

**DOVER PLANNING BOARD  
MINUTES OF MEETING  
JANUARY 23, 2001**

**MEMBERS PRESENT:** Pete Lavoie, Ron Cole, Margaret Stevenson, Jerry Reese, Beth Thompson, David Landry, Tony McManus, Brenda Whitmore

**MEMBERS ABSENT:** Chuck Maglaras, Frank Torr, Reuben Hull, Jeff Mason

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

Chairman Cole brought the meeting to order at 7:06 PM.

**ITEM #1:** Approval of the minutes.

Jerry Reese made the motion to approve the minutes.  
Tony McManus seconded.

Brenda Whitmore was concerned that a question asked by Tony McManus regarding Paul St. that took place at the end of the meeting was not in the minutes.

Ron Cole said it could be that it was not pertinent.  
Tony McManus had no recollection of the question.

**VOTE U/A**

Chairman Cole welcomed Brenda Whitmore as an Alternate to the Planning Board.

**ITEM #2: Old Business**

**a. Discussion and possible vote on a site plan for Millstone Properties,  
located at 8 & 10 Back River Road. (64 units)**

Jerry Reese made the motion to take this item off the table.  
Tony McManus seconded.

**VOTE U/A**

Atty. Jim Schulte represented the owners. He said that a number of technical revisions have been made to the plan addressing concerns raised by the staff at the site walk. There will be 2 buildings. The main building will have 61, 1-bedroom units and will be serviced by an elevator. Two of the units will be constructed for handicap occupancy. The smaller building will house up to 4 units, 2 of which will be 2-bedroom units and 2 will be 1-bedroom units. The intent is to market these, if at all possible, to single persons. At Sawyer Mills there are 220 1 and 2 bedroom units, 68% of which are occupied by single persons. He said they have had discussions with the Hoeksemas and have reached an agreement in principle for landscaping that will be done along the common boundary line. The Hoeksemas have agreed to grant an 8' planting easement. The developer will be planting arborvitae along the first 140 feet, starting at Back River Road and at intervals of 4 to 5 feet and at the end of that, they will be planting white

piners. In addition, there will be a 4' tall chain link fence along the property line until it gets to the Hoeksemas' residence. The easement will be located within a foot of the boundary line on the developer's side of the property. He said that the final engineering plans for the retaining wall and sidewalks have not been done. They will be asking for approval on the condition that those plans be completed and approved by the Engineering Dept. before permits are issued for construction. He said that they are seeking approval to be allowed 1 1/2 parking spaces per unit rather than the 2 spaces required. Based upon the information that they have attained from other projects and that they anticipate that single individuals will occupy these units, they believe that 1 1/2 spaces is adequate. Sawyer Mills has 220 units and 320 parking spaces, of those 298 are assigned so that is less than 1 1/2 per unit. Dover Station has 24 units and 36 spaces; at Dover Place there are 32 units and 48 spaces. He said that they intend to regulate parking by issuing stickers to the tenants. The other major issue is the impact fee. The staff has recommended a sewer impact fee of \$6,000 and the developer has agreed to that. Also, the general off site impact fee be set at 2 1/2 % of the City's cost of improvements to this corridor, basically from this intersection back up to Stark Avenue. Some funding is in place for anticipated improvements to that corridor and there is funding in place for lights at the intersection of Back River Road/Durham Road, with the City paying 20% of that. He said he believes that the State or the State and the Federal Government will be picking up the balance. Doing that intersection, the City will have other expenses for addressing the rest of the corridor and so the formula that has been proposed by the staff and has been agreed to by the developer, is that the developer will pay 2 1/2 % of the City's cost up to a maximum of \$15,000. That calls for the developer to pay his percentage share up to a City expenditure of \$600,000, which comes to a \$15,000 contribution from the developer.

