

**DOVER PLANNING BOARD  
MINUTES OF MEETING  
NOVEMBER 13, 2003**

**MEMBERS PRESENT:** Donald Andolina, Margaret Stevenson, Allen Schintzius, John Swartzendruber, Dennis Ciotti, Beth Thompson, Pete Lavoie, Anthony McManus

**MEMBERS ABSENT:** Eric Tooke, Ronald Cole, Frank Torr, Parks Christenbury

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

Vice Chair Tony McManus brought the meeting to order at 7:04.

**ITEM #1: Citizens' Forum**

No one spoke.

**ITEM #2: Approval of the minutes.**

Dennis Ciotti made the motion to approve the minutes.

Beth Thompson seconded.

**VOTE U/A**

Tony McManus announce that **ITEM #5**, Lot line adjustment for Dover Partners, located on Knox Marsh Rd., has been withdrawn at the request of the applicant.

**ITEM #3: Consideration and acceptance of an application for a minor subdivision of land for Nancy McAtavey, Assessor's Map A, Lot 31, zoned R-40, located on Blackwater Road.\* (P03-63)**

Paul Connolly, CivilWorks, represented the applicant and explained the minor subdivision and Conditional Use Permit application. He said that this parcel is approximately 5 ½ acres in size and is not served by municipal water and sewer. He stated that they went to the Conservation Commission and received approval with the stipulation that they put the back land behind the proposed lots into a conservation easement for the benefit of the City or whatever entity that would be holding the conservation easements on adjoining land presently owned by Williams. Mr. Connolly stated that the NH DES approval is pending receiving well radius easements and access and utility easements located across the front of lot 31. He said that that particular easement across the front of lot 31 is intended for the benefit of lot 31-A, which is the lot closest to the top of the plan. That easement will allow for a common driveway to serve both Los 31 and 31-A, and will allow for the driveway to go in along the wetland and not through the wetland. Paul explained that the leach field on one of the lots is the results of a replacement system that was put in not quite 10 years ago without regard to the

potential for the subdivision of the land. The goal in this case is to salvage the leach field on Lot 31-A and use it with the new construction of a home and create a new leach field on Lot 31.

Peg Stevenson made the motion to accept the application.

Beth Thompson seconded.

**VOTE U/A**

The public hearing was opened.

Ronald Plant, 193 Blackwater Road, stated that he was opposed to this application because of environmental and traffic issues. He said that he was also speaking for a neighbor that feels the same way but could not be present.

The public hearing was closed.

Beth Thompson made the motion to approve the application with the Conditional Use Permit with the following conditions:

1. Add the owner's signatures to the plat.
2. Provide the Planning Department with a digital version of the final plat.
3. Revise the plat by adding the surveyor's seal and signature
4. Revise the plat to add the 50-foot wetlands buffer to all jurisdictional wetlands.
5. Revise the plat by amending Note #12 to indicate the amount of contiguous upland area for each lot.
6. Provide the Planning Department with a copy of the NH Department of environmental Services Subdivision permit and add the permit number to the plat.
7. The applicant shall grant a conservation easement to the City or other approved conservation group on the portion of Lot #31B that is south of a line extending the rear lot line of Lot #31 to the east at a bearing of N75°16'34"W. The easement area shall be shown on the plat. The easement shall be granted prior to the recording of the plat.

Donald Andolina seconded.

**VOTE U/A**

**ITEM #4: Consideration and acceptance of an application for a minor subdivision of land for William Martindale, Assessor's Map 17, Lot 76A & 76C, zoned R-12, located on Shamrock Lane & Birchwood Place \*(P03-64) (1 lot)**

Bob Stowell, TriTech Enngineering, represented the applicant. He gave the history of the land saying that it was originally subdivided in 1958 that created 4 lots, and then sometime after that the lots were combined on the tax maps. Bob Stowell stated that they have been talking with staff about an issue with the sewer main that abuts the Spaulding Turnpike and was part of the original approval plan. He said that instead of putting the

sewer in the roadway they put the sewer along the turnpike to get gravity flow down to the sewer main. There seems to be a question as to whether it is a City sewer, whether it is in good condition or not and who should be responsible for taking care of it. They feel that it was part of the original construction and it was built to City standards. Bob Stowell stated that it is an 8" main and it looks from the construction plans that it was intended to be a City sewer main.

