

**DOVER PLANNING BOARD
MINUTES OF MEETING
FEBRUARY 27, 2001**

MEMBERS PRESENT: Beth Thompson, Margaret Stevenson, Ronald Cole, Anthony McManus, David Landry, Frank Torr, Jerry Reese, Pete Lavoie, Charles Maglaras - Reuben Hull (late)

MEMBERS ABSENT: Brenda Whitmore

STAFF PRESENT: Steven Stancel, Planning Director; Rick Jones, Community Development Coordinator and Jacqueline Freeman, Recording Secretary

Chairman Cole brought the meeting to order at 7:04 PM.

ITEM #1: Approval of the minutes.

Frank Torr made the motion to approve the minutes.
Beth Thompson seconded.

VOTE U/A

Abstained – Tony McManus

Chairman Cole announced that **St. Mary's** would not be heard this evening but would be on the meeting of March 13, 2001.

**ITEM #2: Consideration and acceptance of an application for a Lot Line
Adjustment of land for Three Rivers Farm Irrevocable Security Trust,
Assessor's Map N, Lots 3 & 4, zoned R-40, located on Three Rivers Farm
Road.**

Kevin McEneaney represented the applicant and described the proposal.

Tony McManus stated that he was abstaining from this application
The public hearing was opened.
There were no comments
The public hearing was closed.

Frank Torr made the motion to approve the application with the following conditions:

1. The applicant shall add a note to the plat stating that a digital copy of the plan shall be submitted to the Planning Department at the time of recording.
2. The plat shall be revised to add the 25 ft. setback around the cemetery as required by NH statute.
3. Add the owners' signature to the plat.

Margaret Stevenson seconded.

VOTE U/A

Abstained – Tony McManus

ITEM #3: Consideration and acceptance of an application for a Conditional Use Permit for Unex, Inc. dba/World Path Internet Services (Owner James Andrews dba/Vertical Realty Prop. Co.) Assessor's Map 28, Lot 32, zoned R-12 & RM-20, located on Garrison Hill.*

George Lund, World Path Internet/dba for Unex, stated that they are hoping to install an antenna at 84 feet. He said that they have been working with Sprint and have been approved for the height. This is for the purpose of providing fixed internet access for businesses in Dover.

Steve Stancel read Chapter 170:28.6 H. He said that the ordinance does not allow new towers on Garrison Hill, but it does allow the placement of new antennae media on existing towers after obtaining a Conditional Use Permit.

Jerry Reese made the motion to accept the application.

Beth Thompson seconded.

VOTE U/A

Jim Anderson explained that the only way to know if there is further room on the towers is to do a structure analysis.

The public hearing was opened

There were no comments.

The public hearing was closed.

David Landry asked if the Fire or Police have no further use of this tower.

Steve Stancel stated that the Police Dept. does have antenna media on this pole. The Fire Department has recently put antenna media on top of City Hall and Community Services and is currently looking at options. He said that Jim Andrews indicated that there might be the possibility that they could locate on this pole but a structural analysis would have to be undertaken.

Pete Lavoie stated that Jim had stated in the past that there wasn't any room and when he saw this request he was concerned. Pete said that Jim explained to him that this firm did a study and found that there is still some room for another antenna. The City would have to do another study to make sure that the tower could still support extra antennas. He said that they have Global Positioning System equipment and they need a site for a dish and another antenna that would work with this equipment. He said they also have the SCADA system and that also needs an antenna on a hill.

Steve Stancel stated that room was reserved for City use and the Police are using that pole.

Jerry Reese made the motion to approve.
Beth Seconded.

VOTE 7 – 1

Opposed – David Landry

ITEM # 4: Consideration and acceptance of a request to clarify and possibly revise conditions of approved for a site plan of land for St. Mary Academy Kindergarten structure, dated March, 1998 – zoned O, Assessor's Map 9, Lot 89, located at 110 Locust St.*

This item will be heard at the next meeting on March 13, 2001.

ITEM #5: Old Business

a. Discussion and possible vote on Millstone Properties, located at 8 & 10 Back River road. (64 units)

Frank Torr made the motion to take this off the table.
Chuck Maglaras seconded.

VOTE 7-1

Opposed – Anthony McManus

Atty Jim Schulte, 2 Towle Ave., represented the applicants. He went over the scope of the project. He used Sawyer Mills as an example saying that 68% of their units are rented to single persons. He said that they have requested a Conditional Use Permit to allow 1 ½ parking spaces per unit rather than the 2 spaces. He said that they intend to regulate the parking by issuing stickers to the tenants. Their target population for these apartments will be persons working south of the City. They hope that that will alleviate some of the traffic concerns. He said that the primary concern about the project that was expressed by the Board members had to do with the traffic in the morning when parents are driving their students to the Middle School. For about a half-hour period between 7:00 to 7:30 AM traffic is very bad in that area. For the rest of the day traffic is not the best but it is at a rating level of D.