Atty. Schulte requested that Certificates of Occupancy (CO's) not be issued until funding is in place for all of the improvements to the corridor and that is the sole point of discussion remaining between the developer and the staff for funding purposes. He said that he expects that the lender is going to want a firmer date as to when the CO's can be issued. Anyone who is familiar with that intersection knows that the primary problem with the intersection of Rt. 108 and Back River Road occurs between 7:00 and 7:30 AM, Monday through Friday when school is in session. He said that their traffic study indicates that during the week, when school is not in session, there is much less of a traffic impact. The primary problem is that there are many parents driving their students to the Middle School. The School Dept. is commissioning a study of the entire corridor that will go out sometime in March with the hope that the solution will be in place before school starts again in the fall. The staff is recommending that until funding is in place for the entire corridor, that no certificates of occupancy be issued. The traffic studies that they have commissioned and have been reviewed and then supplemented at the request of the City, indicate that the contribution of traffic from this project at that intersection, will be, during peak hours 1 1/2 and 2.9%, depending whether morning or afternoon. Those numbers are based upon national standards. He said they believe because the target population for these units are expected to be people who will be working south of the City, in Portsmouth or at the Pease Tradeport, that many will have the option of avoiding that intersection during the morning rush hour and go out Back River Road to Route 4. He said the problem is contributed to by all of the neighborhoods in the City that have Middle School students whose parents are driving them to school. He said because the solution to the problem is primarily in the control of City departments, they expect that the City will act promptly to get this resolved. He said if this doesn't happen quickly,

they are asking that the Board grant approval on the condition that no CO's would be granted until either the funding is in place or the corridor solution, or short of that, if the developer will contribute to off-site improvements which would mitigate the 2.2 to 2.9% impact that this project would have on the intersection, or that CO's would not be issued before December 31<sup>st</sup> of this year. Atty. Schulte stated he is asking because part of the problem is a City generated problem, not because of anyone's fault, but because that is what is going on. This gives 11 ½ months for the problem to get addressed and resolved. He said that the construction might not happen before then, but as long the financial commitment is there, the staff would be willing to recommend that CO's be issued because the solution would be at hand. He said they are asking for a firmer date because the City is contributing to the issue and secondly, because the solution is uniquely in the control of the City. He said the whole corridor is a problem that has been developing over time but this particular project will require cooperation by the two City departments with whatever assistance they can get from the Federal and the State.

Steve Stancel stated that we know there is a problem out there. It doesn't make good planning sense to him to add one more unit out there until the solution is not only identified but also funded. The fact that the developer might give us money prior to the CO's is not resolving the problem of having more units up there until the entire solution is funded.

Margaret Stevenson asked with regard to that \$15,000 flat cap, if the City's portion exceeds the \$600,000, would that leave the City holding the bag for the difference and why is there a \$15,000 cap.

Steve Stancel stated that the \$600,000 does not include any Federal dollars, which will also be earmarked for this corridor. He said that they anticipate a significant chunk of money coming from the Federal Government, which would increase the total potential to close to one million dollars. He said that in order for a developer to receive financing from his financing sources, it would be very difficult for them to do that unless there was a solid cap number so that they knew what the maximum would be.

Atty. Schulte stated that the corridor extends from this intersection back to Stark Ave. and it addresses points that are reasonably remote from this project. If you look just at this intersection, the City's cost for that would be substantially less than \$600,000 but we have agreed to contribute toward the bigger problem.

Ron Cole stated that he doesn't want to inhibit the applicant's ability to do business. We know we have a problem and that it needs to get fixed. He said if we are looking for TIP money, that could be 10 years down the road.

Steve Stancel stated that we have TIP money that is available for a signal at this intersection. What is going to happen is that the school has contracted with a consultant to do a traffic analysis in the corridor and that will be completed prior to May. Come May we will have a better idea as to what the solutions are and what the costs are. At that point either the School Board and/or the City Council would take a look at bonding monies to resolve the problem before the next school year starts. He said that the Council could choose not to bond it or not to fund it. That is the problem with just establishing a date prior to the CO. He said that the applicant does have an out in that he can do offsite

improvements at his own cost, which would effectively reduce their traffic impact up to 2.5%. It's liable to cost the developer more than \$15,000 and the developer may be making improvements out there that we end up redoing once our analysis comes through. It could be wasted money. If it comes time for them to need a CO and the Council chooses not to fund it, then the applicant has the option of doing offsite improvements prior to getting their CO. There is an out for the applicant but the offsite improvements could cost more than the \$15,000.