Steve Stancel stated that Pete Lavoie had the line inspected and there are infiltration issues because it hasn't been maintained or used since 1959. In terms of economics, he questioned whether it would be less expensive to put in a private line that is going to service those two properties or if it is a public sewer to bring it back up to public standards. He said that to him it is the responsibility of the applicant.

Pete Lavoie stated that the subdivision was approved with a sewer line, but even in the deed it doesn't state that the easement is to the City of Dover and that is what makes it confusing. He said that he doesn't mind seeing this approved but at some point it is going to have to be defined whether it is the City's or if the private landowners have to maintain it in the future. He said that they were concerned about the construction of the main after they opened the manhole. He said they are willing to work with the developer.

Discussion ensued with regard to the right-of-way and its relationship to the mills and how it was no longer applicable but is still on the books.

Dennis Ciotti 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.

Peg Stevenson made the motion to approve with the following conditions:

1. Add the owner's signature to the plat.
2. Provide the Planning Department with a digital version of the final plat.
3. Revise the plat by adding the surveyor's seal and signature.
4. Revise the plat to show the Tax Map and Lot numbers as assigned by the Tax Assessor.
5. Subject to resolution of ownership of the existing sewer line. The applicant to bear the burden of any cost to repair or replace the line.

Beth Thompson seconded.  
**VOTE U/A**

**ITEM #5: Consideration and acceptance of an application for a minor lot line adjustment of land for Dover Building Partners, Assessor's Map H, Lots 18-1 & 18-2, zoned R-20, RM-20, Knox Marsh Rd.\* (P03-65)**

**Withdrawn at the request of the applicant.**

**ITEM #6: Consideration and acceptance of a lot line adjustment of land for Teresa Picard & Margaret Buckingham, Assessor's Map A, Lot 18B-3 & 19, zoned R-40, located on Varney road.\* (P03-65)**

Tony McManus stated that he has provided advice to Margaret Buckingham in the past but has had no contact with her or with Mr. McEneaney with regard to this subdivision. He felt that he didn't have any conflict and asked the Board if they had any questions.

Kevin McEneaney represented the applicants. He said that both lots are serviced by individual wells and septic. He said that Margaret Buckingham has recently built a new house on her lot. He said the reason for the adjustment is when the Buckingham subdivision was approved, at that point in time, it was not necessary to provide a 75' well radius for wells during the subdivision process and the radiuses could go onto the abutting lot lines without any easements necessary. He said that this plan would wholly contain the 75' well radius within the Buckingham property so there would be no easements necessary. He said that there is a foundation drain at the new house built by Margaret Buckingham that exists down towards her frontage area. The exit of that pipe does not go over the new lot line, however, he will provide a note on the plan that they will allow for a drainage easement that goes into the swale that is on the Picard property. He added that it could be made a condition of approval.

Peg Stevenson made the motion to accept the application.

Dennis Ciotti seconded.

**VOTE U/A**

The public hearing was opened.

There were no comments.

The public hearing was closed.

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

1. Add both of the owners' signatures to the plat.
2. Provide the Planning Department with a digital version of the final plat.
3. Revise the plat by deleting the "A/98B-2" label from Map A, 18-B-3.
4. Revise the plat by adding a note certifying that each lot contains a minimum of 40,000 square feet of contiguous upland.
5. Revise the plat by adding the Dover Tax Map and Lot number (A-15-1) for the Picard lot known as Map 65, Lot 2 in Somersworth.

Dennis Ciotti seconded.

