

**DOVER PLANNING BOARD
MINUTES OF MEETING
NOVEMBER 23, 1999**

MEMBERS PRESENT: Anthony McManus, Margaret Stevenson, Pete Lavoie, Reuben Hull, Frank Torr, Ron Cole

MEMBERS ABSENT: Paul Beecher, Jerry Reese, Charles Maglaras, Karin Crittenden, Jeff Peasley, Jeff Mason

STAFF PRESENT: Steven Stancel, Planning Director and Jacqueline Freeman, Recording Secretary

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

ITEM #1: Approval of minutes

Frank Torr made the motion to approve the minutes.

Reuben Hull seconded.

VOTE U/A

ITEM #2: Consideration and acceptance of an application for a minor subdivision of land for Dover Industrial Development Authority, Assessor's Map D, Lot 11-1, zoned I-4, located on Venture Drive.

Beth Thompson, Economic Development Director, representing DIDA, explained that the minor subdivision will create a new lot to sell to Formax. She said there is a shared utility easement through their existing driveway and they will be taking advantage of the Transfer of Development Rights Ordinance.

Reuben Hull made the motion to accept the application.

Margaret Stevenson seconded.

VOTE U/A

The public hearing was opened.

There were no comments.

The public hearing was closed.

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

1. Add owner's signature to the plat.
2. Add surveyor's stamp and signature to the plat.
3. Revise note #9 to indicate if there are any very poorly drained soils on the parcel.
4. Revise plat to add standard flood hazard note.
5. Revise plat to add the locations of proposed water and sewer lines.

6. Revise plat to add a note that boundary information will be provided in a digital DXF format on disk to the City Engineer.

Tony McManus seconded.

VOTE U/A

ITEM #3: Consideration and acceptance of an application for a lot line adjustment of land for Business Partners, Inc. and Chauvin Arnoux, Inc., Assessor's Map G, Lot 31-1 and 1L, zoned I-2, located on Crosby Road and Faraday Drive.

Dan Gabriel represented Business Partners Inc. He stated that this plan will allow Chauvin Arnoux to expand. He said that this is the former Flatley piece and has been in mothballs for the last 15 years.

Winthrop Smith stated that he is representing Chauvin Arnoux and is acquiring land for future expansion because his current land is fairly limited.

Tony McManus made the motion to accept the application.

Margaret Stevenson seconded.

VOTE U/A

The public hearing was opened.

There were no comments.

The public hearing was closed.

Peg Stevenson made the motion to approve the application with the condition that the owners' signatures be added to the plat.

Frank Torr seconded.

VOTE U/A

ITEM #4: Old Business

a. Discussion and possible vote on an Alternative Design Subdivision for Katz Development Corp, located on Middle and Hawthorn Road. (49 lots)

Peg Stevenson made the motion to remove this item from the table.

Reuben Hull seconded.

VOTE U/A

Atty. Malcolm McNeill stated that he is representing the applicant and owner Eric Katz. Malcolm described the project. He stated that the City has requested a recreation contribution from this project despite the fact that the closest park is approximately a half a mile away and the fact that these units are not likely to generate a lot of children, but this developer has agreed to pay \$100.00 per house or \$4,900. He said that there was discussion regarding a sidewalk along Hawthorn Rd., running out to Stark Ave. He said

that there is a partial sidewalk there now, the substantial users of this sidewalk will not be of this project and the total cost of this sidewalk is estimated to be around \$30,000 more or less. He said that the developer has agreed to make a one-time up-front contribution to the sidewalks in the amount of \$15,000. All the Conservation Commission recommendations have been included in the various documents. He said the last time this came to the Board it was agreed that no further investigation would be required in regard to title issues relating to a public way that allegedly exists across this property. He said that a document was supplied to the Planning Department stating that he did the usual and customary title examination for this property; he reviewed all of the materials that were supplied to him by the surveyor, as well as, some materials that were not recorded at the Registry of Deeds. He said that he spoke at length with the surveyor with regard to his findings and he reviewed all the materials that were made available to him by parties claiming a right-of-way. He said that there has not been a road on this property that has been maintained, improved, or otherwise occupied for years and to their knowledge, never as a public way. The document that the party says is evidence of the existing of a roadway is not even a deed. He said the document is 233 years old and is not recorded in the Registry of Deeds. Malcolm said if one attempts to chart out the compass bearings on the document, it would be Kevin McEneaney's testimony that even to do that would not result in a finding that the property is burdened by a public way. The City does not list any public way on this property; it is on none of its inventories; it receives no state aid and there are no roads that service this property. He said that there is an allegation that the road might have been passed on in the 1950's to get water, but we believe that someone taking water from this property 50 years ago does not give rise to a valid claim for a roadway.

