

**DOVER PLANNING BOARD
MINUTES OF MEETING
JULY 23, 1996**

MEMBERS PRESENT: Charles Maglaras, Jerry Reese, Otis Perry, Ron Cole, Brian Preston, Martin Smith, Mike Bobinsky, Reuben Hull, Dennis Ciotti

MEMBERS ABSENT: Paul Beecher, Bob Belmore, Lionel Martel

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

Chairman Cole brought the meeting to order at 7:05 PM.

ITEM #1: Approval of minutes.

Jerry Reese made the motion to approve the minutes of the last meeting.
Charles Maglaras seconded.

Brian Preston said he would like *resolved* added after the following comment on Page 3: Brian Preston said he is not willing to give up the extension of Fifth Street until we get ownership *resolved*.

VOTE U/A

Otis Perry stepped down.

ITEM #2: Consideration and acceptance of an application for a minor lot line adjustment of land for Charles P. Kageleiry (Owner - Boston & Maine Corporation) Assessor's Map 31, Lots 4 & 4A, zoned RM-8, located on Fourth Street.

Jerry Reese made the motion to take Item #2 off the table.
Mike Bobinsky seconded.

VOTE U/A

Jerry Reese made the motion to accept the application.
Charles Maglaras seconded.

VOTE U/A

Steve Stancel stated that he has not had the opportunity to speak to Scott Woodman regarding his memo, but that Scott has some serious doubts as to whether the City may have some claim to the right-of-way. He added that this not conclusive, that the City may have some rights under the custom theory. He said he feels this issue may need further investigation. He said we have not seen a legal opinion from the applicant's attorney. Steve said that he is not convinced the City has had the proper time to fully check this out. Steve said he is not as convinced as Scott that the Board should address the lot line adjustment without consideration of the ownership of the

right-of-way. He added that Chad may be totally correct in this ascertainment, and we may be delaying his application unnecessarily, but then again, he may not be correct. He added that he sees no reason why additional research should not take place. He said the State Statutes allow 90 days for Planning Boards to make decisions. He added, he would rather be safe than sorry.

Brian Preston asked if this is approved with Note 12 noting the encroachment of Lot 4, would we be agreeing to the encroachments?

Steve said Atty. Wattendorf tended to agree with that. He added that as best as can be determined, the public has been using the road as far back as 1945. He said he is not exactly sure when it got paved. Steve said there is no record of land being transferred or given to the City.

Martin Smith asked if the City would go to court to support the claim.

Steve Stancel stated that this has to be investigated. It would depend on how important it is to the City.

Chad Kageleiry stated that two weeks ago he stood before the same Board asking for a conditional approval for a lot line adjustment, subject to an opinion from the City Attorney, to determine any rights that the City may or may not have over his property. He said that ownership of the property is not in question and the point of any encroachments on the property is not in question. It is whether the City has any rights to have any right-of-way or encroachments on his property. He said the project was tabled because we were waiting for a memo from the City Attorney giving his interpretation and what the next step would be. Chad said that one week ago a memo was written by the City Attorney and distributed within the City. Chad said he is hoping to get some action on that so he can move forward. He said he is asking for a conditional approval subject to clarification to the rights the City may have for the portion of his property that they are using for a water line and sewer line. He said that because of the nature of the position of the City Attorney, we could go on for months at a time without having any point of focus as to how this can be resolved. He said this issue can be resolved outside of the public forum much more expeditiously. He said the conditional approval is not going to impact the facts at all, the attorneys for both sides are still going to have to come to a resolution as to what is applicable. He said he is requesting a conditional approval subject to clarification from the attorneys. †

Martin Smith stated that the memo from the City Attorney clearly states that nobody can acquire by adverse possession against a railroad and the land has been owned by the railroad until just recently. He said it does not matter that the City and the public have been using the property for 40 - 50 years. Martin stated you do not get adverse possession against the railroad. He said he doesn't know if there is any point to be proved or any additional information to be obtained.

Mike Bobinsky asked Steve to clarify the staff recommendations.

Steve Stancel said he recommends tabling until more information is gathered on the City's rights.

Jerry Reese made the motion to approve with the condition that the owners' signatures be added to the plat.

Brian Preston seconded.

Reuben Hull made an addendum to the motion to have them add a note to the plat clarifying what the sending areas are.

VOTE U/A

ITEM #4: Application for a site review of land for Winstanley Enterprises, Inc. (Country Kitchen Bakery), (owners Paul Rinden & Margaret Rinden Kanost), Assessor's Map D, Lot 14-3, zoned I-4, located on Venture Drive.

Bob Stowell, President of Tritech Engineering, stated the project is a building for distribution of Country Kitchen Bakeries products. The products come in by tractor trailer and are distributed by smaller trucks throughout the area.