**VOTE U/A**

**ITEM #7: Consideration and acceptance of an Open Space Subdivision of land for Coldwell Banker – Criswell/Wolcott Real Estate (Owners Michael & Kevin Barry and Sheila Robinson), Assessor's Map E, Lots 67 & 69-A, zoned R-12, located on Sixth Street & Whittier St.\*(P03-48) (14 lots)**

Bob Stowell, Tritech Engineering, stated that this project has received conceptual approval about one month ago. He said that this plan incorporates things that were discussed at the preliminary approval stage and they have been to TRC and have addressed the issues. The design does show a sidewalk extension from the intersection at Sixth Street, along Whittier St., all the way down to Whittier Falls Way. It is proposed as a 5' wide sidewalk with curbing and it is also where the extension of the 8" water main will go on the westerly side of Whittier St. He said that they are still trying to resolve the issue of the public trail and where that could go and how to best accommodate that. He said that in the area of Whittier Falls Way, there is an easement to use in common with the abutters. He added that they have been trying to work with them to provide the City with a trail that meets the City's needs but doesn't infringe on the abutters privacy.

Atty. Chris Wyskiel summarized the discussions between the developer and the neighbors. He stated that along the common boundary line, a private easement has been established 25' wide to each side, creating a 50' wide path on which the property owners to either side of the property line enjoy common easement rights for vehicular access to their lots. The applicant doesn't need to use this anymore for vehicular access with the new street being built. He said it has been agreed to with the Bibbers and the Jeanottes that the developer will re-align the entry way to the private drive that is known as Whittier Falls Way to narrow the pavement and put some fencing in to frame its entry way to discourage third party vehicular use. It has been agreed to relocate the gravel driveway closer to the Bibber and Jeanottes properties, creating a green strip to the northeast and leaving the remaining gravel there as a walkway. He said that the recreation fee being paid for these lots will be allocated to the erection of a split rail fence to go down the grass strip that will be between the driveway and the public walkway. The pathway will be open for pedestrians, bicycles, horses, snowshoeing and cross country skiing. At the neighbors' request, it will be posted to prohibit any type of motorized vehicle use. He said that the City, through the Planning Office, has agreed that with the funds being paid for the recreation fee, the fencing will be put up and the City would have to construct the remaining portion of the gravel pathway from the terminus of the existing gravel way to the turnpike. Atty. Wyskiel passed out copies of the easement grants. He said that he has summarized what the developer has agreed to do and what the City will undertake to do with the monies allocated from the recreation fees.

Beth Thompson made the motion to accept.

Don Andolina seconded.

**VOTE U/A**

The public hearing was opened.

Jim Oschman, 31 Whittier St., stated that he and his wife are the abutters that will be most impacted. He stated that he likes the concept of the OSS but they feel that it doesn't make any sense to have the sidewalk on the western side of Whittier St. He said that people do walk up the hill on the eastern side of the street. He said that there is a bit of sidewalk on the bridge that is on the right side. The development at the bottom of the hill has crosswalks to the right side of the street. He felt to go partly up the hill and then have a crosswalk to the western side doesn't make sense and it seems to be dangerous. He said that the intersection of Sixth and Whittier would have to be redone to accommodate the walkers. He said that should the Board decide to put the sidewalk on the western side of the street, then there will have to be some drainage added which was to be provided when they rebuilt the intersection and wasn't incorporated.

Cornelia Eagan, 150 Sixth Street, is one of the owners of the property that is directly across on Whittier St. from this proposed development. She said that she did not know about any of these changes until just now. In regard to the sidewalk she said that the sidewalk on Sixth St. is now on the north side and at the junction of Whittier St. and Sixth there is a 10' section of sidewalk on the south side and she feels that the sidewalks should be placed on the east side of Whittier St. She said that she is not anxious to have sidewalk on her side either.

The public hearing was closed.

