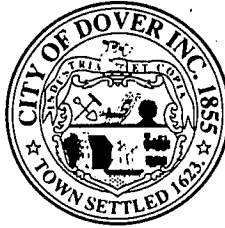


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# City of Dover, New Hampshire

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

## MEMORANDUM

TO:	Planning Board Members
FROM:	Planning Staff
DATE:	February 9, 2001
SUBJECT:	<i>Staff recommendations for agenda items for the February 13, 2001 Planning Board Meeting</i>

**ITEM #2: Application for a Conditional Use Permit for Southwest Partners Realty, LLC, Assessor's Map H, Lot 36B-1, Zoned I-2, located on Knox Marsh Road.**

The applicant met with the Conservation Commission on December 4, 2000 and received approval. A Minimum Impact Expedited application for the NH Wetlands Bureau was filed on January 26, 2001. The Planning Department recommends approval of the Conditional Use Permit with the following condition:

1. The applicant shall obtain a Wetlands Permit from the NH Wetlands Bureau and submit a copy to the Planning Department.

**ITEM #3: Application for a Conditional Use Permit for Thomas & Mildred Parks, Assessor's Map L, Lot 45C, Zoned R-20, located on Spur Road.**

The applicant met with the Conservation Commission on February 5, 2001 and received conditional approval. A standard application for the NH Wetlands Bureau was filed on January 26, 2001. The Planning Department recommends approval of the Conditional Use Permit with the following conditions:

1. The applicant shall prepare and implement a plan for creating a vegetative buffer zone along the Bellamy River. The applicant shall consult with the Conservation Commission Chairman, the City Arborist, and the Strafford County Cooperative Extension Service before finalizing the plan. The plan shall be approved by the Conservation Commission.
2. The applicant shall install appropriate erosion control measures as soon as possible.
3. The applicant shall obtain a Wetlands Permit from the NH Wetlands Bureau and submit a copy to the Planning Department.

**ITEM #4: Public hearing to hear Community Development Block Grant (CDBG) Funding Requests Fiscal Year 2001. Estimated to be available: \$540,000. All applicants for CDBG funding will be given the opportunity to present their applications to the Board.**

Please review the red three ring binder which contains a copy of all applications submitted.

**ITEM #5: Old Business**

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

The Planning Board voted to accept the application on December 12, 2000. RSA 676:4-1 (c) (1) requires the Planning Board to take some action within 65 days, which is February 15<sup>th</sup> (copy of RSA is included for your review). The Board must vote to approve, conditionally approve or disapprove the application at this meeting, unless an extension or waiver is granted. The Planning Board can apply to the City Council for a 90 day extension or the applicant can waive the 65 day requirement and consent to a mutually agreeable extension. If the Planning Board does not act on the application within 65 days, the applicant can request that the City Council issue an order directing the Planning Board to act within 30 days. If the Planning Board still does not act, then the City Council can certify the application approved.

The following were the recommendations that the Planning Department made at the January 23<sup>rd</sup> meeting:

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 170-44-1.
3. Applicant agrees to contribute \$6,000.00 to the City to off set 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.

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

Discussions with Tom Fargo regarding the proposed amendments have not taken place yet, so the Planning Department recommends no action on this item.

**676:4 Board's Procedures on Plats.**

1. The procedures to be followed by the planning board when considering or acting upon a plat or application submitted to it for approval under this title shall be as set forth in the board's subdivision regulations, subject to the following requirements:

(a) An application for approval filed with the planning board under this title, other than an application for subdivision approval, shall be subject to the minimum requirements set forth in this section and shall be governed by the procedures set forth in the subdivision regulations, unless the planning board by regulation specifies other procedures for that type of application.

(b) The planning board shall specify by regulation what constitutes a completed application sufficient to invoke jurisdiction to obtain approval. A completed application means that sufficient information is included or submitted to allow the board to proceed with consideration and to make an informed decision. A completed application sufficient to invoke jurisdiction of the board shall be submitted to and accepted by the board only at a public meeting of the board, with notice as provided in subparagraph (d). The applicant shall file the application with the board or its agent at least 15 days prior to the meeting at which the application will be accepted. The application shall include the names and addresses of the applicant, all holders of conservation, preservation, or agricultural preservation restrictions as defined in RSA 477:45, and all abutters as indicated in the town records for incorporated towns or county records for unincorporated towns or unorganized places not more than 5 days before the day of filing. Abutters shall also be identified on any plat submitted to the board. The application shall also include the name and business address of every engineer, architect, land surveyor, or soil scientist whose professional seal appears on any plat submitted to the board.