Brenda Whitmore asked if Steve could explain those offsite improvements that they could do that would reduce their impact by 2.5%. She asked if it would be more prudent if the traffic study was in place before a decision was made to see if that was feasible.

Steve Stancel stated that there would have to be a traffic analysis conducted to see what the improvements might be. It could be adding three lanes, putting traffic signals in prior to us being ready and there may be other options out there. Steve said that he does not anticipate that the dollar amount to alleviate 2.5% would be exorbitant. He said that he couldn't give specific examples because that would require a traffic analysis.

Atty. Schulte stated that they kind of agree that this is not a really clear option. He said that things like adjusting the timing of the traffic lights would cost a fair amount of money, perhaps as much as \$15,000, but it's likely to be only a temporary solution. He said that the problem is significant enough that the Council and the School Board will do what needs to be done to get it resolved and they are all hopeful that it will happen by September. They are worried, it may not happen and there may be a very legitimate reason, such as Supreme Court Judge Galway's recent decision, which may impact the ability to do things in a timely fashion. The problem is great enough that it ought to be addressed and they are willing to do their part.

David Landry asked about the traffic numbers that Atty. Schulte quoted.

Jim Schulte explained that the figures are the highest numbers that would impact, based upon regional/national statistics for that type of road system, that type of apartment complex. If a substantial portion of Millstone Place worked at Pease or in Portsmouth they wouldn't go through the intersection and would go south. The numbers and the percentages would then be less. He said the traffic consultant looked at the numbers coming out a 72 unit, single bedroom complex in Lawrence, MA and the actual counts were substantially lower than the national statistics.

Steve Stancel stated that he feels confident with the traffic numbers. The applicant has provided three traffic analyses, the original and two addendums.

Jim Schulte stated that one of the requirements from staff is that snow be removed from the site. He said that the manager of Sawyer Mills said that they lose spaces in the winter because of the snow buildup.

Jim Schulte stated that there will not be any brick on the rear of the building, but there will balconies, which will make it attractive. Some of the units on the first floor were a little smaller than the of 600 sq. ft minimum requirement and in order to accommodate

that, it was necessary to push the right hand end of that building two feet closer to the street. The site plan shows the building 2 feet longer.

Beth Thomson stated that according to the calculations there would only be 5 parking spaces for guests.

Jim Schulte stated that there are 2 levels of 1 bedroom apartments and they would expect to assign 1 space for each basic unit, up to 2 for the larger units. He said that is based upon the experience of other units in town, that it will be sufficient.

The public hearing was reopened.

There were no comments.

The public hearing was closed.

Steve Stancel stated that the staff recommends approval and listed the recommended conditions.

Jerry Reese was concerned with the developer spending money and we might come along in 6 months and redo everything.

Steve Stancel stated that the only problem is should the Council choose not to fund it, at least the developer would be allowed to move forward with his project as long as he mitigated his impacts. However short a period it might be, if its chosen not to be funded he could sit there unfunded for years. The ultimate alternative is to reject this project as premature development and saying we have a problem there and until the problem is resolved, no development. He added that he thinks we are trying to avoid that.

Steve Stancel explained that the study is supposed to look at the entire stretch. The study could come back to say that we may or may not need a traffic signal at Daily Drive, and it could be as simple as connecting all the lights together and having them work in cooperation. There are several alternatives out there and that's why we need the corridor study to find out what they are.

Ron Cole stated that he can not see where the Council would not implement what needs to be done. It's evident to anyone that drives that road that you feel you are in MA. It sounds to him that it would happen anyhow, he doesn't know what the Board's feeling is with respect to the request of the applicant that we use the December 31<sup>st</sup> timeframe.

Steve Stancel stated that the Board can do what it wants, he just couldn't recommend Dec. 31<sup>st</sup> because we could find ourselves in a situation where although the applicant has given us money, the City hasn't funded the project and we have units coming on line exacerbating the problem.

Brenda asked if the \$15,000 cap was based on the total solution or is it the total solution of the developer with respect to offsite improvements to reduce their 2.5 impact on the intersection.

Steve Stancel answered that that was based on the total solution of the corridor.

Brenda said that they could conceivably spend far more than \$15,000 to do these temporary upgrades.

Steve said possibly, and it could be less if they just had to connect the lights.

