

**DOVER PLANNING BOARD
MINUTES OF MEETING
DECEMBER 13, 2005**

MEMBERS PRESENT: Frank Torr, Perry Plummer, Donald Andolina, Dennis Ciotti, Doug Steele, Tony McManus, Ronald Cole, Dean Trefethen

MEMBERS ABSENT: John Swartzendruber, Bryan Cahoon

STAFF PRESENT: Steven Stancel, Planning Director; Christopher Parker, City Planner and Jacqueline Freeman, Recording Secretary

ITEM #1: Citizen's Forum

No one spoke

ITEM #2: Approval of the minutes.

Frank Torr made the motion to approve the minutes

Dennis Ciotti seconded.

VOTE U/A

Chairman Cole announced that **ITEM #3**, Conditional Use Permit for Roger Nold (Owner Frank Cassidy) would not be heard. (P05-67). **ITEM #5**, Lot Line Adjustment for Rochefort & Marlof, would not be heard (P05-66). **ITEM 5, Old Business, c. Ray Martineau** congregate care (48 units) would not be heard. (P05-48)

ITEM #4: Consideration and acceptance of a lot line adjustment of land for Arthur & Marianne Eldridge & Bryan & Cheryl Saylor, Assessor's Map F, Lot 23A-36 & 23A-7, zoned R-40, located on Susannah's Crossing/Ezra's Way.*(P05-65)

Rich Lundborn, Norway Plains, represented the applicants. He stated that the driveway for Lot 23A-36 was constructed on the lot line. He said that the lot line adjustment is necessary in order to get the 5' setback and to comply with the regulations.

Frank Torr made the motion to accept.

Dennis Ciotti seconded.

VOTE U/A

The public hearing was opened.

There were no comments.

The public hearing was closed.

Tony McManus made the motion to approve with the following conditions:

1. Add all of the owners' signatures to the plat.
2. Provide the Planning Department with a digital version of the plat.
3. Revise the plat by changing all references from Tax Map F2 to F.

4. Revise the plat to add the minimum building setback lines to both lots.

Donald Andolina seconded.

VOTE U/A

ITEM #6: Consideration and acceptance of a minor subdivision of land for Winning Ways Stable, Assessor's Map B, Lot 17, zoned R-40, located at 203 County Farm Cross Road.*(2 lots)(P05-68)

John Murphy, co-owner of Winning Ways Stable, stated that they own two parcels, an 18 acre piece and a 25 acre piece. They would like to subdivide the 25 acre parcel into 2 new residential lots of 1 and 2 acres respectively. They would also like to combine the 18 acre piece with the remaining 22 acres to create one lot. There are now 2 lots and when done with the application there will be 3 lots. The City wanted to see the amount of wetland area on the 2 new residential lots to insure there is sufficient land other than the wetlands. B17-1 has 200 sq. ft. of wetland area and B17-2 has 21,200 sq. ft. of wetland area. Both lots meet the minimum requirements of 40,000 sq. ft. of non-wetland area. They have 287 feet of frontage where the minimum frontage is 300 feet. They went before the ZBA on November 17, 2005 and were granted a Variance to allow them to create the 2 lots. He said that there is an existing driveway servicing an existing home. The two new lots will be accessed by that driveway. They purchased the land from Mr. Smith and in the warranty deed there is an access easement going to those two parcels. In the future, they are going to cut their own driveway on County Farm Cross Rd. and the existing driveway will be turned into a yard area. They have recently entered into a conservation easement with the City. The majority of the land, other than the horse barn and the two new lots, will be in a conservation easement so that no further subdivision or development can be done.

Donald Andolina made the motion to accept the application.

Doug Steele seconded.

VOTE U/A

The public hearing was opened.

There were no comments.

The public hearing was closed.

Frank Torr made the motion to approve with the following conditions:

1. Add all the owners' signatures to the plat.
2. Provide the Planning Department with a digital version of the plat.
3. Revise the plat to specify the amount of non-wetland areas for lots B-17-1 & B-17-2.
4. The applicant shall provide the Planning Department with a copy of the DES Subdivision Permit and add the permit number to the plat.

Donald Andolina seconded.