Mr. Schulte said that what has happened since the last meeting is in discussions with the Planning Director, the developer has agreed to simply contribute a flat amount \$15,000 regardless of the cost of the improvements, even though with the 2 ½ % the developer might have paid less. From the letter in your packet, the developer has agreed to pay a flat amount of \$15,000. He said that the Board may not have been aware that there was already \$150,000 of City, State and Federal money that is part of the CIP designated for improvements to the intersection of Back River Road and Central Avenue. This \$15,000 would be part of the City's 20% contribution toward additional cost for alleviating congestion in that corridor. There is Federal and State funding through a program designed to reduce air pollution. So the \$15,000 that the developer would be contributing would leverage into a total of \$90,000 of additional money, because you'll get \$75,000 from the State and Feds. He said that that is not guaranteed, but in discussing it with members of the City staff, there is a good likelihood that that would be available. When the numbers were developed for the \$150,000 that is in place, it was understood that the

costs would be going up and the City would be coming back at some point asking for more money. He said that there is money available. There would have to be an application and the project would have to be approved, but since that application would be based upon the traffic study that is currently under way, funded by the School Department and the City, there is a strong likelihood that the State and Federal authorities would agree to contribute additional funding. Beyond the \$15,000, the developer has proposed paying \$6,000 for sewer improvements. He said that he has not discussed it with Pete Lavoie, but he understands that Steve Stancel has and if this Board felt that traffic was a greater concern than the sewer pump station, that \$6,000 could be transferred over and would leverage additional money from the State and Federal Government. He said that they presently have \$150,000 in place, the \$15,000 that is going to be made available will generate a total of \$90,000 so you'll have \$240,000 and there could be another \$36,000 depending upon what the Board pleasure is with regard to the pumping station.

Atty. Schulte said that they agreed not seek CO's until the solution has been established and funding is in place. If the developer wants to get CO's earlier, then they will undertake improvements to the corridor/roadway/traffic signals for the purpose of alleviating congestion in the morning rush hour by 2 ½ %. The traffic study will determine as to what the contribution of this project will be to the problems at that intersection. This project will have a zero impact on the problems that are there. They will either participate in the overall solution which is the most likely scenario, or they will fund, with City approval, the improvements that would reduce the traffic flow through that intersection by the same amount that this project would contribute toward it, so the net effect would be zero. He said that in either event the Board was concerned that this project may aggravate the problem that exists. He said that with the proposal that Mr. Stancel will be making to you they will not be aggravating the problem, they will be assisting in the solution of the problem. He said that the traffic study will be coming back in April, but it is their hope that by the summer a solution will be identified and will be on the way toward getting funded. He said that no one has spoken against this project. Mr. & Mrs. Hoeksema spoke about their concerns. The developer has reached a written agreement with them with regard to the landscaping along the common boundary. The developer has agreed to plant trees and shrubs and to erect a fence to protect their privacy. The agreement is done contingent upon approval. As soon as the approval is given, the deeds will be exchanged.

Frank Torr asked if the scenario occurs with the developer having to do \$15,000 worth of work, could that be utilized as leverage money towards the mix of State and Federal dollars?

Reuben Hull arrived.

Steve Stancel said yes and he feels comfortable with the agreement because the worst case scenario, if we approve this tonight and the developer moves forward, the analysis comes back for the corridor study and says that it will take a million dollars to fix the corridor. If the City refuses to fund that, then the developer has the option based on the

corridor study to make corrections in the corridor to a certain extent to at least alleviate their impact to the corridor. And as the applicant has indicated, there already is \$150,000 in Federal and City monies set aside for this corridor. He said that it is very likely that the \$240,000 when you add the 15,000 plus the 80% match from the Feds, that you could come up with a portion of the solution to alleviate 2.5%. It may be as simple as putting in a traffic signal at the corner of 108 and Back River Road or coordinating all the traffic signals in the corridor or correcting the traffic timing. We feel confident that either way there can be mitigation of traffic created by this project.

Ron Cole asked who makes the call on the 2.5%.

Steve Stancel stated that there are case laws that everything has to pass a rational nexus test, so we can't realistically expect the developer to pay more than their fair share or their impact 2.5% of the project. If it comes to that point, where the developer chooses to do the offsite improvements himself, then they will present to the Engineering Department and Planning Department what their proposal is.