Steve Stancel stated that the sidewalk issue was a difficult decision because of the pros and cons for both sides of the street. He said that there is an existing sidewalk that goes through a certain portion of Mineral Park but then it stops and then you have a distance before it gets to the bridge. He said that there is a 3' wide concrete pad along the bridge but that is not meant to be a sidewalk. He said that they feel that the public would be better served if the sidewalk were on the western side because there are 14 new houses going in on this side and you have two existing houses on Whittier Falls Way and rather than have the people from those units have to cross the street and in many locations it is dangerous to cross right there, it doesn't seem practical to them. He said that in the future there may be some development on the other side of Sixth St. and at that time those developers may be taxed with putting a sidewalk on their side of the street. The western side seemed to be the safest to have people who wish to walk on Sixth St. sidewalk.

Dennis Ciotti asked if the children from the 14 home sites would be attending Horne St. School or Woodman Park and would they be walking or would they have bus service.

Steve Stancel stated that he could get that information to him.

Peg Stevenson stated that she was curious if there was a survey to see how many people from Mineral Park actually walk up that hill up to Sixth St. She said that she sees people walking up the hill and they are on the easterly side. She thinks of the greater number of tenants in Mineral Park vs. 14 homes and asked if it wouldn't be better on the other side.

Steve Stancel stated that there is a large section of area between where the development would end and where the sidewalk currently ends at Mineral Park so there would still be a section without any sidewalk.

Don Andolina questioned the waiver of the 12" line which violates the code.

Pete Lavoie explained that on most subdivisions where there is not going to be a continuous main and they are just going in a short distance, the 8" is sufficient when they put it into their KY pipe program. If there was a possibility of another connecting development, they would then require the 12" line.

Don Andolina made the motion to approve the application and the waiver to 155-43C to permit a 8" water main in place of a 12" requirement with the following conditions:

1. Add the owners' signatures to the plat.
2. Provide the Planning Department with a digital version of the final plat.
3. Revise the plat by adding the surveyor's seal and signature.
4. Approval includes a Conditional Use Permit for the development on steep slopes.
5. The applicant shall provide the Planning Department with a copy of proposed homeowners' association by-laws.
6. The homeowners' association by-laws shall provide for the preservation of the open space in perpetuity and prohibit the dumping of yard and other waste in the open space.
7. Approval includes the granting of a waiver to allow an 8 inch water main.
8. Provide the Planning Department with proof that the applicant has filed a Notice of Intent with the Environmental Protection Agency.
9. The applicant shall grant to the City an easement for a public trail to connect the City parcel (formerly Cassily) to a crossing of the Spaulding Turnpike, at a location along a section of Whittier Falls Way. The final details to be worked out to the satisfaction of the Planning Director.
10. The applicant shall pay the Community Services Vehicle Capital Improvement Program fee prior to the issuance of the first Building Permit \$2,145.00.
11. In lieu of providing on-site recreation facilities, the applicant shall make a contribution for \$2,800.00 for improvements to the proposed trail facilities prior to the issuance of the first building permit.
12. Revise the plat by adding a more detailed UGE & Cable plan, showing the transformers, utilities boxes and services to lots.
13. Revise the plat by adding a hydrant gate to be installed at the cul-de-sac.
14. Revise the plat by adding curb to be installed along the offsite sidewalk.

Beth Thompson seconded.

Dennis Ciotti wanted to be sure that everyone was clear that the sidewalk would be placed on the westerly side of Whittier St.

Steve Stancel stated that it is already on the plan.

VOTE U/A

**ITEM #8: Public hearing in accordance with RSA 675:6 to consider an amendment to Chapter 155-"Subdivision of Land" of the code of the City of Dover. The amendments, to 155-22, clarify requirements (zone, original lot size) for an Open Space Subdivision (OSS). The amendments require financial documentation demonstrating that the proposed yield plan is realistic and practical. The amendments also remove utility, preliminary hearing and impact statement prerequisites for mandatory OSS, while leaving the preliminary hearing and impact statement prerequisites for non mandatory ones. Finally, the amendments change the minimum lot size for R-12 lots, within an Open Space Subdivision, from 10,000 square feet to 8,000 square feet. The full text is available for public inspection in the Planning Department and on the City's website at [www.ci.dover.nh.us](http://www.ci.dover.nh.us).**

The public hearing was opened.