VOTE U/A

ITEM #7: Consideration and acceptance of a minor lot line adjustment of land for Wamco Associates, Inc. (Owner Terra Nova Properties 4th Street, LLC) Assessor's Map 31, Lots 99 & 4A, zoned RM-8, located on Sixth Street.*(P05-69)

Kevin McEneaney stated that FX Bruton has not arrived yet. He asked that it be placed later on the agenda.

ITEM #8: Consideration and acceptance of a site plan of land for Seacoast Hospice, (owner Strafford County Board of Commissioners) Assessor's Map B, Lot 20, zoned R-40, located on County Farm Rd./County Farm Cross Road.*(P05-64)

Tony McManus recused himself.

Jennifer Viarengo from Appledore Engineering, stated that they are proposing a 14 bed facility for Seacoast Hospice. She had a plan at the easel showing the existing building and the parking. The access to the facility will come off of County Farm Rd. The parking will support the visitors as well as the staff. She explained the loading area for the hearses. She pointed out the main entrance for the facility and stated that most people arrive by ambulance. They have provided landscaping. The site will be serviced by City water and sewer. They are still working with Bill Boulanger with regard to the pump station design. There is currently 76,000 gallons that go to that pump station. The proposed increase is 2%, 1,700 gallons per day. They are using all upland for the development. The closest hospice facility is in Concord and this facility will serve the greater Seacoast area.

Frank Torr questioned the width of the road.

Steve Stancel said that Engineering felt that 28 feet wide was adequate. That is the same width as the existing County Farm Road and it actually goes below 28 feet in several spots. He said that he doesn't feel that the City can hold the developer to a higher standard than the City. He said that according to the traffic numbers 28 feet wide is adequate for that area.

Dean Trefethen said that at some point the City may decide to extend County Farm Road down to the river and across the river. It's been talked about for years. It could be incorporated into this project.

Jen Viarango stated to not have to build a town road is a significant savings when you are a volunteer organization. Part of the plan is that the County would also like to see that road developed at some point and they were very gracious.

Dennis Ciotti made the motion to accept the application.

Frank Torr seconded.

VOTE U/A

The public hearing was opened.

There were no comments.
The public hearing was recessed.

Steve Stancel stated that most of the TRC comments have already been addressed but there are a couple of minor outstanding issues that staff has not had a chance to go through in detail. He is recommending tabling until the January 10th meeting.

Frank Torr made the motion to table.
Dennis Ciotti seconded.

VOTE U/A

Tony McManus took his seat on the Board.

ITEM #7: Consideration and acceptance of a minor lot line adjustment of land for Wamco Associates, Inc. (Owner Terra Nova Properties 4th Street, LLC) Assessor's Map 31, Lots 99 & 4A, zoned RM-8, located on Sixth Street.*(P05-69)

FX Bruton, McNeill Taylor and Gallo, stated that in October the Board approved a site plan for storage units at 56 Sixth St. As part of that approval they promised that they would be back with a minor lot line adjustment.

Kevin McEneaney represented the applicant. He said that they found out at the last meeting that there was an encroachment of the garage that is on the 56 Storage property. This Board voted as a condition of approval that it be clarified through a lot line adjustment to eliminate that encroachment. They were unable to meet the minimum setback requirement, which is 15 feet, as they only have 20 feet between the two buildings. They have completely placed the garage on the Wamco property although they are only 2 feet from the side line of that garage. Because they are eliminating the encroachment and are actually decreasing a non-conformity, it is allowed by zoning without a Variance.

Dennis Ciotti made the motion to accept the application.

Tony McManus seconded.

VOTE U/A

The public hearing was opened.

There were no comments.

The public hearing was closed.

Don Andolina made the motion to approve with the following conditions:

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

Dennis Ciotti seconded

VOTE U/A

FX Bruton stated that the site plan approval required that the Planning Department would consider the siding on the buildings, as well as, the architectural renderings that show the

roofing. Mr. Trefethen asked if they could address the siding issue on Sixth and Grove St. After extensive discussion, they have reached an agreement with respect with how the pitch would work. He asked the Planning Department to approve the final look of the siding which is vinyl clapboard on the ends of the building at Grove St. They ask the department to consider not modifying the wall on Sixth St. The main concern of the Department at the time was that they had enough fencing and landscaping on Sixth and Grove St. He said that the two buffers make the building non visible on Sixth St. They found that applying the finish on that building would be very costly and very intricate because most of that side is doorways. They don't have a problem putting vinyl clapboards on the ends of the buildings on Grove St. They think that they have addressed the concerns of the Planning Board and ask that it be considered satisfying the conditions of approval.