David Landry asked, when doing traffic studies, if they would ever come up with a conclusion that no more building of certain types should happen in certain corridors. He said that if we approve this tonight, the firm doing the study for the school would know that there are 60 units approved and trying to find out what their impacts are going to cost them. Would they come to conclusions that there shouldn't be any more building within the area being studied?

Steve Stancel stated that in the State of NH, because of certain property rights, a community couldn't say you couldn't develop in this corridor forever because we've got a traffic problem. The community can only say you can't develop for a year while we resolve the problem. Essentially, a community can't stop development, and it has to fix a problem that exists out there. A study may come back and say that they recommend no further development in this corridor until these improvements are made, but it won't say they recommend no further development in this corridor, because that would be confiscatory. He said that there are other vacant parcels out there that people may wish to develop in the future and they have to be allowed to do so.

Jerry Reese asked if it would be a concern if the Council funded it so they get their Certificates of Occupancy but the improvements wouldn't be done until 2002?

Steve Stancel stated that he feels comfortable that if the solution is at least funded (in the CIP for the next 12 months) with allowing the developer to go forward. That doesn't mean funded 2 and 3 years down the road.

Jerry Reese said the recommendation that the Council is getting, is that the brakes be put on all capital spending.

Dave Landry asked if the developer chooses to give us money now towards mitigation could we take that money and put it in the bank and wait for the other funding? Would we have to actually go out and fix things or could we just put the money in an account and wait for the appropriate time?

Steve Stancel stated the money could be banked for up to 6 years.

Brenda Whitmore stated that putting the money in the bank isn't going to improve the problem. If these units are allowed to go on line, there will be a lot of unhappy people. She asked if it wouldn't be prudent to wait to see what the traffic study suggests to see what kind of remedial action can be taken and determine if that is going to be a financially feasible solution. She said if she was the builder developer, she would want to know what her costs were and not be caught between a rock and a hard place.

Steve Stancel stated that their costs are capped at \$15,000. Steve said that the study that the school is doing is going to identify the solution for the entire corridor. If the

developer were to do offsite improvements, just to mitigate 2.5% that would take a separate study.

Brenda Whitmore asked if it would be possible to ask that the traffic study provide some options for short-term solutions in the event that this problem can't be fully funded.

Atty. Schulte stated that the consultant has probably been given a scope of work as to what they were expected to produce and so they bid on a particular thing. Atty. Schulte said that they would have had a concern about waiting. He said that the study won't be returned until May 1<sup>st</sup>. He said that things never happen before the deadlines so it is not likely that the study will be generated before the 1<sup>st</sup>. It will then have to be evaluated, and although solutions will be proposed, decisions will have to be made. It is likely to be months after that before you have a firm handle as to what the costs are going to be and that would create a real problem for them and for their funding. He said that there are a number of things that they have proposed that they would be willing to do which may provide temporary relief for the intersection. To agree, on a temporary basis, until the solution is installed, is that they would not allow right hand turns out of the driveway so anyone leaving the complex would have to go left. He said that it might be feasible for this complex, with or without the assistance of other complexes, to establish a ride band to take people going to work. It would circulate with or without subsidy from the apartment complex, to reduce the number of vehicle trips in and out for people going to similar locations. He said that it might be possible to find a way to encourage more parents to use bussing. He stated an example of Berwick Academy using a parking lot at Care Pharmacy, parents drop their kids there and they get bussed over to Berwick. He said with the cooperation of the School Department that might work for parents who can't meet the regular bus. Under the staff's proposal, if there is a commitment to funding that may happen this summer or this fall, it is possible that the actual improvements are not going to happen for a year. It is likely, under any of these scenarios, there may be a period of time even under the staff's proposal where some units would be occupied before the solution is built. He said if it would help, December 31<sup>st</sup> could be extended a month or two. They are looking roughly at a year before they would be looking at CO's. He said if it would make it easier putting it off a month or two, it is something they could live with. It is important to them in their ability to get bank commitment to financing this project, to know that at some point, they will be able to generate revenue and be able to pay the mortgage.

