

**DOVER PLANNING BOARD
MINUTES OF WORSHOP
OCTOBER 22, 2002**

MEMBERS PRESENT: Joyce El Kouarti, David Landry, Parks Christenbury, Frank Torr, Beth Thompson, Dennis Ciotti, Anthony McManus, Allen Schintzius

MEMBERS ABSENT: Chuck Maglaras, Pete Lavoie, Margaret Stevenson, Ron Cole

STAFF PRESENT: Steve Stancel, Planning Director; Steve Bird, City Planner; Chris Parker, City Planner and Jacqueline Freeman, Recording Secretary.

Tony McManus chaired the meeting in the absence of Ron Cole and brought the workshop to order at 6:00 PM.

Steve Bird gave a brief background on the reasons for having impact fees. He said that in 1990 the City developed a Capital Facilities Fair Share Ordinance. That was before any State enabling legislation to allow the community to collect impact fees. The ordinance was never adopted and one of the reasons was that there was a down turn in the economy in the late 1990's and the issue of having legislative authority was also around at that time. He said that in 1991 the legislature finally adopted impact fee legislation after a long battle. The Master Plan chapters that were adopted in 1998 and 2000 all recommended that the City consider impact fees. In the Year 2000, the Planning staff began preparing an impact fee ordinance. Steve Bird said the Department worked on a general ordinance that prepared the groundwork for impact fees and worked on drafting specific methodologies for impact fees for schools, roads and/or fire station. He said that they were progressing along those lines and ran into a few roadblocks, primarily a reduction in staff and resources got a little thin and development was not letting up at that time. In June of 2002, a decision was made to hire Bruce Mayberry to assist in completing the impact fee work. He said that Bruce has worked with many NH municipalities and is the author of the handbook on Impact Fee Development that was put out in 1999. He said that they have finalized the general impact fee ordinance which is the subject of the Zoning Amendment. They have also completed the School Impact fee methodology. He said that they have worked closely with the School Department.

Bruce Mayberry, Planning Consultant, stated that 54 towns, including 5 cities, according to the NH OSP, all have enabling ordinances. He said that figure is up about 20 from a year and one-half ago. Impact Fee Ordinances are to comprehensively regulate the assessment of impact fees and potentially accruing offsite assessments. This ordinance would give umbrella authority that would cover all those instances of impact fee assessment and/or offsite assessments. Mr. Mayberry said that the basic function of the ordinance is to set up an administrative framework and to enable the City to do impact fee assessment, in general, for potentially all of the various things that are allowed in the statute. There are some 21 different capital facilities potentially subject to assessment. It authorizes the Planning Board to set up proportional impact fee assessments using

various studies, reports and data, as long as those impact fees are done in a proportionate manner to comply with the statute. What the Ordinance allows for is not just the School Impact fees that Steve Bird has developed a draft of, but also future impact fees that may be looked at in the future for other facilities. He went over the School Impact Fees and the variables that compose a proportional impact fee assessment. He said that there is an impact fee schedule in the Methodologies for Calculation of Impact Fees in the City of Dover.

Joyce El Kouarti asked if any of the 54 communities that had impact fees had been legally challenged.

Bruce Mayberry said that he can't tell her how many were challenged, the only thing that he is aware of that has gone to the Supreme Court level a couple of times has been related to the fact that the community was trying to assess fees without an ordinance. The response of the Court was that you need an ordinance. He said that he would not be in a position to be aware of all of those challenges.