Kevin McEneaney stated that he was on the committee for the Master Plan that dealt with the Open Space Subdivisions. He was concerned with the financial disclosures relative to the yield plan. He said that in some instances you may be asking for financial information that may not be readily available because of a purchase and sale agreement that the sellers may not want to divulge. He explained how they go about developing the yield plan by getting limits of the parcel, doing the preliminary flagging of the wetlands and then they taking into consideration a roadway network and the minimum lot size requirements and the contiguous upland areas. He said that requiring the financial information that is proposed here is a little over the top. He said that unless you had a really tight design you may not know exactly what your costs are. He said that there are minimum lot sizes for different districts and in the R-40 there is no minimum lot size for the OSS but in the R-20 and R-12 there are minimum lot sizes. He recommended that maybe a minimum lot size should be instituted in the R-40 district or wipe out all the minimum lot sizes in all the zones. The residential districts all act the same, there are just different lot sizes.

Attorney Malcolm McNeill stated that he is not speaking for any client and he is not being paid to be present. He said that he believes in the legitimate right of private property ownership and the right of governments to become involved in that ownership only when it involves a legitimate public purpose, protecting the public welfare, etc. He said that it should only be done with regulations that are clear and reasonable. He said that at the top of the pyramid is the right of private property ownership. Other societies don't have that right in many instances, but we do and we need to protect it. Similarly we have a right in the development of real estate to either succeed or to fail, but that is the right of the private property owner, not the right of the government. He said that he is very much the supporter of OSS and has been for approximately 15 years. There have been very few communities that have adopted these types of subdivisions because there is an inherent skepticism that developers are getting away with an ability to develop more lots and more units in an OSS, and as such, that is a bad thing.

Malcolm McNeill stated that lately communities have come to the conclusion that the retention of open space is highly desirable and should be encouraged. In the past when an OSS came through, we had to go through the process of developing a yield plan and also developing a rational for permitting an open space project that was perpetuated by the skepticism that existed. He said from his own experience, the OSS projects were better projects and better developed and they did not result in any significant bonuses to any of the developers. He said that was not the motivation of his clients. He said that until recently, the developer had an option to do a conventional subdivision or get an ADS approved. He said that if they wanted an ADS approved they had to do a study similar to what is in the proposed amendments that deal with public impacts, in traffic, public schools etc.,. He said that the circumstances have changed. Now the preference is to have an OSS and get away from the cookie cutters and maximize development in clusters, preserve open space and proceed with development that we can be proud of. He said what is being said is that the cookie cutter doesn't make sense in Dover any more. The question is why should we adhere to a sizing calculation that deals with a form of subdivision that we no longer support and why should a yield plan on a conventional subdivision be the basis of determining what kind of OSS you should have.

Malcolm McNeill stated that he came here mainly with regard to the financial disclosures that are being proposed in Section 155-22 I(4) which is at the bottom of this proposal on page 1. He said that if someone comes in to do a conventional subdivision in one of the zones where it is permitted, the question of what the potential profit is, what were the acquisition costs and what was the deal with regard to this property, in all candor, is none of your business. He said if the applicant complies with the space requirements that are imposed; he has a right to proceed. For a person who is trying to effectuate the exact type of development that you wish to have and for which you have given him no choice, it is unreasonable to be in his pocket, in his bank or in his head with regard to if it is going to work or not. He suggested looking at getting rid of yield plans and trying to find a way to step into the 21<sup>st</sup> Smart Growth Century and determine what amount of density the City wishes to have in various zones, rather than using an archaic cookie cutter as a model for today's development. He suggested looking at the Rochester PUD ordinance and at the Town of Exeter's ordinance and for which Exeter, in his view, has done a good number of very desirable OSS projects.

The public hearing was closed.