David Landry made the motion to approve with the staff recommendations as follows:

1. Add the owner's signature to the plan.
2. Approval includes the granting of a Conditional Use Permit for a reduced number of parking spaces as provided for in Chapter 170-44-I.
3. Applicant agrees to contribute \$6,000.00 to the City to offset the impact of the development on the capacity problems of the Charles Street pump station. The payment shall be made prior to the issuance of the first building permit.
4. Applicant agrees to contribute to the City an off-site impact mitigation amount equal to 2.5% of the cost of the City's portion of implementing improvements to mitigate Durham Road corridor congestion, said amount not to exceed the sum of \$15,000.00. The corridor improvement project shall be funded by the City and developer prior to the issuance of the first certificate of occupancy, or the applicant shall complete such

off-site improvements (as approved by the City) that would effectively mitigate the development's percent increase of traffic at the Back River/Central Avenue/Durham Road intersection, prior to the issuance of the first certificate of occupancy.

5. The applicant shall comply with the conditions recommended in the City Engineer's memo dated 01/18/01 and submit revised plans to the Planning Department.
6. These conditions shall be effectuated through the creation of a developer's agreement with the Planning Board.

Beth seconded.

Tony McManus stated that he would be voting against this at this time. He said that it makes no sense to him to approve this knowing that there is a traffic problem in that area. He said that he was there this morning and saw what it was. He said that his office is at the beginning of that stretch and he sees the problems on an almost daily basis. It makes no sense to approve another project when we know that we have a problem and we don't have a solution. He said that that is poor planning. He said that he doesn't think we can look at this project in a vacuum, and we have to recognize that the duplex project at the top of the hill that we approved last year is now underway and will be occupied in several months. The City is in the process of building ballfields at the foot of Garrison Road which is going to add traffic to Back River Road. He said that he is not impressed with the argument that they can turn left and go out Back River Road which allows them to run into the traffic of Garrison School and the Christian Academy at the same time in the morning. He stated that he doesn't think that the intersection of Back River and Piscataqua Road is really fit for a great deal of traffic right now. He said that we can't resolve one problem by creating another at the other end. He said that at some point we have to say to a developer that right now is not the proper time to do this project until we get these situations resolved. He said that we have an obligation to the people who use that area and the citizens of Dover not to continue to compound the traffic problems throughout the City. The preamble language of our Zoning Ordinance is that the code is designed to promote the safety and general welfare of Dover's residents by serving to facilitate the adequate provision of transportation. He said that by approving this project at this time, he doesn't think that we are doing that. He said that the preamble also says to encourage the most appropriate use of the land. This fits the definition of the ordinance, but after the site walk, he found that it is a small piece of property and in his personal opinion, the most appropriate use of that land is not 64 apartment units with a large percentage of the lot paved over. That building is simply too big for that parcel and it is an imposition on the neighbors and neighborhood, in addition to the traffic problem. He said that we have to start considering those issues when we deal with projects of this size.

**VOTE 3 – 4**

**For – Beth Thonpson, Margaret Stevenson, Pete Lavoie**

**Opposed – David Landry, Brenda Whitmore, Jerry Reese, Tony McManus**

**Motion defeated**

Jerry Reese asked if it was appropriate to table this application.

Ron Cole stated that it could be tabled otherwise it is gone.

Jerry Reese said that after the traffic study is done he would like to see the applicant feel that he can come back. He said that he agrees with Tony, and until we have a proposed solution for that corridor, he can't see adding any more to it.

Ron Cole said that the way the application process reads we have voted not to approve this project as it has been submitted to us. He asked if there was a timeframe as to when the developer can come back in without having to go through the entire process again?

Steve Stancel stated that the Planning Board voted not to approve these recommendations, and there are still options. He said that we also legally could not wait until the study is done because the Planning Board has to make a decision within 60 days of its original acceptance, unless the applicant wishes to extend that period. He said that it could be tabled if you think there are other options out there.

Ron Cole asked if they could bring the plan back in 60 days if they revise it.

Steve Stancel said that it would be a new application and would have to go through TRC if they were to revise the plan. Steve explained that if this Board chooses to reject an application, it has to give specific reasons. He said that the Board may want to make it clear, if you are not prepared to approve this project, and give specific reasons, possibly Tony's. Steve said, in his opinion, the motion was to approve with the conditions stated and it failed. He said that he is not sure that the plan has been rejected. The plan was accepted on December 12, 2000 and we held the site walk on Dec. 16<sup>th</sup>.