Steve Stancel stated that the discussion tonight would clarify what you would be voting on this evening and passing on to the Council, the enabling legislation to create the authority for impact fees for the community. What you have also before you is the first proposed impact fee which is for schools. The concept is that the Council would approve the enabling ordinance but after that, the Planning Board approves the individual impact fees. The reason is that on an annual basis, these impact fees would be updated so that we would be sure that we were meeting the rational nexus test on an updated annual basis. He said that he sees this moving on to the Council and during the next few weeks we would go through this school impact fee in greater detail and make sure that we are comfortable with the numbers so, if and when the Council approves the final version of the Impact Fee Ordinance, we are able to immediately implement the School Impact Fee. He said that some of the comments in recent weeks focused on when the impact fee kicks in and who has to pay it. He said that the school impact fee would only be paid by residential units. Steve wanted to point out that one area of contention was if existing lots of record would have to pay. The way that this enabling legislation is set up is that existing lots of record that have yet to have the residential unit built on would have to pay an impact fee when they came in for a Building Permit. He said that there is also a provision for a waiver in this ordinance. He said that most are aware of the State's four year law rule which is 674:39 Four Year Exemption. It says that any project that has been approved and is begun within a year of approval and has substantial development, is exempt from zoning changes for four years. There are projects out there that have been approved recently that may be exempt from this ordinance. They would have to come in for a waiver. Some communities say any new lots created from this day forward will be affected by the impact fees. From a Planning Board standpoint, we are being more conservative and saying that we are going back to all existing lots. One of the reason is because of the number of lots that are in the pipeline. He said that there are 537 approved units, which represents a significant amount of money as these units come forward. Some won't have to pay the impact fee. If a project started construction within a year of approval, they can have that exemption for 4 years. He said that one example is the

project off of Tuttle Lane that was approved in April. They have started construction and have substantial improvements and therefore, would be exempt. This is a point that he wants to make clear.

Dave Landry asked if any of the developers have already paid some portion of non-school impact fees under the program called the Capital Facilities Fair Share Ordinance. He said some of these people have paid their fair share of traffic mitigation, etc.

Steve Stancel stated that in the past they have negotiated on an individual basis with each project. For the most part those negotiations have focused on offsite improvements. If you read this carefully, developments that come in the future still won't be exempt from potential offsite improvements even with impact fees. There have been no school fees paid on any past projects. Depending on how we set up the road improvement impact fees, there may be some of these projects who have paid towards some items that might be affected.

David Landry asked if posting this enabling impact fee ordinance start the clock rolling.

Steve Stancel stated that this doesn't establish any fees, it just establishes the enabling. He said that the clock would start at the time that the Council approves this and the individual fees are established.

David Landry asked what would happen in the case that a developer was given approval but someone else develops the project. David asked what the mechanism was that would let them know that they would be responsible for this fee.

Steve Bird said that the actual assessment is at the Building Permit stage, so it's whoever comes in for the building permit for the development that would be assessed the fee. The site plan could be sold three times from the time that it is approved and the time that they actually build it. It would be incumbent upon the person buying the project to realize that the City of Dover has impact fees that would be part of the cost of the development.

Steve Stancel said that they routinely have developers come into the office that are buying projects to ask if the City has impact fees so that they are aware of what some of the hidden costs might be. A bigger issue is a person buying an existing lot out there that may not realize that there could be an assessment when they come in for their Building Permit.

Dennis Ciotti asked about the NH State Regulations that allows for lesser fees for lots of record.

Steve Stancel said that there is an RSA that protects projects that have been approved for a period of 4 years from any regulation changes, but that is assuming that they have begun construction within a year of approval and that they have achieved a certain level of development. He said that there is a provision so that elderly housing, age 62 and

above, could ask for a waiver from School Impact Fees so that there are some protections built in.

Discussion ensued with regard to what age is considered elderly.

Tony McManus stated that the law relates to the units, for example, so if there are 50 out of 100 units that they sell as 62 or older they can get a waiver from the balance.

Steve Stancel stated that they tried to consolidate the remaining regulations that they wanted to discuss in the workshop session and possibly vote on them later in the meeting. He started with the first one:

#11 Whittier and Sixth Street from R-12 to ETP Zone.

Steve Stancel stated that the Board is aware that planning staff has never supported this proposal, primarily, because they see the Spaulding Turnpike as a natural cut off between the existing ETP zone on Sixth Street and the more urban residential area to the east. He said that it's a very difficult area to access. He said that one of the reasons they have for keeping it R-12 is the fact that they have built in to these 43 changes some smart growth regulations and included some TDR and ADS Ordinances where you are really going to need a receiving area to assist in making these things work. This area is close enough to the urban core to allow the higher densities and to possibly facilitate some of the Smart Growth regulations that we have also approved in order to help us achieve our goals of Smart Growth.