Malcolm said in regard to the seven lots that abut Hubbard Road, their attorney has written a letter to the City saying that in no way do they want to be part of the homeowners association, and they make no claim to a legal interest in regard to the open space. He said a review of their deeds, as well as the Assessing records, will clearly indicate that the City does not tax them for any open space, nor do the deeds clearly convey any open space. He said that the 7 owners have withdrawn any opposition to this plan provided that they are not mandated to get into a group that they don't want to be in and the land that is contiguous to theirs remains open. Malcolm asked that the city not require these people to be in this association against their will. He added that if there is some legal opinion that there is an interest that exists, although they don't feel it does, the developer will take responsibility to resolve those interest issues.

Malcolm stated that they continue to believe strongly that they are not developing this project in a fashion that affects Mrs. Becky's property.

Paul Connolly pointed out the location of Mrs. Becky's property and explained the location of the wetland. He said that none of the drainage is proposed to go in that direction. He explained the drainage plan for the project.

Kevin McEneaney explained the two waivers the are requesting. One for the width of the right-of-way and the other for the alignment of Wayside Rd. and Middle Road.

Malcolm McNeill stated that if the issues with Mr. Preston are not resolved, they will be back before the Board seeking an alternative route.

The public hearing was opened.

Mrs. Becky had pictures of her land that were taken in 1989 and some later ones to show the Board. She claimed that all of the water comes from Hawthorne Road.

Pete Lavoie said that the City tried to stop the water from coming into Mrs. Becky's land. He explained how they did a complete repair of that area. He said that they removed the fence line, buried all the debris, put rip rap stone, replaced the fence and it is all on video in his office.

Mrs. Becky said that the City Manager told her that something would be done within 5 months. She said that if nothing is done within 5 months, she will sue the City of Dover again and sue Wayside at Dover.

Craig Williams was concerned that the drainage has been changed from one water shed to another. He said that according to State of NH law, it can't be changed because there are established rights to that water.

Paul Connolly stated that they are not changing any flow. He said that the challenge for the engineer is to maintain existing drainage and flows so that no one is affected. Paul said that the challenge is to manage the drainage so post condition is the same as pre condition.

Discussion ensued.

Reuben Hull stated that the drainage plan was done by a Professional Engineer and has been reviewed by our City Engineer and the State of New Hampshire and he is satisfied.

Craig Williams stated that there are 3 pieces of property that are irrigated out of that pond and if the flow is decreased or the water shed is disturbed it affects the ability to withdraw for irrigation.

Paul Connolly said that he sees no negative impact on the pond. He said that the volume is controlled by Mother Nature.

Craig Williams said if the 7 lots are no longer part of this subdivision, they are substandard lots. He said they need ZBA approval to create substandard lots.

Steve Stancel stated if all 7 of those lots wish to be out of the ADS and this Board wishes to do that, then it would be a matter of waiving the open space requirements for those original 7 lots. He said that this is a unique situation where these lots were created under the guise of having open space associated with them, then the balance of the project went

defunct. We have heard from the majority of the 7 property owners that they no longer wish to be part of the project and we have a letter from an attorney that represents 4 of the 7. This Board, at a previous meeting, indicated that it was its intent to not include the 7 lots in the ADS. The way to do that is to call them alternative design lots but waive the open space requirements for those lots.

Ron Cole stated that the Board is making judgment on the application and the concept but not on the meets and bounds.