Steve Stancel stated that the fencing material that was chosen were slats that locked along the bottom so that people couldn't pull them out of the fencing. They are satisfied with the quality of the fencing and the roofing materials.

ITEM #10: a. Impact Fee Waiver Request for Kevin Creighton & Stephen Colonna, Assessor's Map 10, Lot 8, located at 50 Cushing Street.

John Wilkinson represented Kevin Creighton, one of the owners of 50 Cushing Street. He said that the basis for the waiver request is that the dwelling is currently being used as a two unit dwelling and has been used in that manner since at least 2001 and has also been taxed by the City since 2001 as a two unit building. It was reassessed in 2001. Currently, the City is requesting that the owners pay an impact fee. The City has been collecting taxes on the dwelling as a two unit since 2001. The owners did purchase the dwelling with the understanding that the City was taxing it as a two unit. Both realtors relied on the tax card from the City stating that it was a two unit.

Tony McManus asked if the increase in the number of units was done prior to the passage of the Impact Fee Ordinance.

Steve Stancel answered yes.

Tony McManus stated that if it was a two unit at the time there was no ordinance in effect that whoever did it, whether right or wrong, would not have had to pay an Impact Fee.

Steve Stancel stated that there is a legal opinion from the City Attorney Allan Krans in the packets, where he is saying that because building permits were not received, the City typically treats these as not being an official unit and the applicants are required to come in for their building permits. The unit is an allowed unit in this zone but in some cases the units are not allowed in the zone and when they are caught, the unit has to be eliminated.

Tony McManus asked how there could be an impact fee now if there was no impact fee at the time it was done.

Steve Stancel stated there is no exemption for equitable circumstances and what the City Attorney is suggesting is that the City did not recognize that second unit until such time as it comes in for a building permit. He said that, perhaps, the applicant has a case against the previous owners or the realtors for misrepresentation.

Donald Andolina stated that it seems that the City did recognize it as a duplex because they have been taxing it that way.

Steve Stancel said that it was an illegal duplex because a permit was never issued. He said that it is a situation where an Assessor goes out to reassess a case, they assess on what they see and if a two unit would normally be allowed in that zone, there would be nothing that would trigger questioning back in 2000.

John Wilkinson stated that it is a little unclear what was filed at the time. They have done extensive research. This reassessment was done in 2001 which is two owners ago. They have talked to every realtor that has been involved and it is really unclear. The owners at the time have been unwilling to respond and are in Arizona.

Steve Stancel stated that in speaking with Tom Clark, he brought up the point that when these cases come up the applicant is required to fill out a building permit and start the process. They have to meet the regulations that are in existence the day they file that building permit, not the regs that were in existence two or three years ago.

Tony McManus made the motion to grant the waiver.
Donald Andolina seconded.

VOTE 4 – 3 Opposed - Dennis Ciotti, Dean Trefethen, Perry Plummer

b. Discussion and possible vote on a site plan for Liberty Mutual, located on Sixth street.(P05-33)

Dennis Ciotti made the motion to remove this from the table.
Frank Torr seconded.

VOTE U/A

Malcolm McNeill introduced the Liberty staff from Boston. He stated that the last time they were here they made a presentation with regard to the site, its various components, the various aspects to the site with regard to the access, the parking area and conservation easements, etc. They also provided an architectural report with regard to the nature of the building that consists of 350,000 sq. ft. They have provided a delineation of the improvements to Sixth St. and the Exit 9. Also there was a report from the City's traffic consultant which concurred with the terms of the improvements. They also provided the City with a list of the presumed costs of those improvements and tried to specifically identify and attribute values to the various improvements that were being contemplated. He said that they will be talking to the City with regard to drafting and completing a development agreement that would delineate the cost sharing. They have reach

agreement with the City administration regarding the development agreement. It is being finalized and reviewed by both sides and will be available to the City Council tomorrow night.

