

**DOVER PLANNING BOARD
MINUTES OF MEETING
AUGUST 10, 2004**

MEMBERS PRESENT: Donald Andolina, John Swartzendruber, Dennis Ciotti,
BethThompson, Tony McManus, Frank Torr, Dean Trefethen,
Eric Tooke

MEMBERS ABSENT: Ronald Cole, Pete Lavoie

STAFF PRESENT: Steve Stancel, Planning Director and Jacqueline Freeman,
Recording Secretary

Tony McManus chaired the meeting and brought it to order at 7:00 PM.

ITEM #1: Citizens' Forum

Mary Hebbard, 97 Spruce Lane introduced herself.

Rick Hebbard stated that about 400 ft. of stone wall has been removed from the Brough property. He indicated that the wall was not contiguous but there were well over a hundred rocks that were removed and are now on a second, illegal driveway. He stated that trees were cut down in the overlay district and added that several codes have been violated

Mary Hebbard listed the codes that were violated as follows: Chapter 92-5 Driveways, Chapter 143 Scenic Roads, Chapter 170-28.4 Scenic Rd Overlay District, NH State Statute RSA 231, Section 158, and RSA 472 Section 6, Boundary Lines which is a misdemeanor. She said that this makes her angry because they went through this two years ago. It makes her angry that someone comes before the Board and say that they have an understanding of what is expected and then they totally violate that. She wants to make sure that something is done.

Tony McManus explained that Chairman Cole told him there was some discussion that did take place with regard to the rocks but it did not appear as a condition of approval. He said that the Planning Department and the Building Inspector are looking into this and will follow up on this.

Rick Hebbard said that he hasn't seen anyone from the City out there and it's been well over a week.

Steve Stancel stated that they have been out there.

ITEM #2: Approval of the minutes.

Beth Thompson made the motion to approve the minutes.
Dennis Ciotti seconded.

VOTE U/A

ITEM #3: Consideration and acceptance of a request by Public Service of NH, to remove 4 dead trees along the right-of-way of a scenic road (Old Garrison Road).*(P04-35)

David Crane stated that taking down the 4 dead trees is part of the maintenance that they plan to do on Old Garrison. He said that near the 2 dead pine trees he noticed that there was another dead pine that he missed the first time. He said that he would like to add that to the trees to be cut. He said that in addition, they plan to trim near the power lines which they do periodically just to keep things from growing near the lines for public safety and liability reasons.

Frank Torr made the motion to accept the application.

Beth Thompson 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 that the request be approved. Staff reviewed the trees in question and observed that they were dead. The removal of the trees will not impact the scenic qualities of Old Garrison Rd.

Beth Thompson made the motion to approve and to add the removal of the 5th tree.

Don Andolina seconded.

VOTE U/A

ITEM #4: Consideration and acceptance of a minor lot line adjustment of land for McEaney Survey Associates Inc., (Owners Patrick Murray & Boston & Maine Corp) Assessor's Map 24, Lots 2D, 2E, 2B, 21, zoned B-3 & I(-1), located on Broadway.*(P04-36)

Tony McManus explained that a letter was received from Kevin McEaney requesting a waiver from Chapter 155-18, Section B(5) requiring that the entire lot be shown on the plan because of the length of the Boston & Maine parcel.

Kevin McEaney represented the owner. He said that this is a lot line adjustment and a lot consolidation plan. He said that Mr. Murray acquired land from the B& M Railroad and explained how the land would be added to the parcels.

Frank Torr made the motion to accept the application.

Beth Thompson 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 including the waiver request as follows:

1. Add the owner's signature to the plat.
2. Revise the plat by correcting the spelling of "be" under the Legend for the definition of LL TBA.
3. Revise the plat by correcting the plat to locate the notation for lot 24 – J2 either on the lot or use an arrow to indicate the correct lot.

Beth Thompson seconded.

