burden of paying Dover tax rates just to maintain open land. He was concerned with traffic on Tolend Road. He said that there is no safe access to Tolend Rd. The existing access is very difficult and he doesn't know what can be done to make it safer. He said this little development will not have a major impact on traffic, but one on top of the other will make an impact. They can't ride a bicycle or walk on the road because the development on that road is resulting in it becoming a very hazardous situation.

The public hearing was closed.

Steve Stancel said in regard to the **lot line adjustment plan** staff recommends approval with the following conditions:

1. Add the owner's signature to the plat.
2. Provide the Planning Department with a digital version of the plat.

Steve Stancel stated in regard to the **OSS**, the applicant appeared before the Technical Review Committee on January 5, 2006. The Planning Department recommends that the Planning Board accept the application and open the public hearing. The applicant has requested a waiver from Chapter 155-22-F, to allow the existing house to remain closer than 100 feet to Tolend Road. If the Planning Board wishes to schedule a site walk, the application can be tabled; otherwise the following are potential conditions of approval:

1. Add all of the owners' signatures to the plat.
2. Provide the Planning Department with a digital version of the plat.
3. The applicant shall provide a copy of the proposed homeowner's association documents to the Planning Department for review and approval prior to the signing of the plat. Said documents shall address open space preservation, maintenance of the common driveway and water line, and include reasonable limits on clearing the vegetation within the 50-foot external buffer to maintain the existing natural character.
4. Provide the Planning Department with a copy of the NH Department of Environmental Services Subdivision Permit and add the permit number to the plat.
5. Approval includes the granting of the waiver to allow the existing house to remain.

6. Revise the plat to add an approved road name.
7. Vegetation be placed between project and Jacoby lot to be agreed upon between applicant, Planning staff and owners of Map E, Lot 46.
8. Suggestion from engineering that in the future the City attempts to obtain a 30 foot wide utility easement for potential extension of sewer line.

Frank Torr asked what would happen if there was no agreement relative to the vegetation. He was concerned because the driveway is only 5 feet from the property line and felt a site walk would be advisable.

Steve Stancel explained that it would have to come back to the Planning Board where it could be reasonably worked out.

Dean Trefethen felt that a site walk was in order.

Donald Andolina felt that a site walk was in order.

Frank Torr made the motion to table this item to a site walk.

Dean Trefethen seconded.

VOTE U/A

Abstained – Tony McManus

Dean Trefethen asked that the driveway and the 50 foot buffer be staked.

Ron Cole asked for the site distance be staked on both sides of the driveway.

Kevin McEneaney stated that the Engineering Dept. requested that the site distance be measured as part of the TRC comments. They measured in both directions. Towards the east there are about 320 feet and the other way there is an excess of 500 feet. It met the requirements.

Marcia Colbath asked that the driveway be staked as it abuts Mrs. Jacoby's property.

Ron Cole set the site walk for **Saturday, February 18, 2006, at 8:30 AM**, meeting at the bottom of the driveway.

ITEM #6: Consideration and acceptance of an amendment to a major subdivision of land for Changing Places, LLC, Assessor's Map G, Lots 25, 26, 26B, zoned R-20, located on Columbus Ave.*(P03-68)(20 lots)

Tony McManus stepped down because he represented one of the sellers.

John O'Neil, representing Changing Places, LLC., introduced his partner Michael Brigham and Penny White from NH Soil Consultants. He said they are requesting an amendment to their previously approved subdivision from a sewer disposal subdivision to a septic disposal subdivision because they cannot afford to hold off any longer. He spoke about the effort to Master Plan a combined sewer system instead of their original plans,

which were septic. They are not physically or financially able to wait any longer for the completion of the sewer master plan to take effect. They have gone above and beyond, including installing sewer with manholes and lot stubs in their new road and provided all necessary easements for future possible completion of the sewer master plan. They did a complete septic analysis, submitted with NHDES a septic subdivision approval application, met with TRC review, accompanied by Reuben Hull from Civil Designs and Penny Wright from NH Soils and received TRC's approval to move forward with septic.

Steve Stancel said the project was approved in August 24, 2004. The 72 unit abutting project has been held up because of a dispute. That project planned to run the sewer from its existing location near Cambridge Tool through several properties all the way to the backs of properties along Tolend Road and further extend the line to Columbus Ave. to connect this project. Earlier this year issues arose with the abutting project in terms of a dispute between the property owner and the developer. A mediation session was scheduled for March 1, 2006. On March 1st these issues could be ironed out and this project may still move forward with the sewer, however, we are not completely confident that that will take place and it wouldn't be fair to hold up this developer any longer. This developer has installed the proposed utility easements for the future and they will remain. In the future, the worst case scenario if septic does end up going in, the next developer down the road will have the option of continuing the sewer to Columbus Ave. and beyond, because the utility easements will be in place.