Steve Stancel stated that he has no problem with recommending tabling this tonight and said that they will take a look at what Exeter has for regulations. He said that they spent a lot of time and several months on this OSS regulation. In the final analysis, they all agreed to the fact that a yield plan was fairer to both the developer and the City and made more sense than a simple mathematical equation which many other communities use. He said that part of it has to do with the complication of many of Dover's regulations in terms of 50 foot setbacks from wetlands, requiring 40,000 sq. ft. of contiguous uplands, etc. He said that there are many intricacies in the Dover Regulations that do not lend themselves easily to a simple mathematical equation in determining density in OSSs. That's why to him it makes more sense to do a yield plan where they can actually see

what would reasonably be built in a conventional subdivision. This Board is seeing only one instance but in his office he has seen many instances where developers at the first try have come in and attempted to take advantage of the OSS regulations by throwing together a yield plan that is not realistic. A question to ask is would a developer spend \$150,000 or \$200,000 to cross a wetland to put more houses into the back portion of the property. To him that brings into question whether the yield plan is realistic or not. He said that in his mind the only way to take some of the subjectivity out of the decision on whether a plan is realistic or not is to ask for some of the financial information. Maybe we have gone into too great a detail on what we are asking for but he felt that it is not unreasonable to ask for cost estimates, even at a very early stage, as to what some of the on-sight improvements might cost to better help the Planning Board make a decision on realism in a yield plan. That's the tough area that they are in and there's no doubt in his mind that our regulation is very unique within the State and New England but that's good because it means that we are on the cutting edge. He said they have to take a step back and look at the regs again and he doesn't have a problem doing that but let's not throw out the entire ordinance.

Tony McManus stated that he thinks that some of what Atty. McNeill said makes sense and for us to at least look at some of the other ordinances. He said that he would rather spend the time and do it right now than have to come back six month from now and do it over again.

Peg Stevenson made the motion to table.

Don Andolina seconded.

**VOTE U/A**

Don Andolina asked if the City Council has looked at this ordinance or if a legal opinion has been sought.

Steve Stancel explained that prior to drafting these regulations, they contacted the NH Municipal Association attorneys and ran the concept by them to make sure that they felt that it was legal. They did determine that the Board would be within its rights to request financial information on a development. He said that short of asking a developer to give them a ballpark figure, the Board is then tasked with coming up with the figures themselves, in their heads. He said that in his mind they are only asking for some additional information that would help takeout some of the subjectivity.

Christopher Parker stated that he spoke to The Municipal Assoc. and they said if the City was ever taken to court on that, that a judge would find with the City because it is a realistic request.

Steve Stancel said to keep in mind that when the original regulation was drafted they did look at all the regulations from other communities within NH and New England, including the Rochester PUD and it really doesn't apply to this particular situation. He said that he was not sure about Exeter but they will take a look at it. He said that they are

on the cutting edge on this and other communities only have a simplistic mathematical equation. He said that we may have to tweak the ordinance.

**ITEM #9: Old Business**

**a. Review of CIP**

Steve Stancel stated that there was a workshop with the Council on November 5<sup>th</sup> where various Department Heads presented their proposals in detail and, subsequently, last night November 12<sup>th</sup>, there was a public hearing on the CIP with the City Council where there were several people that got up and spoke on different items. He suggested that since there is a lighter agenda on the next meeting that we could go into greater detail discussing the CIP at that meeting. He said that they went over every item that's being proposed in the CIP and matched it up with where it might be found in the Master Plan and at what priority in the Master Plan it was listed. He said that this would help the Board to match up where it was found in the Master Plan and what the priority was.

Tony McManus asked the Board if they wanted to schedule a public hearing on the CIP for the next agenda.

Dennis Ciotti stated that the Board has always held a public hearing and there is no reason to stop now. He said that just like the Open Space Subdivision, something else might come up that might have some impact. He said it would provide the opportunity for everyone to be familiar with the CIP, especially the new members. He said that he would like to keep things status quo.

Steve Stancel stated that it will be up to the Board whether they want to vote that night or the first meeting in December. He said that the Board's recommendation goes to the Council prior to their vote. He said that it could play a factor in their decision.

**ITEM #10: New Business**

There was none

**ITEM #11: Adjournment**

Beth Thompson made the motion to adjourn.

Peg Stevenson seconded.

**VOTE U/A**