VOTE U/A

ITEM #5: Consideration and acceptance of a minor lot line adjustment of land for Rita Herlihy, Assessor's Map 27, lots 270 & 271G, zoned R-12, located on Oak Street.*(P04-37)

Kevin McEneaney represented the applicant stating that this is a lot line adjustment. He explained that the three lots were created by a 1907 subdivision. He said that in the 1940's Mrs. Herlihy's house lot was combined with the lot behind her house on Rose St. to make the lot more conforming. He said that Mrs. Herlihy would like to combine the 2 lots on Rose Street to convey to her daughter, leaving her house sitting on the original size lot which is approximately 8,000 sq. ft. This required a Variance because it was creating a sub-standard lot on Oak. St. The Variance was granted in June of this year.

Donald Andolina made the motion to accept the application.

Beth Thompson 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 condition that the owner's signature be added to the plat.

Beth Thompson seconded.

VOTE U/A

ITEM #6: Consideration and acceptance of a minor lot line adjustment of land for Pierre & Carolyn Lavoie and Eric & Lorraine Johnson, Assessor's Map L, Lots 14M & 14G, zoned R-20, located on Dover Point Rd. Evans Drive.*(P04-38)

John Swartzendruber stated that he was abstaining because he is close friends with one of the applicants.

Kevin McEneaney explained that the Lavoie's parcel is approximately 23 acres in size. The Johnson parcel is approximately 5 acres in size. With this lot line adjustment the Lavoie parcel will become 28.85 acres and the Johnson parcel will be reduced to 1.49 acres. The lots meet all the requirements. Last year or the year before the Johnsons received a Variance to construct an addition to their property to within 5 feet of the property line and there is a reference to that on the plan.

Beth Thompson made the motion to approve with the following conditions:

1. Add the owners' signatures to the plat.
2. Revise the plat by correcting the spelling of "parcels" in note 6 describing the flood hazard area.
3. Provide the Planning Department with the digital version of the survey.

Dennis Ciotti seconded.

VOTE U/A

ITEM #7: Discussion and possible vote on possible revocation of the Excavation Permit for Dover Sand & Gravel, (Owner Pruven Aggregates, Inc.), Assessor's Map H, Lot 61 and 59, located on Mast Road.

Steve Stancel stated that a letter was received from an insurance company in Exeter indicating that they are working to secure a reclamation bond for the Proulx gravel pit. He added that the City has attempted to make contact with the company to verify and to attempt to get a time frame, but as of yet, they have not gotten back to us. He suggested holding the public hearing and then tabling until the next meeting when they'll have a better idea of when the reclamation bond will be received.

The public hearing was opened.

Richard Proulx representative of Pruven Aggregates, stated that they are in the process of obtaining the bond. Several insurance companies have gone bankrupt and fellow gravel pit owners have had a problem upgrading their bonds. The biggest issue they are having is that they have never needed a reclamation bond. He said that they feel that they do not need one but they will provide one because they are trying to get along and work with the City. He said that he is hoping to have his reclamation bond in the next couple of weeks.

Rick Hebbard, 97 Spruce Lane, stated that he was on the gravel pit committee last year and he has an extensive background in the construction industry. He said that he owned Barrington Sand & Gravel for almost 30 years and was the Vice President. He said that after going through all the information, RSA's and the Dover Code, there is nothing that dictates that Pruven Aggregates has to get a bond. He said that they are here tonight for a possible revocation of their permit. He said that they have no permit and they need no permit because they are grandfathered. As he sees it, they are exempt.

Tony McManus asked if all the other gravel pits operators have provided their bonds.

Steve Stancel stated that all the other gravel operators are in compliance. He added that he would like to respectfully disagree with the Mr. Hebbard. He said that it is the staff's position that a) this gravel pit is not grandfathered, and b) even if it were grandfathered that both the State RSA's and the City's Regulations allow for the requirement for a bond. It is very clear in the regulations if the applicant disagrees with either the administrative decision or the decision made by this Planning Board, they can go to the Zoning Board of Adjustment to appeal. As it stands now, we are requiring a bond.