Ron Cole asked if we could work off the same project if the application was tabled?

Steve Bird said that the 45 days start from the date it was accepted and that was Dec. 12. If this is appealed by the applicant, the Board would be asked for the reasons for denial.

Ron Cole said that he needs a Board member to come up with the reasons for denial.

Tony McManus stated that his thought was that the project may have some merit but at this time because of the inherent problems with it, he thinks that several people on the Board would feel more comfortable with looking at this once we know what the proposal would be to mitigate the traffic problem. His preference would be, with the concurrence of the developer, to table and have the ability to revisit this once the traffic study has been done and we know what we are up against. He said that he is not sure that he agrees with Steve. He said that it is possible that an engineer may say that because of the inherent nature of that intersection, and the problems we have with the school, that no matter what you do, it is not going to allow an addition of cars except at an expense that the City is not willing to pay.

Steve Stancel explained that it is the applicant that gives the extension.

Ron Cole took a show of hands with regard to the stated reasons that the Board did not approve the application. He added, basically, because it doesn't merit approval at this particular time subject to the traffic study being done. He asked for a show of hands of those who want to use this as the reason for not approving this application.

Jerry Reese, Tony McManus, Pete Lavoie, Brenda Whitmore, David Landry raised their hands.

Ron Cole told the applicant they could submit a request to the Board requesting 60 or 90 day stay on their application.

Jerry Reese made the motion to table the application.

Margaret Stevenson seconded.

**VOTE U/A**

Jim Schulte stated that they have been invited to request an extension for 60 or 90 days but the traffic study is not scheduled to be back until after both of those deadlines. He asked what would be different 60 or 90 days from now which would allow this to be looked at in a different light?

Ron Cole stated that Tony's comment was that he wants to make sure that the traffic study will recommend measures that can be taken to mitigate the 60 units.

Jim Schulte stated that on a practical basis, wouldn't that mean that any delay would have to be until the next planning Board meeting following May 1, 2001, if the traffic study is produced then.

Ron Cole said that they would work it out so that the extension will be granted to make this happen.

Jerry Reese left at 8:20 PM.

**b. Discussion and possible vote on a site plan for Sixth Street Station, located at 76A Sixth Street.**

**Tony McManus stated he was abstaining from this item.**

Margaret Stevenson made the motion to take this item off the table.

Beth Thompson seconded.

**VOTE U/A**

Ray Bardwell, representing Sixth Street Station, stated that during the site walk the area of concern was the 75' setback that the road would be coming across to get back into the further section of the project. He said that the two Conditional Use Permits that they need are the ability to remove the building that is there at 76A Sixth St., and to construct a 6 unit building within the 50' setback from a brook. He said that they could not physically be moved further away from the brook to meet the requirements because of the sewer and drain easements. He said that the other Conditional Use would be to go through the area within the 75' setback of very poorly drained soils. He said that the soils themselves are not very poorly drained, it is just the setback distance. He said that they have gone over the recommendations and discussion on the riverwalk and they have visited Doweast Energy with staff. He said that this is a family project and it would be done in phases and from start to finish it would probably take a couple of years. He said

that the riverwalk is not pertinent to whether this goes in in phases or all at once and they are willing to step forward in getting that riverwalk done.

Steve Stancel stated that there has been a recent court case that has struck down several offsite improvement fees that have been charged by communities without impact fees in place. There is an RSA in place that allows communities to charge for offsite improvement fees, however, in a recent case between a developer and the Town of Derry, it was found that the developer was not responsible for the offsite improvement fees. The planners have found a way to combat this through the creation of an agreement between the developer and the Planning Board. In other words, they can't be made as a condition of approval but there can be agreed upon offsite improvements between the developer and the Planning Board.

Margaret Stevenson stated that after walking that land, it looks like a project that is very much needed around here and a nice addition to that area.