(c)(1) The board shall, at the next regular meeting or within 30 days following the delivery of the application, for which notice can be given in accordance with the requirements of subparagraph (b), determine if a submitted application is complete according to the board's regulation and shall vote upon its acceptance. Upon determination by the board that a submitted application is incomplete according to the board's regulations, the board shall notify the applicant of the determination in accordance with RSA 676:3, which shall describe the information, procedure, or other requirement necessary for the application to be complete. Upon determination by the board that a submitted application is complete according to the board's regulations, the board shall begin formal consideration and shall act to approve, conditionally approve as provided in subparagraph (i), or disapprove within 65 days, subject to extension or waiver as provided in subparagraph (j). Upon failure of the board to approve, conditionally approve, or disapprove the application, the selectmen or city council shall, upon request of the applicant, immediately issue an order directing the board to act on the application within 30 days. If the planning board does not act on the application within that 30-day time period, then within 40 days of the issuance of the order, the selectmen or city council shall certify on the applicant's application that the plat is approved pursuant to this paragraph,

unless within those 40 days the selectmen or city council has identified in writing some specific subdivision regulation or zoning or other ordinance provision with which the application does not comply. Such a certification, citing this paragraph, shall constitute final approval for all purposes including filing and recording under RSA 674:37 and 676:18, and court review under RSA 677:15.

(2) Failure of the selectmen or city council to issue an order to the planning board under subparagraph (1), or to certify approval of the plat upon the planning board's failure to comply with the order, shall constitute grounds for the superior court, upon petition of the applicant, to issue an order approving the application if the court determines that the proposal complies with existing subdivision regulations and zoning or other ordinances. If the court determines that the failure of the selectmen or the city council to act was not justified, the court may order the municipality to pay the applicant's reasonable costs, including attorney's fees, incurred in securing such order.

(d) Notice to the applicant, holders of conservation, preservation, or agricultural preservation restrictions, abutters, and the public shall be given as follows: The planning board shall notify the abutters, the applicant, holders of conservation, preservation, or agricultural preservation restrictions, and every engineer, architect, land surveyor, or soil scientist whose professional seal appears on any plat submitted to the board by certified mail of the date upon which the application will be formally submitted to the board. Notice shall be mailed at least 10 days prior to submission. Notice to the general public shall also be given at the same time by posting or publication as required by the subdivision regulations. The notice shall include a general description of the proposal which is the subject of the application and shall identify the applicant and the location of the proposal. For any public hearing on the application, the same notice as required for notice of submission of the application shall be given. If notice of public hearing has been included in the notice of submission or any prior notice, additional notice of that hearing is not required nor shall additional notice be required of an adjourned session of a hearing with proper notice if the date, time, and place of the adjourned session was made known at the prior hearing. All costs of notice, whether mailed, posted, or published, shall be paid in advance by the applicant. Failure to pay such costs shall constitute valid grounds for the planning board to terminate further consideration and to disapprove the plat without a public hearing.

(e) Except as provided in this section, no application may be denied or approved without a public hearing on the application. At the hearing, any applicant, abutter, holder of conservation, preservation, or agricultural preservation restriction, or any person with a direct interest in the matter may testify in person or in writing. Other persons may testify as permitted by the subdivision regulations or the board at each hearing. Public hearings shall not be required, unless specified by the subdivision regulations, when the board is considering or acting upon:

(1) Minor lot line adjustments or boundary agreements which do not create buildable lots, except that notice to abutters and holders of conserva-

tion, preservation, or agricultural preservation restrictions shall be given prior to approval of the application in accordance with subparagraph (d) and any abutter or holder of conservation, preservation, or agricultural preservation restrictions may be heard on the application upon request; or

(2) Disapprovals of applications based upon failure of the applicant to supply information required by the regulations, including identification of abutters or holders of conservation, preservation, or agricultural preservation restrictions; or failure to meet reasonable deadlines established by the board; or failure to pay costs of notice or other fees required by the board.