Frank Torr made the motion to table.

Beth Thompson seconded.

VOTE U/A

Tony McManus announced that they would be placed on the agenda for the next meeting.

ITEM #8: Old Business

a. Discussion and possible vote on Emerald Woods subdivision, located on Littleworth road. (P02-01) (25 lots)

Dennis Ciotti made the motion to take this item off the table.

Donald Andolina seconded.

VOTE U/A

Bob Stowell, Tritech Engineering, represented the applicant. Since the last meeting, it was the vote of the Board to hire an independent consultant to review the drainage that had been proposed for the project. He said that they have been working with Engineering and that City Engineer Paul Vlasich spoke at the last meeting. Since then, the City contracted with Millette, Sprague and Colwell to perform an independent analysis of the drainage and that was prepared and presented to the applicant. They have worked with the proposed plans to address the minor comments that were raised by the consultant. They feel that they addressed the concerns adequately. They have provided additional information to Engineering staff and Planning staff and they feel they have overcome the drainage hurdle that they have been stuck on.

Steve Stancel explained that this was tabled because there were still some concerns about drainage coming off the site. They went out for Requests For Proposals and hired an independent drainage engineer to take a look at the plan. The independent engineer is here tonight and if the Board wishes, he is available to explain what he found and what his recommendations were.

Dennis Moulton, of Millette, Sprague & Calwell, stated that they were hired by the City of Dover for an independent review of the drainage. On June 22nd of this year, he met with Steve Bird and Doug LaRosa of Tritech, at the site. At that time they met with several of the abutters who expressed some of their concerns relative to the drainage coming from the site. He walked along the proposed roadway and at that time he gave the existing conditions of the site, the existing drainage patterns, the conditions of the

vegetation and other site considerations that would have an impact on the drainage. Dick Millette of their office worked with him in the review of the design plans to ensure that the drainage did flow in the way that it was intended by Trittech and was not being diverted inappropriately to regions off the site. Once they finished that review, they went on to the drainage calculations themselves. For the drainage calculations they not only reviewed the numbers within the calculations but the assumptions made by Trittech during their analysis. On July 1st they completed their review and issued a letter to the City of Dover, outlining their findings. They had a number of recommendations regarding changes to the plans and drainage calculations that were forwarded to Trittech. They felt that these changes would clarify the design and address some minor issues that they felt were a problem and provide them with a greater level of comfort with findings of the drainage analysis. He said that on August 6 they received plans and drainage calculations from Trittech and they had addressed all their concerns and outlined the changes that were made on the plans. They reviewed the plans again to insure that the plans were indeed revised according to their recommendations and they were. The conclusion is that they are in agreement with Trittech's analysis. They feel that they prepared the analysis correctly in conformance with standard engineering practices and the post development flows from the site will not exceed those that are seen currently.

The public hearing was opened.

Larry Pitman, 82 ½ Littleworth Rd., stated that he has only been there since 1983. He said that he has brought in truck loads of sand for his yard. Mrs. Pitman passed out a folder of photos of the area to each member of the Board. Mr. Pitman said that he was told that water level will seek its natural flow. He had a series of pictures on the easel which he made reference to. He remarked that if drainage happens on his side of the road, why doesn't the same thing happen on their side of the road. He said that when Ezra Green was built they said that no extra water flow would be generated. He had pictures of the proposed development and stated that it is downhill from him. He said that nature tells him that water runs down hill. He pointed to pictures that showed where the water finally ended up. He said that the water from the development passes under Littleworth Road. He said that at the moment there are 15 driveways leading into the same area. He said that his pictures show the difference between before the development and now. He said that he heard someone say that the water is not his problem after it crosses under Littleworth Road and that statement stuck in his mind after all these years. When he is ready to sell his house in four or five years, he said that when they come out to evaluate his house and tell him that his house is worth much less than it should be because of the extra water flow, he asked if it would be the developer or the Board who would pay him the money. He indicated that he is not planning on taking a loss on his property because of a developer. He asked who would be picking up the tab.