Harold Preston stated he is an abutter. He said that there is some disagreement with the line in the right hand corner coming against the Williams property. He said that Kevin McEneaney and he disagree about this line. He said that while he was in his field he ran into another stake (rebar with cap on it, 661 lss) which is Kevin's license number. He said that it was put in sometime when he surveyed this land for the Adam's Estate subdivision in 1987. He said that the length of that line was 700.68 feet. He said that he has gained 2 feet in 11 years because now it is 702.80. He said that using that line he ran out the sewer easement (20 ft. easement), between the sewer easement and that line there is 3 feet of his land. He said that both sewer pipes, one of which is located by going from manhole to manhole, the other line is ductile iron. He said that they probed for that and hit the ductile iron which is about 7 1/2 feet away from the cement asbestos 8" pipe. They have a 20' easement symmetrical over the pipes which means from the center out, so he called it 6 feet between the pipes. He said that the easement is a total of 20' wide. He said that he wants it in the minutes so when this argument comes up it will be on record. He said he has laid out a grid, staked it, and he has run string lines so anybody can see it. He said that this is reality, not something someone has done on a map. He said that he doesn't agree with Kevin McEneaney's line and even with his line there is 3' of his land to get over. Harold said that even if the developer gets permission to use the City easement, they have to get from their land to the easement.

Mary Buse, 45 Middle Road, had concerns with the wetlands because this area is in the floodplain. She said she wants a guarantee that there will be no impact to her property. She said there is a problem with the boundary on her side and that the markers have been changed from when Adams Estates was surveyed. She asked that there be a fence or markers so people will not be using her land as the open space.

Mrs. Becky said when she bought her property there were no wetlands back there and now it is a massive wetlands. She wants some assurance from the Board that something will be done. She said that nothing has been done in 12 years.

Ron Cole said that she has the City Manager's assurance that sometime will be done in the next 5 months and that he would be glad to speak for her.

Mrs. Becky stated that before Mr. Beecher there was another manager and another one before that, and nothing has been done in 12 years. She said it is getting worse and she can see that it is going to mean a law suit.

The public hearing was closed.

Steve Stancel read the recommended conditions.

Pete Lavoie stated that he is concerned that the sidewalks originally went all the way to Stark, and that the engineering note on Middle Road indicates concerned that they would like the radius lengthened.

Frank Torr stated that he is uncomfortable with item #8 stating that the 7 properties originally had rights to the open space.

Malcolm McNeill stated that the land was never dedicated and the deeds do not make that form of conveyance. Malcolm explained that the homeowners association document was prepared and discussed and distributed among the first couple of owners of Hubbard Road and the people elected to not get involved with the homeowners document. The developer then stopped in further processing the homeowners association document and none of the deeds make any conveyance of title or interest in the open space. He said that it is clear that the owners of those lots do not want to be burdened by being in an association. If the Adams Estates project had gone through, they would be paying dues. What they are getting is passive recreation space at no cost.

Paul Connolly stated that with regards to wetlands, Mary Buese's property is located upstream from the point of discharge on Middle Road. Paul said that the point of runoff both now and after development, remains unchanged.

Malcolm McNeill stated that if they can't reach an accommodation with Mr. Preston in regard to the sewer, they can get to the sewer that goes over their property.

Steve Stancel stated that they will have to come back to this Board if they make a change in the sewerage.

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

1. Add owner's signature to the plan.
2. Add surveyor and engineer stamps and signatures to the plans.
3. Provide the Planning Department with a copy of the state Wetlands Permit and add permit number to the plan.
4. Provide the Planning Department with a copy of the state Site Specific Permit and add permit number to the plan.
5. Conservation Commission recommended four conditions: 1) Deed for lots with wetlands include reference to maintaining wetlands and wetlands be shown on recorded plat; 2) Open space be left in natural state except for passive recreation and this be added to association covenants; 3) Create management plan for open space to be included in covenants; and 4) Add wording to the covenants as to why open space and wetlands are important and need to be protected.