Atty. McNeill said that Liberty wishes to make it known that they appreciate the challenge and the cooperation of the City with regard to this project. The challenge has been to play by the rules and to do what is equitable. He indicated that they were in contact with the Fire Chief and the City regarding the placement of the Fire Station. They are refining the location dealing with any environmental issues that may exist with the fire station property and considering various alternatives in the event the site presents any environmental difficulties. They have also agreed to provide additional land or conservation easements to the City if they are necessary for mitigation relating to any wetlands. He has reviewed the conditions of approval that were provided to them. They have one comment with regard to Item 9 regarding the access connection to Measured Progress. Atty. McNeill stated that they are paying for the access and paying for the gate, Measured Progress is not involved in that. They are requesting the word "emergency" replace the word "be". He said that it is not intended to be a cross, general transportation easement and it is only intended the gate to be for emergency purposes. They wanted to make that absolutely clear. Regarding engineering issues delineated in correspondence of 12/08/05, they feel that they have reached agreement on those issues. They are requesting approval based on the conditions in the memo.

Tony McManus wanted to understand that there is a conservation easement of 9.76 acres of property and then a trail easement between the Spaulding Turnpike and the Measured Progress property. He asked why there are two separate easements.

Gordon Leedy, landscape architect and planner and the principal in charge for this project for VHB, said they kept the two easements separate for a specific reason. The easement that is part of the wetland mitigation package was kept separate from the trail easement because the trail easement has a different purpose and is for public access.

Tony McManus asked if the area of the trail and the land between the trail and the river is still going to be owned by Liberty.

Gordon Leedy answered that it was correct.

Tony McManus asked if the City was going to be able to have access to the river from the trail.

Gordon Leedy stated that functionally, the area is open but there is no formalized public area to the river.

Tony McManus stated that there are some lovely spots along the river for people to picnics, etc. He said that he would like to see that kind of thing available for the public.

The public hearing was opened.

There were no comments.
The public hearing was closed.

Steve Stancel stated that the Planning Board held a workshop on this project on December 6, 2005. and gave the recommended conditions of approval.

Frank Torr made the motion to approve with the following conditions:

1. Add the owners' signature to the plan.
2. Add the surveyor and engineer signatures and stamps to the appropriate plan sheets.
3. The applicant shall provide the Planning Department with proof that the Environmental Protection Agency's Notice of Intent Permit has been filed, prior to the issuance of the first building permit.
4. The applicant shall provide the Planning Department with a copy of the DES Site Specific Permit and add the permit number to the plan.
5. Provide the Planning Department with a copy of the NH Department of Environmental Services Wetlands Permit and add the permit number to the plan.
6. The applicant shall prepare a stormwater management and maintenance plan that shall be reviewed and approved by the Planning Department and Dean Peschel of the Community Services Department prior to signing the plan.
7. The approval includes the granting of a Conditional Use Permit provided that the applicant prepares a restoration documentation report for the wetland buffer areas disturbed during construction. Said report shall be submitted to the Planning Department for approval prior to the issuance of the first certificate of occupancy.
8. The applicant agrees to enter into a development agreement with the City that would be executed in a form acceptable to both parties. The agreement shall specify each parties share of transportation improvements, the transfer of property to the City for a fire station, and any other provisions deemed necessary. Said agreement shall be subject to approval of the Dover City Council. The applicant shall also submit updated plans detailing the off-site improvements that have been agreed to.
9. The applicant shall agree to construct a gated access connection to the Measured Progress site and shall grant any easements required for emergency access.
10. The applicant shall grant to the City of Dover Conservation Commission a conservation easement on 9.76 acres of the property as shown on the approved site plan as wetland mitigation easement. Said easement shall be signed by the parties, executed, and a copy given to the Planning Office prior to the issuance of the first building permit.
11. The applicant shall grant to the City of Dover Conservation Commission a trail easement between the Spaulding Turnpike and the Measured Progress property. Said easement shall be signed by the parties, executed, and a copy given to the Planning Office prior to the issuance of the building permit.
12. The applicant shall address all of the issues contained in the memo dated 12/8/05 from Engineering as follows:

1. It appears that the right of way on sixth St. was never transferred over to the City during the last project. That process shall be completed with this approval process.
2. The Liberty watermain shall be looped into the main on Education way. There is an existing easement from Measured Progress but it may be better to tie into the watermain at a different location on the West side. Liberty shall investigate the best option for a tie-in.
3. A gate shall be added at the access road off the parking lot to the detention basin.
4. Note that the existing SMH's invert shall be reworked for the new pipe.
5. Provide more information on the pipe insulation over the arch culvert.
6. Make improvements to the outfalls from the existing culverts on the railroad ROW prior to issuance of the Certificate of Occupancy.
7. Please provide a maintenance plan for the detention and Vortech system.
8. Specify the vortechs size.
9. Designs of the proposed parking deck will be required.
10. It is recommended moving the gas main into the sidewalk on the access road and providing sleeves for crossings.
11. Show the new watermain that was installed this summer on the main entrance roadway.
12. There appears to be a chance of undermining the retaining walls when future work is done on the sewer in the easements. Please address this issue.
13. Provide more detail of the sidewalk/brook crossing.
14. On the water line trench detail-sand bedding is required.

Dennis Ciotti seconded.

VOTE U/A

Chairman Cole stated that Liberty Mutual, with this new building, will be paying approximately one million dollars a year in taxes to the City. He thanked Liberty Mutual, Atty. McNeill and everyone associated with the project. He said that the City of Dover is the envy of the of every city in the State of NH.

ITEM 9: Old Business

a. Discussion and possible vote on the Residential/Commercial Mixed-Use Overlay (RCM) District.

Dennis Ciotti made the motion to remove this from the table.

Frank Torr seconded.

VOTE U/A

Steve Stancel stated that there was a public hearing at the last meeting and the one before last. Since that time we have received additional comments from the general public and several changes have been made to the proposal. Because of those changes they are recommending that they hold another public hearing at the next meeting prior to a vote.

Chris Parker said that at he received feedback from the Board and the community at the November 22nd Planning Board meeting. He then went over each of the changes as written in the Ordinance. Under Residential Development Guidelines, he added that the guidelines for this development are included in Chapter 149, section 14.2 which he would hand out later in the meeting.

Dean Trefethen said that the timing with regard to the starting of the residential component and the non-residential component is confusing to him.

Chris Parker said that the intention is to allow for the starting of the residential. For instance, there are 50 units that you can build, but upon the 25th building, you cannot proceed to number 26th until the non-residential is begun. You then sit at 25 units until 50% of the non-residential has been completed and at that point you can start building number 26. He said that at least 50% of the non-residential will have to be in place before they can build more residential.

Dean Trefethen said that he is not convinced that new car sales is appropriate for this type of district and he would like to see that removed.

Dennis Ciotti said that the verbiage with regard to the 50/50 portion needs to change. He said when the construction begins, a developer is going to say that putting a sewer in is the beginning of construction. He wants to tie the 50/50 to Certificates of Occupancy. Dennis said that the flip side is the developer has got 25 units in and he is entitled to 25 more and he can't get anybody to fill the buildings – he's stuck. He should have to have tenants for these buildings once they go in also.

Chris Parker felt that as long as the units are built and the City considers them ready to be occupied.

Dennis Ciotti said that is what the ordinance needs to say.

Tony McManus said that if the Board has given approval for the development which includes 50 residential units, the developer is entitled to build 50 units once the approval is given. The idea is good but should be checked by the City Attorney to see what he thinks. He wondered if a developer who has approval for 50 units could be told that he has to stop at 25 and start the commercial portion of the project. He felt there would be a problem with that.

Chris Parker said that it has been considered as one of the conditions of approval. He said it might be as part of a Conditional Use Permit under the developer's agreement.

Tony McManus felt if the developer agreed to it, then it would be fine. He still thinks that the 55 feet height seemed to be very high for a New England Village motif. If you say maximum you will have a developer come in and arguing that he is entitled to go up to 55 feet.

Steve Stancel said that he thought that one way to handle the 50/50 issue was to require phase lines as part of the master plan of the project.

Don Andolina said that he would like to see the new car sales removed. He doesn't think that it is appropriate for the type of usage.

Tony McManus felt that the ordinance was well done.

Tony McManus made the motion to send the new proposal to a public hearing.

Frank Torr seconded.

VOTE U/A

Request for an extension from Atty. McNeill regarding 72, 55 and older development on Tolend Road.