The public hearing was closed.

Steve Stancel stated that this project has gone through several months of review. He said that the applicant's engineer explained the drainage, also the City's engineer signed off on the drainage and the City has had an independent engineer sign off on the drainage.

He added that the Planning staff recommends approval of the subdivision plan and the Conditional Use Permit with the following conditions:

1. Add the owner's signatures to the plat.
2. Add the surveyor's stamp and signature and the engineer's stamp and signature to the appropriate sheets.
3. Provide the Planning Department with a digital version of the final plat.
4. Provide the Planning Department with a copy of the NH Wetlands permit and add the permit number to the plat.
5. The developer grant a public access and utility easement for the future development on Map F, Lot 17 A and Map F, Lot 15 to be given to the City prior to sale of any lots.
6. Provide the Planning Department with proof that the Environmental Protection Agency Notice of Intent permit application has been filed.
7. The applicant shall pay the Community Services Vehicle Capital Improvement Program fee, in the amount of \$10,772, prior to the issuance of the first building permit.
8. In lieu of providing on-site recreation facilities, the applicant shall make a contribution for improvements to existing recreational facilities, in the amount of \$5,000, prior to the issuance of the first building permit.
9. Revise the plat to add a note that the property is in the Secondary Groundwater Protection District.
10. Revise the plat to add a note explaining how the end of the watermain at the cul-de-sac will be restrained.
11. Prior to recording the final plat, the applicant shall provide proof that an agreement has been reached with Ezra Green's Farm LLC to permit access to their sewer line in Littleworth Road and to permit the construction of the extension of Susannah's Lane. Neither the sewer line nor the road has been accepted yet by the City.
12. Revise the plat to integrate the suggested drainage improvements and grade changes outlined in the Drainage Review dated July 1, 2004, completed by Millette Sprague and Colwell.

Dean Trefethen stated that this application came before the Board before he got on the Board and he also missed the April meeting due to vacation. In light of that he is going to **abstain**.

Donald Andolina asked when the photo with the standing water was taken.

Mr. Pitman stated that it was taken the same year as the site plan. He said that he was told that he couldn't clean out his ditch because it's wetlands. He asked how the developer can build and he can't even clean out his ditch. Probably because he doesn't have money.

Mr. Moulton stated that he is not sure where the photos were taken and Mr. Pitman indicated that they were taken on the other side of Route 9. He said that if you look at the maps of the area, Kelly Brook actually crosses under the road at that point so it is not that

surprising that you see standing water. He said what you have to look at when you are doing these analyses is what are you doing to that point of discharge and what happens when you develop when you change the hydrological components in that area. He said that according to Tritech's analysis, which he reviewed and has agreed with, the changes to the flows to that outlet point are the same.

Don Andolina asked if the analysis included the various seasons.

Mr. Moulton stated that the analysis looks at a 10 year storm that is based on information provided by Environmental Services. They have what they call a "Green Book" and among engineers it's a handbook on how to do hydrological and storm water studies and it sets a standard for New Hampshire as far as what to use for various storm events. He reiterated that he agrees with Tritech that this meets the requirements.

Steve Stancel stated that this is a conventional subdivision and since the time that this project was submitted to the Planning Board, the regulations have been changed. Today this would look much different if it were to come in than what we have before us. The lots and the houses would have to be clustered and they would utilize the upland areas much more effectively. He said that this project is really the last of the conventional subdivisions in this zone that you will see in the City of Dover.

Frank Torr asked if there was such a thing as asking the developer to post a bond to guarantee against a loss of value with regard to Mr. Pitman and Mr. Ross' property. He stated that the report said that the site contains at least four elongated, fairly level and wide runoff paths running across it from west to east and to him, they are called swamps. Basically that runoff is slow but with the development in there, it will affect the levels of these areas and eventually it will make its way across Littleworth Rd. to these properties in question. It raises a major concern to him. He doesn't want to be a deterrent to the development but he doesn't want to harm someone else's property as a result of the development. He knows that engineering can back up their specifics by technical material but in realistic terms, it still will be a problem.