Margaret Stevenson made the motion to approve with the staff recommended conditions as follows:

1. Add the owner's signature to the plan.
2. Includes the approval of the Conditional Use Permit subject to granting the City of Dover a conservation easement along the Cochecho River for a riverwalk. The area of the conservation easement shall be negotiated with the Conservation Commission. Said easement shall be granted prior to the issuance of the first certificate of occupancy.
3. Revise the plan to correct note #3 on sheet C2 by adding "City of Dover" to the end of the note.
4. The applicant agrees to contribute \$1,500.00 to the City to be used for construction of the riverwalk on the Downeast Energy Corporation property. The applicant also agrees to provide equipment, materials and man-hours to assist in the construction of the riverwalk on the Downeast Energy Corporation property. The contribution shall be made prior to the issuance of building permit. (Applicant to return to Planning Board to identify alternative to riverwalk should easement from Downeast Energy not come to fruition.)
5. The applicant shall submit a revised plan that complies with conditions #1, 2, 7, 8, 9 and 10 of the City Engineer's memo dated 01/05/01. The other items have been addressed.
6. If the proposed easement for the riverwalk through the Downeast Energy Corporation property is not secured, the applicant shall return to the Planning Board to revise the layout of the riverwalk.
7. The City shall receive a copy of any Level 1 analysis completed for finance packaging.
8. These conditions shall be effectuated through the creation of the developer's agreement with the Planning Board.

Beth Thompson seconded.

**VOTE U/A**

**Abstained – Tony McManus**

**ITEM #3: New Business**

**a. Discussion of proposed changes to the City's Groundwater Protection Zones.**

Tom Fargo, Conservation Commission Chairman said that on August 7<sup>th</sup>, the Conservation Commission received a request from the Planning Board to evaluate upgrades to the Groundwater Protection Ordinance. One of the basis for the request was a study that was done by Horsely & Whitten Company as part of a grant package that was paid for both by the City and by the State. They were paid to come up with a suggested ordinance that would help to upgrade the Groundwater Protection Ordinance. Their suggestions address two points, one is managing nitrate impacts in the zone and also managing stormwater discharges. Both of these issues have to do with groundwater quality. He said that they recommended that the ordinance also address placement of impervious surface within the Groundwater Protection Ordinance so that the groundwater quality would not be negatively impacted. He said that the Master Plan outlines some of the groundwater issues. He said that he found two references in the Master Plan that could be applied toward groundwater protection issues. One dealing with gravel extraction operations, many of which occurs in the groundwater protection areas and also the application of sewerage sludge.

He explained the process he went through to come up with the proposed changes. He said that his edits are underlined and in italics and those edits, which are proposed by Horsely & Whitten, are not italicized.

Tom went through the various changes that were made throughout the document and explained each one in detail.

He spoke on the Tamposi/Nash property on Plaza Drive and their proposal of an apartment complex. He said that he has already advised them that they would like to see them incorporate these proposed changes in their site design. He said that that there is a potential problem with the actual limit of the 200 in travel time that is not fully defined. It is defined somewhat in the area of the Smith and Cummings Well where the project is, but not defined anywhere else. He said that he wrote a grant application to NHDES to hire a consultant to define these 200 day travel time radii. He said that he got word from the grant coordinator, and it looks like they are going to get funded for that. Tom said that the State operates a system by where local municipalities can give State approval of the groundwater protection ordinances. By gaining State approval, you can go into neighboring municipalities and, basically, enforce your groundwater protection ordinances in other jurisdictions. He said that this is important when you look at the groundwater protection map and see that many of our groundwater supplies are located in Madbury. He said that he has had discussions with Dean Peschel with this regard.

David Landry asked if the gravel operations can be grandfathered to excavate below the elevation of 6 feet. He said, if they are already beyond that, does this means that they have to fix it. He said he read where it says that requirements of this section may be waived if the applicant demonstrates that such an excavation will not adversely affect the water quality, etc. He said he would like to see it say that the applicant should demonstrate that requesting a waiver prior to removal of material within the area of concern. In other words, he wouldn't want to see somebody remove material at a shallower depth and then come to check on a waiver.

Tom Fargo said that he agrees with him and explained that the language that he has inserted is basically out of the RSA. Tom said that the Planning Board emphasized with regard with the gravel operations, it has been noticed that the gravel operators will excavate below the seasonable high water table. He said that this could happen during a dry period in the summer when the pumps are running at a high rate. He said when the water table starts to recharge the water comes up and is then exposed at the bottom of the gravel pit. He said that this is an undesirable situation with regard to impacts to groundwater quality. A suggestion for improvement that could be made would be to require that the gravel operators maintain the groundwater table.