6. A contribution to the City from the applicant in the amount of \$15,000 to be used for the construction of a sidewalk along Hawthorn Road from Newport Road to Stark Avenue. This contribution is due prior to the issuance of a building permit.
7. A contribution to the City from the property owner in the amount of \$100 per house at the time of each building permit, to be used for improvements to the recreational facilities at Applevale Park.
8. That the Planning Board waive the requirement that the previously created seven lots on Hubbard Road have partial ownership in the common open space and that they not be required to be part of any association. If this is determined by legal opinion that a formal withdrawal requests by the owners are required, the applicant is responsible for obtaining said requests in writing as approved by the Planning staff.
9. Additional comments per Engineering Department:
 1. The location of the proposed CB's #2 and #3 in relation to the existing sewer line is unacceptable. There must be separation between the structure and the sewer line.
 2. A note needs to be added clarifying "A 30-ft utility easement is to be granted to the City of Dover over the proposed water mains."
 3. Shift the lanes on Middle Road to the inside radius.
 4. Add to the survey Legend Sheet 2 "Iron pins to be set" and "Bounds to be set".
 5. All easements should be pinned and a right of way Bound placed at Middle Road.
10. Compliance with the association's protective covenants, as amended and approved by the Planning Department.
11. Recommend approval of waivers 155-33A widths of right-of-way 40' where 50' are required as well as 155-32I Street Layout which is a requirement of streets joining each other at approximately 90° for a distance of 100'.
12. High granite markers be placed along the boundary of Map K, Lot 17A-2.

Margaret Stevenson commented in regard to condition #6 that she hopes that future developments are consistent with the requirement of contributions prior to issuance of building permits. She would like to see consistency with all approvals for development.

Frank Torr seconded.

VOTE U/A

ITEM #4: b. Discussion of the City's Capital Improvements Program.

Steve Stancel stated that the City Council has scheduled a public hearing for December 1 on the CIP and will probably vote on this on Dec. 8. He said that since this Board won't meet again until after Dec. 8, we could attempt to get through the CIP this evening, or have a special meeting on the November 30th, or on December 7.

Ron Cole stated that he hears all of the concerns regarding Athletic Fields Item #10, and accepts them, but the City is in dyer need of more athletic fields. He said that we have the money to build the fields and to maintain the fields and he would hate to see us put this off for another year. He said that he strongly urges the Board to recommend to the City Council that \$900,000. be appropriated.

Tony McManus asked about the design of the Public Works Facility.

Pete Lavoie explained there was a problem with one of the bids arriving late, so the Purchasing Agent and the City Manager decided to put the job back out to bid and return the bid on the 29th before the public hearing. He said that there is a problem with being able to review those bids and making a recommendation to the Council that evening. The building committee will be reviewing the plans with their staff and will have a recommendation on December 8th.

Reuben Hull agrees that we are under fielded but he is not ready to be tied to a location. He stated that there is a need to allocate the money to get something going.

Discussion ensued with regard to the funding of the fields.

Reuben Hull asked about the Broadway drainage.

Pete Lavoie stated that they are hoping to get something from the railroad with regard to the Broadway Area Drainage and Dean is looking for another grant that may be available to assist them if they do some stormwater retainage as part of the project.

Pete Lavoie stated that the Replacement of the Bellamy Hut is still in consideration and along with the City Manager, they will be working on shifting some funds from other projects to make sure that this project happens.

Discussion ensued regarding the tax ramification of the CIP and the volunteer program for staffing the Southend Station.

Councilor David Landry stated that this is an incredibly large CIP, and most of it is wants vs. needs. He commented on each of the items. He said that he is in favor of the street and sidewalks improvements. He stated that he has a problem with the TIP. He said that he doesn't have an issue with the Cocheco Damn Retaining Wall. He said that he is probably the only person in town with a problem with the public works facility because he feels that where it's going is not the best use of that property. He said that we don't have access to Mast Road, because the owner of the property that we have to cross has no intention of letting the City have access to Mast Road through his property.

Councilor Landry stated that the school should be applauded for not doing things piecemeal. On items 11, 12, he would like to see that go forward. He said that as far as the arena, no one should refer to this as an enterprise fund. We will never be able to charge enough money to ever get out of the red. Deferring maintenance for years until the only thing that is of any value in that building is the chiller and everything else is destroyed, and calling it an enterprise, is a very strange way to do things. He said that it is very appropriate that we have additional fields and feels that the Planning Board is being boxed out of this. He spoke on the Bouchard well and the air stripper and added

that he doesn't agree with binding future Councils to millions of dollars worth of commitment.