Jim Schulte stated that the letter he submitted expressly states that the City will have to approve their proposed solution.

David Landry said that their vote to say no had to do with this development being premature. He asked how this minor enhancement of the financial changes the argument that this is a premature development.

Jim Schulte said that what was proposed the last time is similar to this. That there would not be CO's issued until a solution is found for the traffic problem is what is being proposed now. Because those conditions prevent this development from being occupied until the traffic is solved, this development cannot have any negative impact on traffic in the City. The vote that the Board undertook last time, was based upon traffic concerns that would not have been sustainable if he elected to appeal it. We have tried to enhance what the developer is trying to do but the other reason for coming back is to clarify what was before the Board last time and this time. Under this proposal, there will be no adverse traffic impact from this project because there will be nobody living in that project until the solution is determined, either by the developer acting independently to offset its impact or by the City overall. Although it is certainly possible for them to go out and alleviate 2.5% of traffic flowing through that intersection, it would be better if that was coordinated with the entire work on the corridor because the money would be more efficiently spent on an overall solution. Mr. Schulte said that as long as they alleviate their impact on the neighborhood, traffic couldn't be the basis for denying it. The people who voted in opposition to the motion, he felt, did not understand that because of the funding that is presently in place and of the agreement not to seek CO's until the traffic is solved, traffic cannot be a basis for denying this because there will be no adverse impact on traffic.

David Landry stated that there is going to be this enormous building on this property and there is going to be an incredible amount of pressure to issue the CO's. He asked if there were situations in the past where CO's had not been issued.

Ron Cole said there was a subdivision built where a couple of people bought houses and moved in and the CO's were not issued because the roads weren't done and we went out and took the people out of the houses. In his opinion it's pretty cut and dry.

Atty. Schulte said that the practical solution is that until there is a solution to traffic they are not going to be able to get funding for this. So the risk of having a big empty building is not going to happen. We need funding to do this and the banks just won't lend the money until they know that we are going to be able to get revenue out of it.

Steve Stancel said that he does feel confident in this project given the conditions. As far as he is concerned it would be premature development if there were no traffic solutions in place. He said that he feels that we do have traffic solutions with these conditions. He said that there is a benefit to the community in approaching it this way as opposed to forcing the developer to go out and do offsite improvements mitigating 2.5% today, in that we do receive monies towards the overall master plan fix for the corridor. It doesn't make sense to run out and do a patchwork solution with a 2.5% fix today and then have the study come in in May indicating that that was all for naught and we should have gone in a different direction.

Jim Schulte clarified that their traffic study was for the intersection and the study that the School Department is doing is for the whole corridor. He went over the landscaping work that would be done.

Steve Stancel went over the recommended conditions of approval.

Linda Brennan (who gave no address) came up to the mike and said that she thought that this was tabled until after the traffic study.

Another gentleman who spoke from the audience wanted to know if it would be appropriate to have a hearing for public comment for such an important and far reaching project.

Ron Cole explained that they did have a public hearing. Ron said that the question is how many times does the public have an opportunity to speak. He said if the Board wishes to reopen a public hearing he would be happy to do it. He said at the last meeting when Motiva was discussed, there were opponents of the project – one wanted decisions done immediately and another wanted more and more study. He said that the Planning Board has to make decisions at some point or another. He said that he would leave it to the Board if someone wants to make a motion to suspend the rules and reopen the public hearing.

No one did.

Chuck Maglaras asked for a figure on the parking spaces as to how many they have and how many they want to go to.

Jim Schulte stated that there be 1 ½ spaces per unit doesn't add up to the right number. Perhaps it should simply state there are 98 spaces.

Tony McManus stated that he is still going to vote against the proposal. He said that the last time this was discussed, his objection was that there is an intolerable traffic situation there that will only be worsened by the addition of this project. Tony said that we not only have to consider this project but the fact that we are building ballfields on Garrison Road and that we approved a project on Back River Road that will also add traffic. He said that he doesn't think that this has been factored in. He said that he agrees with what Steve said that except for their proposal to correct it, this is a premature development. He said that he agrees with Dave Landry that he has not heard anything different tonight than he has heard several weeks ago except that they are willing to throw more money at solving it. He said that we don't have the solution and we don't have the School Department's traffic study. He said that we don't know what the cost is going to be and it does not make any sense to approve a project that we know will worsen an already intolerable situation. It doesn't satisfy him to have a developer come in saying that if the City doesn't fix it, then they'll fix it, when we don't know what their fix is. The problem starts at the turnpike exit all the way to the Middle School and High School. If the City decides that it can't or won't fix it the problem within the next 2 or 3 years, for the developer to come in and say that he is going to make improvements to the intersection, does not satisfy the problem. He said if the developer says that they are not going to build until the traffic problem is solved, then we don't need to give them approval tonight. Tony said that to say that there will be a zero impact because they are going to be able to fix the intersection is a lawyer's argument, and he doesn't think it is valid.