Steve Stancel explained there are a couple of large parcels that are adjacent to the river that the Open Lands Committee is negotiating to possibly purchase. If you were to try to develop that parcel you would have to either come out on Whittier where there are some serious site issues involved or come down Autumn Street in order to access the parcel. He said that there are some difficulties with developing either one. There are topo issues involved with trying to develop that area west of Whittier St. that is adjacent to the river and adjacent to Sixth St. for non-residential use.

Chris Parker explained the topo of the rezoning area and how the topo droppes off. He pointed out the various areas that would have access issues.

Discussion ensued with regard to funneling non-residential traffic through residential land.

Steve Stancel said that he thinks that Whittier St. is not a good access point and that is what has been the case with people who have looked at that parcel for development.

Frank Torr asked if that position could be defended in court if a housing development came in.

Steve Stancel said that he believes that it could be defended from a safety standpoint. He said that you would have to allow some kind of development on that piece but anything to a certain density that would have a good number of vehicles coming off there would be justification to deny from a public safety standpoint.

Frank Torr said that he can understand the topo on that side but looking at the other side of Sixth Street on the corner of Whittier, that was developed and it's a very similar type of topography. He said that with that development, they picked out any spot that was above wet ground and put in houses. He said that he can envision that happening on the other side of Sixth and Whittier, on the Cochecho side.

Steve Stancel agreed and said that you will see some residential development. He said that he doesn't think that they were trying to find every good piece for residential development and rezone it to non-residential. He said that they tried to take each area and look at whether it made sense to be residential or non-residential and understanding that there is going to be some need for growth in the community in the future. They tried to approach that through smart growth techniques. They just saw this area to be more conducive to residential.

#18 TDR

Steve Stancel said that the question from the public with the Transfer of Development Rights is whether the ETP zone should be included as part of the sending and receiving area. He said from a staff standpoint, they think that there may be some legitimacy in doing that but it's a substantial enough change that it would require going out to public hearing on it. He said that they recommend moving forward with the existing proposal so they don't lose time with the City Council but then coming back in the next few months and reexamining the ETP zone as to whether they want to add it to the TDR. This would require notifying all the property owners in the ETP zones.

Steve Stancel said that it would change the nature of the area because right now the ETP zone has a minimum 3 acres and if there were a TDR, you would be able to have much smaller lots. There are some large users in the existing ETP that may have difficulty with that, which is another reason to send that to a public hearing.

Beth Thompson said that the community had a vision for the ETP when it was created and this would substantially change it. She would be wary of what it would do to the ETP zone.

#21 Kennel

Steve Stancel said that Veterinary Office, Animal Hospital or Kennel was going to be allowed in a PUD and there was some concern about having Kennel as a use. He said that they are recommending the removal of the allowance of a kennel in the PUD from the proposed regulation.

#25 Elderly Assisted Care Home

Chris Parker explained that on page 4 of the handout the clarification is in bold. He read what it previously said and then said that they wanted to add some flexibility to that and to clarify the difference between the existing and new version.

#26 Updates to the Wetlands Protection District

Steve Stancel stated that there was a request from the public to take a look at the 50' setback from some of the wetlands as it pertains to size. In Portsmouth the setbacks only pertain to wetland areas that are 20,000 sq. ft. or larger. He said that Dean Peschel and he felt that it is not the size of the wetland that is important, it's the quality of the wetland. He said that there may be some very small wetlands out there that are very important that you would want the 50 feet setback from and there may be some large wetlands that are not very important that you don't need the 50 feet. He said there is a Conditional Use Permit available so that an applicant can ask for a Conditional Use Permit before this Board and go before the Conservation Commission as well. He said that the other issue is the permanent boundaries of the wetlands. The staff spoke to different wetlands scientists and were directed to remove the permanent markings language and replace it with a note to say that wetlands be listed in the deed of a parcel to educate land owners. He said that the wetlands scientist indicated that through time, wetlands boundaries change. Also, people are likely to pull them up and it was unrealistic to require permanent stone boundary markers.

Tom Fargo stated that he agrees with Steve Stancel with the size of the wetlands. He said that the permanent markers could be confusing to the land surveyors who might not recognize them as being wetlands boundaries.

Steve Stancel stated that the note on the deed would refer people to the approved plan which should outline the various different types of wetlands on the parcel.

Tony McManus closed the workshop.