Ron Cole said that water quality was one of the issues that was considered to be the most important. This was at the top of the community survey or #2 in the Speak Out Dover survey.

Debra Whitmore inquire about the gas station is a secondary groundwater protection area on Route 155.

Tom stated that it is a Conditional Use. Tom said that you can have a gas station within the Secondary Groundwater Protection Zone. There will be plans coming in soon for the upgrade to the station on Central Avenue across from Shaws. Tom said that the State has required that all tanks be brought up to the new standards. As of December 31<sup>st</sup> 1999, if you didn't have secondary containment you were out of there. Any station that is operating now has already got the double wall tanks with the monitoring systems.

Beth Thompson stated that in C 4, Nonconforming Uses, determined to be a imminent hazard by the City Council or Health Officer, to her stated that it seems very arbitrary. She suggested to give it some force maybe you would say, an identified health hazard identified by some force besides the City Council, who may or may not have the knowledge of what is or is not a health hazard. She said that this does not give the owner or the user of that property the means for recourse to mitigate that health hazard to continue operating. She said she had several things that she wanted to address and asked if this would be continued at a workshop. She said page 3 of the proposed amendments N thorough Q eliminates any use. She said that she couldn't see any use that is allowed and that should be looked at.

Tom Fargo said that these are Conditional Uses and that you have to be sort of all-inclusive.

Ron Cole asked Beth to get together with Tom and report back at any subsequent meeting. He said that he is hoping that at the second meeting in February, we should be able to have the public hearing. He said that because of the permits for the gravel pits he would like to get together with them at the same time.

**a. Discussion regarding implementation of Community Facility (Impact) Fees.**

Steven Bird stated that when we had a subcommittee meeting last month to talk about impacts of growth in Dover, one of the topics that came up was impact fees. He said that

the recently adopted sections of the Master Plan made some recommendations in quite a few of the areas in terms of looking at impact fees as an option to recoup cost of growth. He went over some of the background of impact fees. He said that they are authorized by State law by RSA674:21,V. He said that it is one of the permitted innovative land use controls that is listed in that State law. He said after a long legislative battle, impact fee legislation was adopted in 1991.

Steve went over the material that was provided to the Board. He explained how in 1990 the City of Dover developed a Capital Facilities Fair Share Ordinance, a fancy name for impact fees. He said that the reason that name was used was in 1990 was that there was no enabling legislation for a community to collect an impact fee. A lot of work went into that document, it is 30 pages thick and contains the ordinance and the methodology for calculating impact fees. He said that he wasn't around in 1990 when this was done, but it is his understanding that a lot of work went into to it and it was never adopted by the City. It was on the tail end of the economic boom of the late '80's and by the time this ordinance was before the Council, the feeling was that they didn't want to inhibit economic development. A concern was that if your community collects impact fees and the community next door doesn't and you are trying to attract industry, you are competing for that company and it may be looked at as a negative. On the plus side, developers like to know what fees they are going to have to pay when they come into a community

Steve Stancel said that he thinks it is very important that we move forward on this. He said if this had not failed in 1991, we would have a lot of money in our coffers today from Impact Fees that could have gone a long way toward addressing some Capital Improvements in the City.

Steve Stancel said that he is working on establishing a public meeting to discuss rezoning initiatives on the week of February 19<sup>th</sup>. The exact day and location is yet to be determined. It should be set in the next few days and he'll get a memo out. He explained it is the meeting where the subcommittee and the entire Board, and the City Council will be invited, as well, members of the public. We hope to get some developers, land use attorneys and realtors to come in and explain where they think the market is going. If the subcommittee that is taking a look at making some zoning change wishes to meet in advance of this, let him know so he can establish a meeting as well. He said Tony, Frank and Peg are on the committee. He said that anybody is invited. He asked the Board not to forget the workshop on Motiva on February 6<sup>th</sup>.

**ITEM #4: Adjournment**

Tony made the motion to adjourn.

Beth Thompson seconded.

**VOTE U/A**