Malcolm McNeill represented Tolend Road LLC, the applicant that was approved in June relative to the seventy-two, 55 and older units off of Tolend Rd. Eric Katz who is one of the principals of Tolend Road LLC and Atty. Chris Wyskiel who represents the owners of the land are present. He explained that the applicant proceeded with the application for approval in reliance upon a contract. The contract provided that at the conclusion of the approval process, the property would be conveyed. Planning Board approval was on June 14th. There is a requirement that the plan be submitted within 90 days for signature. The party that is the most interested in doing that is the developer. There were 19 conditions of approval and a number of environmental permits that had to be obtained. The applicant used the initial 90 day period to go forward to seek finalization of all those conditions. When he finished that process he proceeded to obtain financing from Sovereign Bank. At approximately the time that the conditions were satisfied and the financing was also obtained, he contacted the seller and ultimately Atty. Wyskiel indicating that they would prepare to close the transaction. At that time they became aware that there was a dispute with regard to the financial provisions of the contract and were unable to close in September. On September 29th they requested an administrative extension for 90 days to try to work out their issues. He said that the Board authorized the Planning Director to issue a 90 day extension without having to come before the Board. That happened and it extended the time to submit the proposal until Dec. 14th. In the interim, they have attempted to resolve their issues and have come a significant distance but as of this evening they have not reached closure.

Atty. McNeill stated that as the 90 day period was coming to a close, he joined with Atty. Wyskiel in this request for an extension. There are a lot of good reasons why this extension should be granted. The first is that the City rezoned land from Industrial to Residential to permit this development. The City will be donating 14.22 acres of industrial land as a result of this approval. The applicant will bring a 4,000 + plus foot sewer from the Cambridge Tool Co. up to Tolend Rd. at no expense to the City. There will be 72 units of fiscally positive housing. They also agreed to donate 5.5 acres to the City for a playing field off of Columbus Ave. The general criteria for granting an extension under the subdivision regulations is to grant it if there are conditions that are

beyond the control of the parties that render the applicant unable to submit the plan. The applicant doesn't own the land, in terms of posting the bonds and other security to get the plan they can't do that until they own the land and the seller at this stage refuses to sell it to them. The plan itself has to be signed by the owner, not by the applicant and the seller will not sign the plan. They have made some real progress toward resolving this issue. They are considering alternative dispute resolution mechanisms to bring this to closure. He assured the Board that they would continue to settle this case because it is in everyone's interest, the City and the seller, the applicant and others.

Atty. McNeill said that a project was approved on Columbus Ave. that could not be built without sewer. That developer chose to go forward. Land development is one risky business. That project went forward in reliance upon the sewer being there. They assured those people that they want to bring sewer to this site as soon as possible. If this project is not extended and these permits are not continued, there will be no sewer and there will be no project. In terms of that adjoining project it is important for this extension to be granted. They ask that their extension be considered on its own merits. They have all the permits, the financing is in place and they have a contractual dispute relating to some financial issues that they hope to be resolved. They asked for the standard 90 day extension to try to get this done.

Atty. Chris Wyskiel stated that he wanted to clarify the point that they have made substantial progress. He said that both councils have recommended a mediator and are targeting a January 11 date, which they hope will close the gap if not resolve it.

Donald Andolina asked what the confidence level was that all the open items could be completed within the 90 days.

Malcolm McNeill stated that the only open items are the contractual items, everything else is in place. He said that since Atty. Wyskiel has become involved they have closed many gaps and he is cautiously optimistic that this will work. The parties have a great interest in making it work because if it doesn't work, his clients have no permits because of the way the contract is written. He said that they have spent hundreds of thousands of dollars developing this property and they are motivated to get it done.

Dennis Ciotti asked if the developer on Columbus Avenue already installed sewer pipes, etc.

Steve Stancel stated that there are portions of sewer pipes installed.