John O'Neill explained where the sewer easement and manholes have been put in place from Columbus Avenue and along Lucy Court and Lucy Lane.

Steve Stancel stated that all the lot lines are the same, the detention areas, drainage, roadway system and all the other utilities are exactly the same as the previous project.

John O'Neil explained that all of the houses will be septic. Their goal is in the next few days to have 18 permits submitted and done.

Frank Torr made the motion to accept the application.

Donald Andolina seconded.

VOTE U/A

The public hearing was opened.

Paul Carignan, 38 Wallace Dr., was very disappointed to hear that this project was going to septic. His concern is that the proposed abutting house will only be 40 feet away from the property line and the leach field is potentially going to go in on the property line or 10 feet from the line. His other concern is the topo of the land slopes down so any type of drainage or overflow would come onto his property. He asked what has been done to protect his property and to assure that there will be no runoff onto his land.

Steve Stancel explained that the individual systems are designed and come before the Engineering Department for approval. At that time Engineering reviews the systems and

if it is a raised system, they look at how far it's raised and how close to the property line it is and whether or not they feel there might be an effect of any water runoff.

Paul Carignan again stated his concerns were the sloping of the land and the runoff and his neighbor would be facing the same problem also.

The public hearing was closed.

Steve Stancel asked the applicant to address that septic concern on that lot.

John O'Neill stated that the septic will be designed to meet all the State setbacks and regulations. He assured the abutter that nothing would flow towards his property because the septic are self-contained.

Penny White from NH Soil Consultants pointed to the locations of the test pits. She said that she doesn't see where anything ever would be going in the direction of Mr. Carignan's lot.

John O'Neil stated that in layman's terms this system is in the ground so it is not coming up any higher and the major grading is essentially for the tank itself. It's a solid closed tank. The leach field itself will not be an issue with the abutter.

Ron Cole asked what protection the abutter would have in the event that all this fails.

Steve Stancel stated that it would become a civil matter between the two property owners.

John O'Neil stated the sewer capability is there and they will make the fiscally responsible decision at that time of the binding arbitration results are known. They can plan on situations that are in existence but they cannot on those that are not.

Steve Stancel stated that a decision will be made within 24 hours of March 1st. They will know within that timeframe whether they think further litigation is needed or whether everyone will agree. The other issue is the original approval, for that 72 unit project, gave the developer 150 days to construct the sewer line. We may have some leverage with the other developer in terms of not giving them any further extensions. There is the possibility that this project can be worked out with sewer but there are no guarantees.

Steve Stancel said to keep in mind that the State will need to approve the project as a totality for septic design but then the State also has to approve the individual septic design. The City's engineer also has to approve the individual septic design and they are inspected as they are constructed by both the State and the City. He said that in general, they are comfortable with the designs.

Donald Andolina stated that he doesn't feel comfortable hearing if there are any problems the abutters would have to go through civil action to have it rectified. He asked if it would be appropriate to request that the applicant put up a bond.

Steve Stancel answered that there is a bond that would be in place for the total project as it's constructed. You can't hold a developer or the City responsible for 10 to 20 years down the road and it has to become a civil matter because it is against the law for runoff from one property going onto another. Generally, the bond is for the cost of the roadway system but that bond can be used if within a period of time there is a problem with a septic system and that is based on the design itself. The bond usually expires after the last house is built.

Dean Trefethen said the he had expressed concerns at the original approval with the number lots and particularly the lots around Lucy Court. With the idea that it would be sewerred, he was willing to go along with the approval. He said that there is probably one too many houses proposed for the cul-de-sac around Lucy Court.

Steve Stancel stated there is no telling in the future but realistically, the sewer will be extended at some point but he couldn't say how long it would take. Before the systems start failing there very well could be an available sewer line there.

Donald Andolina asked Mr. Carignan what he thinks about the bond.

Mr. Carigan said that the bond is only good until the last house is in and realistically, the development could be done within a year. He is concerned with the short term. At what point does the developer assume responsibility and at what point does the homeowner. He said in a couple of years, it should be the developer. He felt that the bond is nice but it probably won't be around if there was an issue. He is not trying to give the developer a hard time but he has to protect his home.

Steve Stancel asked if there was a specialized chamber system or an alternative septic design to alleviate some fears.

John O'Neill felt that Mr. Carigan's greatest fear is the tank itself and the tank is a closed system. The leach field itself is entirely in the ground. His subdivision is probably 5 to 6 years old. The systems are designed for 20 or 30 years and knowing that, the design of the 4,000 sq. ft. area is a built in reserve. There is a bond that will be in effect much more than a year after they are done. At the very most there is a \$10,000 complete repair if the system does fail. The bond would cover something like that.

Doug Steele said that he would have a hard time not supporting this. If these systems are meeting the State standards and are approved by the State and then by our Engineering Department he has a hard time not approving this.