(f) The planning board may apply to the selectmen or city council for an extension not to exceed an additional 90 days before acting to approve or disapprove an application. The applicant may waive the requirement for planning board action within the time periods specified in subparagraph (c) and consent to such extension as may be mutually agreeable.

(g) Reasonable fees in addition to fees for notice under subparagraph (d) may be imposed by the board to cover its administrative expenses and costs of special investigative studies, review of documents and other matters which may be required by particular applications.

(h) In case of disapproval of any application submitted to the planning board, the ground for such disapproval shall be adequately stated upon the records of the planning board.

(i) A planning board may grant conditional approval of a plat or application, which approval shall become final without further public hearing, upon certification to the board by its designee or based upon evidence submitted by the applicant of satisfactory compliance with the conditions imposed. Final approval of a plat or application may occur in the foregoing manner only when the conditions are:

(1) Minor plan changes whether or not imposed by the board as a result of a public hearing, compliance with which is administrative and which does not involve discretionary judgment; or

(2) Conditions which are in themselves administrative and which involve no discretionary judgment on the part of the board; or

(3) Conditions with regard to the applicant's possession of permits and approvals granted by other boards or agencies or approvals granted by other boards or agencies.

All other conditions shall require a hearing, and notice as provided in subparagraph I(d), except that additional notice shall not be required of an adjourned session of a hearing with proper notice if the date, time and place of the adjourned session were made known at the prior hearing.

II. A planning board may provide for preapplication review of applications and plats by specific regulations subject to the following:

(a) Preliminary conceptual consultation phase. The regulations shall define the limits of preliminary conceptual consultation which shall be directed at review of the basic concept of the proposal and suggestions which might be of assistance in resolving problems with meeting requirements during final consideration. Such consultation shall not bind either the applicant or the

board and statements made by planning board members shall not be the basis for disqualifying said members or invalidating any action taken. The board and the applicant may discuss proposals in conceptual form only and in general terms such as desirability of types of development and proposals under the master plan. Such discussion may occur without the necessity of giving formal public notice as required under subparagraph I(d), but such discussions may occur only at formal meetings of the board.

(b) Design review phase. The board or its designee may engage in nonbinding discussions with the applicant beyond conceptual and general discussions which involve more specific design and engineering details; provided, however, that the design review phase may proceed only after identification of and notice to abutters, holders of conservation, preservation, or agricultural preservation restrictions, and the general public as required by subparagraph I(d). Statements made by planning board members shall not be the basis for disqualifying said members or invalidating any action taken.

(c) The applicant may elect to forego or engage in preapplication review or either phase thereof as provided in subparagraphs (a) and (b). Preapplication review shall be separate and apart from formal consideration under paragraph II and the time limits for acting under subparagraph I(c) shall not apply until formal application is submitted under subparagraph I(b).

III. A planning board may, by adopting regulations, provide for an expedited review and approval for proposals involving minor subdivisions which create not more than 3 lots for building development purposes or for proposals which do not involve creation of lots for building development purposes. Such expedited review may allow submission and approval at one or more board meetings, but no application may be approved without the full notice to the abutters, holders of conservation, preservation, or agricultural preservation restrictions, and public required under subparagraph I(d). A hearing, with notice as provided in subparagraph I(d), shall be held if requested by the applicant, abutters, or holders of conservation, preservation, or agricultural preservation restrictions any time prior to approval or disapproval or if the planning board determines to hold a hearing.

IV. Jurisdiction of the courts to review procedural aspects of planning board decisions and actions shall be limited to consideration of compliance with applicable provisions of the constitution, statutes and regulations. The procedural requirements specified in this section are intended to provide fair and reasonable treatment for all parties and persons. The planning board's procedures shall not be subjected to strict scrutiny for technical compliance. Procedural defects shall result in the reversal of a planning board's actions by judicial action only when such defects create serious impairment of opportunity for notice and participation.