Frank Torr stated that he thinks that we need to take a historic perspective of this. Frank said the Board is probably the blame for the problems out there. We bought a bill of goods from the School Department when they indicated that the Middle School would not create a traffic problem and he thinks that that is where the traffic problem exists. He said that we are the blame and he doesn't think that we are in a position to penalize someone else that is not the cause of the problem and who is trying to solve the problem.

Beth Thompson said that she agrees that we can't penalize them for something that they are willing to remediate. She said that we couldn't take into consideration future potential development of ballfields when we don't know that is a fact. These people should only have to deal with their impact. We cannot stop them for something that they are legally entitled to do.

Frank Torr made the motion to approve with the following staff recommended conditions:

1. Add the owner's signatures to the plan.

2. Approval includes the granting of a conditional Use Permit for a reduced number of parking spaces as provided for the Chapter 170-44-1.
3. Applicant shall contribute \$6,000.00 to the City to offset the impact of the development on the capacity of the Charles Street Sewer Pump Station. The payment shall be made prior to the issuance of the first building permit. That \$6,000.00 may be pushed over to traffic depending on the need.
4. The applicant shall adhere to the stipulations outlined in Atty. Schulte's letter of February 22, 2001.
5. The applicant shall comply with the conditions recommended in the City Engineer's memo dated January 18, 2001, and submit revised plans to the Planning Department.
6. These conditions shall be effectuated through the creation of a developer's agreement to be signed by the applicant and the Planning Board Chairman.
7. Final plan to incorporate landscaping along the southern boundary as stipulated in a landscaping agreement between the applicant and Karen and Peter Hoeksema dated February 27, 2001.

Margaret Stevenson seconded.

VOTE 6 – 2

Opposed - Tony McManus, David Landry

b. Request for an extension of approval for Clifford & Laura Zabkar and Stephen & Jayne Rewucki for a lot line adjustment located on Shawnee Lane and Mohawk Drive.

Laura Zabkar stated that they are requesting a time extension to move the shed. She said that they were not able to move it before the weather got bad.

Steve Stancel stated that plan will not be stamped, signed or recorded until the shed is relocated 10 feet. There may be a way that a bond or something could be put up to be sure that it could be moved, but that gets very complicated.

Saura Zabkar asked if it would be acceptable to put the shed on rollers and move it away from the line until they can put in a new foundation.

Steve Stancel said as long as it is move 10 feet away from the line.

Jerry Reese made the motion to extend the approval until May 15, 2001.

Tony McManus seconded.

VOTE U/A

b. Discussion and possible vote on Community Development Block Grant funding request.

Jerry Reese stated that he is abstaining since he was not at the workshop.

Frank Torr made the motion to approve it as is and forward it on to the City Council.

Chuck Maglaras seconded.

Dave Landry said that he was struggling to see how the School Department's request meets the elimination of slum & blight, urgent need or benefit to very low-income people. He said that some of the other applicants were tossed out of this because they get money from the General Fund. If anyone gets money from the General Fund it is the School Department.

Rick Jones stated that School Department is qualifying under low/mod benefit. There are 3 national objectives that you have to qualify under the HUD Guidelines. The School Department has certified that the families of the students that attend the alternative school are low/mod income based on the HUD Guidelines.

David Landry said that at a prior meeting, he asked for the amount of students attending the Alternate School for the past 5 years. He said that he had not received that information.

Nick Skaltsis stated that he handed that information to Mr. Landry at the very beginning of the workshop session.

David Landry said that he didn't think so, but he would take him at his word. He said that the Alt School is something that we are saving the tax payers a little less than 1 cent on the tax rate because this is clearly a CIP item. He said that 1 cent on the tax rate for him is about 12 cents per year. He said that he does not understand the taxpayer advocate argument. We are about 3 or 4 years into an inflation rate in this Country of about 2%, and the School Budget has gone up 10 – 15% for three straight years. He said that he just couldn't approve this.

VOTE 5 – 2

**Opposed – Tony McManus, David Landry
Abstained – Jerry Reese**

Tony McManus stated that he was curious why St. Mary Kindergarten is coming before the Planning Board. He said that it doesn't seem like a Planning Board matter. He asked if it is because the Traffic & Parking Committee doesn't want to handle a hot potato. If they are asking us to enforce the previous order, that is the Building Inspector' position.