Perry Plummer stated that he concurs with Doug Steele. He agrees that they meet the State standards and having septic systems that far apart is not an uncommon practice.

Ron Cole said that this a classic case. If he were Mr. Carignan he would probably be expressing the same concerns. To allay his fears is the fact that it will have to filter through both the State and the City of Dover professional engineering departments before it will be allowed to be built.

Steve Stancel went over the conditions of approval as follows:

1. Add all of the owners' signatures to the plat.
2. Provide the Planning Department with a digital version of the plat.
3. The applicant shall provide the Planning Department with a copy fo the NH Department of Environmental Services Subdivision permit and add the permit number to the plat.
4. The applicant shall provide the Planning Department with a copy of the NH Department of Environmental Services Septic Design permits for lots # 12, 13, 18, and 19, and add the permit numbers to the plat.
5. Revise sheet #5 by adding a label for the culvert flared end section #6.
6. All other conditions from the original Planning Board approval of August 24, 2004 are incorporated into this approval. – there are only two outstanding offsite improvement fee issue involved with that original approval and those are to be paid at the first building permit.
7. If circumstances change, the original plan approved with municipal sewer can still be valid until this plan is recorded (that plays into whatever happens on March 1st or 2nd and go from there)
8. Identify on the plan who will be responsible for the maintenance of the detention ponds.

Frank Torr made the motion to approve subject to the above stated conditions of approval.

Donald Andolina seconded.

VOTE 6 – 1

Opposed – Dean Trefethen

Tony McManus took his seat.

ITEM #7: Consideration and acceptance of an Open Space Subdivision of land for Megan Martineau Revocable Trust, Assessor's Map K, Lot 1-A, zoned R-40, located on McKone Lane.*(P06-04)(1 lot)

Bruce Pohopek represented the applicant. The Martineau's own 14.69 acres with an additional 10.5 acres in a conservation easement. He showed the yield plan depicting a ROW into a cul-de-sac with the potential of 3 subdivision lots. These lots are laid out on the yield plan with existing structures and test pits shown. They have developed a roadway showing the three lot scenario. There is a current driveway that services the current Martineau property. That driveway would also be a common drive for the new lot.

Tony McManus stated that the subdivision doesn't seem to meet the frontage requirements for the ordinance without a variance.

Steve Stancel stated that in an OSS, the frontage requirements are reduced. In this area the frontage in this area is reduced to 40 feet.

Bruce Pohopek stated that the open space is the 40,000 sq. ft. tract of land that abuts the NH Fish and Game property which is contiguous with the conservation area along the Cochecho River.

Tony McManus made the motion to accept the application.

Perry Plummer seconded.

VOTE U/A

The public hearing was opened.

There were no comments.

The public hearing was closed.

Steve Stancel stated that the Planning Department recommends approval with the following conditions:

1. Add all of the owners' signatures to the plat.
2. Add the surveyor's seal and signature to the plat.
3. Provide the Planning Department with a digital version of the plat.
4. Provide the Planning Department with proof that a conservation easement covering both previously approved open space as well as any new open space area has been granted to the NH Fish & Game or a private land trust or non-profit corporation or homeowners' association prior to the signing of the plan.
5. Provide the Planning Department with a draft of the shared driveway access easement document prior to signing the plat.

Steve Stancel said that he expanded on condition no. 4, as there was some previous open space area identified on this plan from a previous subdivision. While it was put in a conservation easement, it's currently being held by one property owner, but when you subdivide and have an additional property owner there has to be an association created to hold that conservation easement together as a whole.

Bruce Pohopek asked for a time frame. He said that the lot is basically for Mr. Martineau's mother to build a house.

Steve Stancel stated that you can create the association but since he wouldn't sell that second lot, technically, he would be the association. It is important that the association be created up front so that the plan can be recorded and the proper tax assessment can occur.

Frank Torr made the motion to approve with the staff recommended conditions.

Doug Steele seconded.

VOTE U/A

Ron Cole announced the Spring Conference and asked the Board members to let the Planning Department know that you want to attend and the City will pay the fee.

ITEM #9: New Business

a. Request for a School Impact Fee Waiver for Diana Post, 10 Spring Street, Assessor's Map 12, Lot 8, zoned RM-10.

Diana Post stated her reasons for appealing the tax. One is that when she inquired about the possibility of converting her barn into a living space she was not informed of the School Impact Fee or the Water & Sewer tax. She said that her contractor was not informed either. She said that the small apartment would be rented to a couple as a two story studio apartment and she doesn't feel that it is reasonable to be charging her the impact fee when she will not be renting to people with children. She looked into refinancing the house to fund the project and the amount she received was devoted to the cost of the project but she never budgeted the fee. She said that she is counting on the income. She said that she is just a little person who needs to supplement her income.