Steve Stancel stated that the Planning Department is opposed to the full 90 day extension. He said that the original approval was good for 90 days and the Planning Director can administratively extend it an additional 90 days. That is 180 days (6 months). The concept being that it can take some time to achieve various conditions for approval. These conditions of approval can include NH Wetlands Permits, Army Corps Permits engineering and final design issues which can create circumstances beyond the control of the applicant. He said that he is not convinced that an agreement between the property

owner and the developer is a circumstance beyond the control of the applicant. These regulations were put in place because we were finding that some projects after receiving conditional approval in years past were languishing out there in the conditional approval phase. What happens is that the developer would get a project approved, leave it in the conditional use state, and finish another project they were doing and then come back and get final approvals. A project in a conditional approval phase pays fewer taxes. There were some incentives to keep it that way, consequently, the City created these regulations so that projects would get on the docket, get approved and then move forward. The importance of a timely final approval includes becoming part of an official City map and the impacts can be planned which is important. For a project that is conditionally approved you can't always plan on the impacts. Conditions in and around the conditionally approved project may change through time such as traffic or other infrastructure issues. That is another reason that you don't want a project to languish out there in conditional vs. final approval. Regulations may change that would adversely affect the project as well as general interpretations or attitudinal changes or policy changes among approval agencies themselves. If this project were to come before the Board in the near future again, 72 units may or may not be approved. It is simply not good policy that a project languishes in limbo in a semi-approved state. In this particular case the developer has all the permits in place and as we know this is an issue between the developer and the property owner. He said that this is a large project of 72 units. It's not very often that we continue to approve extensions for a project this big. The approval is complex and involves land transfers between the City and the developer and involves land that can be used for industrial uses if everything were in place and approved. There are recreational easements to the City that can be used for field development if this were in final approval. There are sewer extensions that would be advantageous to the abutting property users and not just the 3rd party that was mentioned here this evening. He said for those reasons he thinks that it is important for the project to get wrapped up. The question at this point is what is a reasonable extension to allow these developers time to finalize their negotiations. He felt that 90 days is too long. He said the Planning Department recommends 45 days which will give the developer 225 days from the day of approval. He said that the 45 days will push the developers along to a finally bring this to a conclusion.

Malcolm McNeill stated what they have considered mediation with a proven mediator. That will not occur during the Christmas Season but in mid January if everything comes together from a scheduling perspective. He said that's 30 days. They want to be in a position to have adequate time to complete the project because the most important thing that can happen here is that the project not be threatened by an unrealistic extension period. This case was financed in September they are just engaged in a very difficult contractual discussion that we can straighten out but just need time to do it. He said that he felt that a longer time would be fairer and that 45 days is kind of tight.

Donald Andolina asked Steve Stancel how he would feel if the Planning Board approved a 90 day extension. The first 45 days to the applicant and the last 45 days, if necessary, would be granted through the Planning Director.

Steve Stancel said that it is his understanding that mediation is going to take place in January and that a decision should be relatively quick after that. 45 days allows for that process to occur. They should know shortly after that what is going to happen with this project. If the developer needs to come back, he comes back but he thinks that the 45 days hold their feet to the fire.

Malcolm McNeill stated that he would prefer the 90 days with them reporting back to the Planning Board in 45 days with regard to their progress where it can be judged whether they are dealing in good faith with the issue.

Donald Andolina felt that there is mutual interest and benefit to both parties and he thinks that it is worthwhile to give a bit more than we might ordinarily want to give here, therefore he felt that the Board should go beyond the 45 days.

Donald Andolina made the motion to that give a 90 day extension with the provision that at the end of the 90 days the Planning Director, after reviewing the project is allowed to either grant the additional 45 days or deny it.

Frank Torr said that we need to be explicit as to which way we are going to go.

Donald Andolina suggested saying that at the end of 45 days if it is not completed we'll ask the Planning Director to come back to us with a proposal for either additional time or to take some other action.

Frank Torr said that he would prefer to see the 90 days but a report from both attorneys as to what has happened after 45 days. A lot of time and money has been involved in this project and he knows that 180 days is a long time. He said that he would rather err on the liberal side in this case.

Donald Andolina said that he will change his motion to grant a 90 day extension with a report back at the end of 45 days.

Frank Torr seconded.

Discussion ensued with regard to granting extensions and the Board decided to make the January 24, 2006, the cut off date.

Tony McManus said that the motion as he understands it is that there will be a 90 day extension and the attorneys would report back at the meeting of January 24th and if they don't have it resolved by the 24th, they still have additional time but we would have some handle on where they're at.

Donald Andolina said that is correct.

VOTE 5 – 1 Opposed – Dennis Ciotti

ITEM #12: Adjournment

Frank Torr made the motion to adjourn.

Dennis Ciotti seconded.

VOTE U/A