Mr. Landry stated that he agrees with Camp Sun & Fun and thinks that is an excellent program. He said that Ron was very astute last year to ask if any part of the increased funding for sidewalks and streets is going for other than contractual services. He said that paying people's salaries with bonded money is not appropriate.

Pete Lavoie answered that salaries, gasoline or diesel fuel, shovels or those sorts of things are not included.

Ron Cole stated that the Board is merely an advisory board. He said that unless we see something glaring, we make our recommendations to the Council and let the Council and the Manager fight it out.

Tony stated that although we are making a recommendation, we are recommending the adoption of the expenditures, and are at the same time recommending a use for that money for projects so that if we are recommending a million eight for the public garage then we are recommending that the public works garage be constructed and that amount of money be put into it. He said that that is the problem he has with the fields, if we are recommending \$900,000 for additional fields on County land, he feels that the Council has a right to assume that we are responding to that in an affirmative manner.

Ron Cole said that all we are doing is recommending that the \$900,000 be bonded, but we are not recommending how it gets done.

Discussion ensued in regard to the fields. Ron Cole mentioned that Little League bought their own fields because there wasn't anything else that they could do.

Frank Torr stated that Ron should make the statement that it is only the appropriations of the money and there is some reluctance as to the locations of the fields.

Tony McManus stated that there is more expenditure to the City of Dover than the \$900,000. We haven't even begun to discuss the cost of upgrading County Farm Road/Watson Road Intersection, the cost of maintaining those fields and the engineering involved. He said that when we make this recommendation we are in effect recommending the whole package.

Frank stated that if we don't include it at this point, do we have the option of making a recommendation down the road sometime.

Ron Cole stated that Mike said that the CIP can always be opened.

Reuben Hull made the motion to recommend the CIP Resolution to the City Council to include the following thoughts and recommendations of the Planning Board:

1. Athletic field development (#10) recommend the monetary amount but questioning the location and recommend additional study and review be done for the location and the overall concept of the field development.
2. If individual items are starting to be looked at, the first one to be removed would be #18, Bouchard Well as an item to be delayed as both Councilor Landry and Acting Community Services Director have implied that that is not critical for the first year.

Tony McManus seconded.

Pete Lavoie said that should look at the design.

Frank Torr said that he still has reservations about the Arena improvements. It was his understanding that it was in a profit making mode, but Councilor Landry indicated that it is in a losing proposition. If there is such a demand for the usage of ice, he thinks that the price should be able to go up to satisfy the cost of operating and improvements.

The Board decided that another recommendation that Ron Cole would bring to the Council would be 3) The Arena (#25) – A strong recommendation that there be an absolute commitment set forth for maintenance of this facility into the future and that ultimately, the last decision would be made by the Council.

Tony McManus asked if there is any possibility of creating an authority to run the arena that would be separate and self-funded. You have private people who are willing to contribute to this. The city might be in a better position to get the low interest rate but it would remove it entirely as a city Enterprise and it would have to make it on its own. He said that he knows when the arena was built, the private sector participated quite strongly and a couple of individual made substantial contributions.

Pete Lavoie stated that part of the problem of the \$300,000 is that no maintenance was set aside to take care of the building, and discussed how they got into debt.

Gary Bannon stated that this item is critical. If we don't do something we won't have anything.

Peg asked about Item #5 local share of TIP.

David Landry stated that the number that is collected is set up in a special fund to be used strictly used for the City's share of the TIP. The mechanism is there and the timing is a little bit off. He doesn't want to be over critical because he thinks the Tip is a fantastic program.

Steve Stancel explained that they just started collecting money November 1, and we anticipate if it's in for a complete year the City will take in roughly \$100,000 for that fee.

VOTE U/A

Ron Cole asked if anyone wanted to discuss the ADS

Ron Cole set up a workshop for the 1st Tuesday in January which is January 4, 2000, at 7:00PM. He said if anyone wants to announce their candidacy they can announce on that day because the Board will be voting on the 12th.

Steve mentioned an announcement for the kick off for the Transportation Section of the Master Plan on December 9th at 7:00 PM.

Anthony McManus made the motion to adjourn

Reuben Hull seconded.

VOTE U/A