Steve Stancel said that he would throw the question of a bond to the developer's attorney.

Jim Schulte said that it is unusual because they do meet the regulations. The drainage from this project goes to a different place or to a different path than the drainage from the Ezra Green development. They both cross Route 9, but the drainage from this will cross at a different location. It will run along the front of 82 ½ and 84 Littleworth and it crosses underneath the Old Stage Road. He said that he believes that you are creating a very difficult situation if you require that a bond be posted because it would be of indefinite duration and given Mr. Pitman's testimony that his land has always been wet, and even after putting in 40 loads of sand, his land is still wet. It is hard for him to see how anyone could ever establish that his land is wet because of the development of Emerald Green when his pictures and his testimony to you is that in spite of his efforts in filling his land and raising it, it's always been wet. He said that in April when this was tabled for a review, the City engineer had gone through the same analysis and agreed

with Tritech. He said that although it's been dry lately, April was a very rainy month. The night that we had this hearing in April, there had been almost a week of steady rain. The next day was dry so he went out to the property to look at it and he took pictures. Some pictures were of the Ross' property but he showed some that were taken in front of Mr. Pitman's property at 82 ½ Littleworth Rd. He handed out some pictures for the Board to review showing the water running along the ditch and a picture of Kelly Brook. He said that if he were standing in the brook he would not be able to see over the top of Kelly Brook. All the flow that came from Ezra Green and all the flow that came from this site and down that ditch drains all the way down the hill in front of Mr. Pitman's property and this is the amount of water that there was. He said that he understands that Mr. Pitman has wet property and he understands that behind Mr. Ross' property there may be a wet area but it appears that the recitation that the Board heard about the problems are greater than appear when you actually go look at the site. He said that you can see that it was taken from Route 9, looking toward Old Stage Road and you can see that the land seems to be level and dry except in the area where something was laid down to park an RV or a trailer. Mr. Shulte answered the question about the bond by saying that the developer would not accept the idea of a bond because it could never be enforced. If Mr. Pitman has a claim, the law of NH says if you divert water onto someone else's property you are liable for that. If you can establish that, then the person who did that diversion of water would be liable to him. Having a bond isn't going to help substantially except it's going to cloud the question because you are going to have to establish who was responsible and given the long history of wet conditions, and the lack of evidence of how wet it is after a substantial rain, he doesn't want to go there.

Beth Thompson stated that we've been dealing with this issue for many months and she hates to add more houses to the community, however, we all know that we can't deny people the use of their land as it's zoned. This applicant has been put through the ringer. She said that the City Engineer validated the work, yet that wasn't good enough so we hired a private consultant and they validated the work also. She said that she has to respect their professionalism.

Beth Thompson made the motion to approve with the 12 conditions recommended by the Planning staff.

Dennis Ciotti seconded.

John Swartzendruber stated that he was abstaining

Eric Tooke stated that he was abstaining

VOTE 2 – 2 Opposed – Frank Torr, Donald Andolina,

Eric Tooke stated that he was abstaining because his son was born in April and he was not at the meetings to review this.

Tony McManus explained that when this plan first came to the Board he suggested that the developer look at making the project a cluster development and they were not willing to do that. His concern is that the plan is poor planning. He has been out there on 2

occasions in a relatively dry period and the area is extremely wet. As Frank Torr pointed out, the problem is going to be exacerbated when you begin to bring in fill and you begin to put in houses and start to pave and interrupt the natural flow and the water table. The plan is that the low areas are going to collect the runoff and eventually it will filter out and he is not going to accept that that is going to happen. He still has the same concerns that he expressed at the last meeting regarding the amount of water that will end up on the opposite side of the road regardless of how it gets there. We have an adjacent problem with Ezra Green that has not been addressed and he doesn't want to add another problem on top of that development to the rear. Under the new regulations it would have to be a cluster development. He asked if they could redesign the whole project with the two lots placed together and have a cluster development that would use the entire property. He said that he feels obligated to the people who will be buying the houses to provide an area that is properly designed and will guarantee lots that are not going to be wet a good portion of the year. He said that since it was a tie vote he was called upon to vote and he will vote against it.