Steve Stancel stated that there are two issues. The Parking & Traffic Committee would like a clarification on what a loading zone is because that was one of the conditions of approval and a clarification to the original conditions of approval with regards to the agreement that there be a person available on the sidewalk to assist children coming out of the cars when parents pulled up in the loading zone. They are requesting that during non drop-off and pick-up times that the parents be allowed to pull up in the loading zone and walk in and get their children if they have a doctor or dentists appointment. It is not clear in the Planning Board conditions whether or not we can take an interpretation to allow that. It is coming in for an interpretation and/or revision to the original conditions to allow them to do that.

Tony McManus stated that he doesn't think that that is our position because it will set precedence. He said that he would move that we refer it back to the Parking & Traffic Committee. He said that they should be aware that we don't have jurisdiction of this.

Steve Stancel stated that in essence, they are asking for a revision. He said that the way that we have interpreted the conditions, is that no cars can pull up in that loading zone and park and parents walk in the school. If that is the way that the Board wishes it to stay, then that is fine, but their request for revision is that in non drop off and pick up times parents be allowed to park there.

Tony McManus said that he thinks that St. Mary ought to file an application asking for an amendment to their approval.

Jerry Reese said that this item did not come to the Parking & Traffic Committee from St. Mary but was brought to the Parking & Traffic Committee by parents of the children. The school did not come forward and he wants that to be very clear to the Board.

David Landry stated that after being on the Parking & Traffic Committee, he believes that this issue belongs there. He said he would second the motion.

Steve Stancel stated that the only problem is that you have the Parking & Traffic Committee interpreting the will of the Planning Board and/or changing the Planning Board's condition of approval. It's a gray area.

Ron Cole stated that our wishes were quite clear when we did it and within our purview at that point. We addressed the kindergarten issue and allowed them to put it there with those stipulations, now it's a parking and traffic issue.

Beth Thompson questioned if the Parking & Traffic Commission can clarify what a loading zone is. She doesn't think they have that authority to make those decisions.

Chuck Maglaras stated that what they are trying to do is change what we have approved. He said he couldn't see how the traffic committee could change something that the Planning Board has done. To him it has to come back to the Planning Board. He said he would not want someone else interpreting the decision that was made by this Board. He said they should come before the Planning Board.

Steve Stancel explained that St. Mary's did not initiate this. It was the parents who brought it to the Parking & Traffic Committee. The Parking & Traffic Committee kicked it around for about 2 hours and they felt that to change the conditions of pick-up and drop-off time, it has to go back to the Planning Board for revision. He said that their letter requests that. Steve said that the question is whether or not the Planning Board wishes to allow parents to pull up and park during non-pick up and drop-off times. He said that he will talk to the principal of the school tomorrow, but it is his understanding that they are not opposed to this request. He said that if we hear both sides at least democracy would have been served.

Frank Torr said that we are dealing with technicalities if you consider the letter a request. If it will satisfy the concerns of the other Board members, maybe they should make a formal request, rather than have them go through the Parking & Traffic Committee.

Tony McManus stated that he feels it would set a dangerous precedence.

Ron Cole asked why revisit something that sounds pretty cut and dry. He said that he doesn't have a problem with the Parking & Traffic Committee making a decision as to whether they want people to park for 15 minutes during the rest of the day. He said that he thinks that falls within their purview.

Steve Stancel said that he disagrees because the Planning Board had a reason for making that a condition of approval for obvious safety purposes. If the Board wishes to change their opinion on that, then it is up to the Board. He said he thinks that it's dangerous for the Board to refuse to accept a request to revise something that was set a few years ago. He said what is occurring out there, may not be a problem during non-pick up and drop off hours. So why wouldn't the Board want to look at that. He said that he's not sure it should be in Board's purview to refuse to accept something and look at it.

Frank Torr said that with parking spaces at a premium, it would make sense to be able to utilize parking spaces. He said that he went by there today and the loading zone sign is parallel to the ground and there were cones sitting there and spaces empty. It would make sense to utilize those spaces.

VOTE 2 – 5 For – David Landry, Tony McManus
Opposed – Thompson, Torr, Maglaras, Stevenson, Lavoie

Steve Stancel reminded everyone of the workshop on Tuesday, March 6, 2001, at the Old Middle School at 7:00 PM

ITEM #7: Adjournment

Jerry Reese made the motion to adjourn.

Tony McManus seconded.

VOTE U/A