Steve Stancel stated that he will look into the communication situation. Generally, when you come in for a building permit you are invoiced for water and sewer as well as the impact fee. The impact fee is collected at the time of the CO.

Diana Post said that she received the invoices in the mail. First the impact fee and two weeks later the water & sewer invoice.

Steve Stancel stated when they set up the waivers they are very specific to the criteria. If you meet the criteria the staff recommends approval and if you don't we recommend rejection. Steve Stancel read the criteria for the Impact Fee Waivers.

Steve Stancel explained the idea of school impact fees is that new development pays for the capital improvements that are created or will need to be created as a result of that new development. Scientifically, the City has looked at how many children are generated by what kind of housing units and then determined what the cost of the construction is and equates that to the new construction.

Marcia Colbath felt that we were going down a slippery slope. We have denied others.

Tony McManus stated that this is pretty close to the Mother-in-law apartment that we granted a month or so ago. In that case we did it on condition that it would remain occupied by the parent and on the death of the parents it would be incorporated back into the main house and not used. He agrees that Steve is doing the right thing according to the wording of the ordinance but his understanding of this was that it was directed toward developments and not an individual unit that was being built on an existing building for a family member or something like that. He felt that the Board should change the

ordinance and the waiver should be granted given the circumstances that has been presented.

Tony McManus made the motion to grant the waiver.

Donald Andolina seconded because precedence has been set.

Doug Steele asked about a form stating that there would be no children.

Discussion ensued with regard to the regulations and that it should be stated that there would be adult occupancy only.

Diane Post said that she would be willing to sign a document attesting to the fact that she would not rent it to someone with school children.

Perry Plummer said that he would support it with a signed document.

Ron Cole stated that the motion is in effect to grant the waiver with a document stating that it will be adult occupancy only with a legal document signed by the applicant that adults only would be residing in the unit.

Marcia Colbath said that she is supporting this only because there isn't a separate bedroom.

VOTE 6 – 2

OPPOSED – Doug Steele, Dean Trefethen

b. Introduction and discussion of proposed site review changes relative to the proposed Residential Commercial Mixed Use (RCM) Overlay District.

Chris Parker said that the Board voted to forward to the Council the zoning portion of the Overlay District. During that process the Board had commented that there was concern about the site design portions. He said that they felt that it would be better to create a new section of the Site Review Regulations to incorporate those concerns. The idea was to create a situation where you have residential and non-residential that can work together and be integrated through vehicular, pedestrian, and landscaping. What they did was take various aspects of the site review process and laid out specific regulations or design criteria that they are hoping to attain. He went through different sections. He said that the idea is to create multistory, multi-scale buildings to not just have big boxes but to give some character to the buildings. They want to create a friendly atmosphere, minimizing conflicts between vehicular and pedestrian access. They want a walkable development. They are encouraging mixtures of lighting, the use of wood or brick as opposed to corrugated metal. Trying to get away from the big box look and add some character to the buildings and make them aesthetically pleasing to the neighbors, as well as the users of the project. They want the roof to be uncluttered. They don't want to see the ventilation units. They want to see that the buildings are broken up by color or by architecture to give a change and feel to them.

Chris Parker said that they are looking for durable materials that are attractive specifically on the front and sides. They don't want to prohibit certain materials, such as the prefabricated steel panels or reflective glass but they do want to have them more as an accent rather than the primary building material. They want pedestrian amenities that allow for enjoyment of outdoor areas and adequate off-street parking. He said that the Zoning does allow for mobile home subdivisions. They want to see them with peaked roofs and architectural shingles.

Tony McManus said that the City should change everything from mobile home to manufactured housing because it is consistent with the statutory rules that apply.

Donald Andolina stated that the last time this was discussed Malcolm McNeill had some concerns. He wondered if any of his concerns were included in the revision.

Chris Parker answered that they made some concessions and he understands Malcolm McNeill's point of view, but he wants to acknowledge that the Board has the power to waive any of these regulations.

Tony McManus asked if there would be a formal public hearing.

Chris Parker stated that the idea is that they would be posted tonight and at the next meeting in two weeks we would have a public hearing for comment on these changes.

Tony McManus made the motion to post this for a public hearing.
Donald seconded.

VOTE U/A

Steve Stancel explained that this is almost CDBG time again. The CDBG requests have been received and the Board will be receiving the applications with the next packet. A public hearing will be scheduled for March 14th, and then it will decide if a workshop is needed on the 21st and then, possibly, vote on March 28th.

Steve Stancel reminded the Board of the joint workshop with the City Council.

Chairman Cole stated that at the next meeting a list of all committees will be filled out.

Reminder of the site Walk on Saturday, the 18th, at 8:30 AM.

ITEM #10: Adjournment

Donald Andolina made the motion to adjourn.

Dean Trefethen seconded.

VOTE U/A