VOTE 2 – 3 Opposed – Frank Torr, Donald Andolina and Tony McManus

Steve Stancel pointed out to the Board that a no vote has to have very specific reasons as to why it's a no vote, as it may end up in litigation. He said that if there are other reasons why this was denied he wants to see them listed now.

John Swartzendruber said that his issue with abstaining was that he was an alternate at the time that this came in and he missed a fair amount of meetings and as the discussion went on, he's uncomfortable with what he didn't hear early on.

Tony McManus stated if those that voted against this wanted to give their reasons for their opposition, this was a perfect time to do this.

Don Andolina said that his opposition follows what Tony stated and that is that it is not clear to him to his satisfaction that this will not be a continuing problem, as with Ezra Green Farm. He said that he agreed that there wasn't much water last April but we have 25 houses that will dump water in there. He felt that it would be a continuing problem.

Eric Tooke stated that he abstained but asked if there has been a precedence set previously for a subdivision that was begun prior to the changing of the subdivision code and regulations.

Steve Stancel stated that there have been in the past and if the project has been accepted by the Planning Board, then the rules and the regulations that are in place at the time the plan is accepted are the ones that follow through.

Erick Tooke asked if the only matter of contention was drainage.

Steve Stancel stated that there have been various issues throughout the time period that this has been off and on the table during the approval process but the drainage was

probably the biggest problem but there were other issues in the past that had to be worked through.

ITEM #9: New Business

Tony McManus stated that there is an extension request for Churchill Medical Systems.

Steve Stancel explained that when they went out for a ribbon cutting they found that the final site plan had never been signed by Ron Cole. The reason for that was that there was an outstanding item from the Planning Board approval and that was to submit the EPA Notice of Intent and that has been done, or will be done by the end of the week.

Beth Thompson made the motion to extend to October 2004.

Frank Torr seconded.

VOTE U/A

Tony McManus stated that there is a letter in the packets from Grant Davis suggesting a route for an Eastside bypass.

Steve Stancel stated that on the desks is a first announcement of the Annual Fall Planning and Zoning Conference to be held at the Waterville Valley Conference Center on Saturday, October 30th. These are great conference, with regard to what are the latest regulations coming out as well as on the basics.

Beth Thompson said that she wanted to comment that she was very disappointed with the vote on Emerald Wood. This is the second time that a project was turned down because the Board was second guessing professionals. She explained that professionals spend years and a lot of money on their education and that we would question their professionalism about things that most people don't understand is disappointing.

Frank Torr stated that the Waterfront Committee has been meeting on a regular basis addressing goals and visions as a group. He said that Tom Hindle brought photos of the waterfront and spoke about motif and how it should be addressed in his opinion. He said that they had Doug Steel speak to the issue of clean-up of the City site. He said that they have set the time for the public hearing on the charrette. It would probably occur in the latter part of September or the first of October. The basic project should be on line in August of 2005. He said that the next scheduled meeting is August 30, 2004.

Tony McManus stated that on behalf of the group that is working on the McConnell Center, they are working on the use of the building for City agencies and strictly non-profit groups. There is a question on how the governance will take place and whether the City will retain ownership or if it would be transferred to a specific non-profit entity or another option that we haven't considered. There is a presentation that will be made to the City Council with just the preliminary suggestions either late Sept. or the first of Oct. He added that everyone should feel free to contact him or Steve Stancel if anyone has any thoughts on the use of the building.

ITEM #10: Adjournment

Beth Thompson Thompson made the motion to adjourn.

Frank Torr seconded.

VOTE U/A