Charles Maglaras asked if there is enough parking.

Bob Stowell said the trucks would be parking against the building. He said they will be breaking ground the first of September. He added there will be a thrift shop in the front of the building.

Otis Perry was concerned that the dumpster could be viewed from Venture Drive. He suggested a stockade fence to screen the dumpster.

Jerry Reese made a motion to accept the application.

Charles Maglaras seconded.

VOTE U/A

The public hearing was opened.

There were no comments.

The public hearing was closed.

Otis Perry made the motion to approved with the following conditions:

1. Add the owners' signatures to the plat.
2. Obtain the review and approval of the DEDC for the development plans. The DEDC has been contacted by the Economic Development Director to schedule a review meeting for this application.
3. Stockade fencing be used for screening of the dumpster.

Mike Bobinsky seconded.

VOTE U/A

ITEM #5: Old Business

Ron Cole stated the Board would take care of some quick business before going on to Rivers Edge II.

a. Rite Aid

Ron Cole stated the Board approved Rite Aid in May. He said the 60 day approval period has elapsed and in addition, there are some minor changes to the site plan.

Malcolm McNeill, represented Rite Aid. He stated that they were approved on May 14, 1996. He stated he is asking for a 30 day extension in order to make a submission of the final plans. He stated that they have some minor changes. He said they have eliminated one drive-through lane and one parking space which does not affect compliance. He said they have made minor changes to the site plan in an effort to reduce the size and impact of the retaining wall. Mr. McNeill said they have move the wall 8 feet away from the Fournier property and it will be not be a steep as before, there will still be the fence. He stated Mr. Fournier has called the Planning Department to say the change is acceptable to him. He said there will be a lesser wall on the McQuade side, which is in the rear. He said the McQuades are going to give them a construction easement to effectuate the gradual leveling off of their property.

Otis Perry made the motion to grant the 30 day extension and to allow the Planning staff to handle the changes.

Jerry Reese seconded.

VOTE U/A

b. Jeff Londres - Conditional Use

Steve Stancel explained that Jeff Londres came before the Board on July 9, 1996 for a Conditional Use permit for a swimming pool and forgot to get the Conditional Use for a boat dock. Steve said the Conservation Commission favorably regarded this dock and Mr. Londres received his NH Wetland Permit. Steve said the dock was included on the same plan as the Board reviewed for the pool.

Jeff Londres said he took out a poorly designed dock and will be building a more suitable one.

Dennis Ciotti said he is removing himself from the vote.

Jerry Reese made the motion to approve.

Charles Maglaras seconded.

VOTE U/A

c. Rivers Edge II

Joe Sawtelle, trustee of Rivers Edge II Trust, stated he bought the land from the FDIC. He said the plan was an approved plan for 146 residential units. He said this plan would not have been in the best interest of the City of Dover. He said the plan was revamped to 50 single family homes. He said the streets follow the contour of the land to preserve the integrity of the property as much as possible.

John Chagnon, the engineer of the project, said he is asking for two things, the final approval and is requesting a conditional use and a waiver.

Ron Cole asked if any of the abutter had any questions.

Nancy Gauthier, 162 Henry Law Ave., was concerned with the water flow and the stream running through her back yard. She asked if there was a starting date for the project.

John Chagnon stated that the runoff rate will stay the same, the development will not increase the flow of water.

Joe Sawtelle said there is no starting date. He added that the houses will be the same as in Mt. Pleasant estates.

Discussion ensued in regard to the catch basins. John Chagnon stated that they have provided the City with a drainage study. John Chagnon said they will repave the driveways of the two existing houses on the right side of the plan. He said the house on the left side has a gravel driveway and the developer will pave up to the point of the right-of-way.

Charles Maglaras asked about the liability factor of the trail.

Joe Sawtelle stated he has a liability policy as many people walk on the land and the children have built tree houses.

Mike Bobinsky stated if this trail is dedicated to the City, the City will have some obligation to maintain the trail.

Otis Perry stated that funding and maintenance of the trail are going to be issues. He said he is not sure, if constructed, the City can afford to maintain it.

Mike Bobinsky said that the City has an Adopt a Spot Program. He said there are 14 or 15 groups who are participating.

Joe Sawtelle stated that the homeowners association will be responsible for maintenance and will give the City an option to adopt until such time as the City acquires it.

Steve Stancel gave the staff recommendations

Steve Stancel said the Fair Share fee of \$1,000.00 will be collected at the time the Building Permit is issued.

Jerry Reese stated there should be a new condition stating the driveways are to be restored to the condition that they are presently in to protect the owners.

John Chagnon stated there is an existing note on the plan stating the contractor will rebuild the driveways.

Jerry Reese made the motion to remove the item from the table.

Mike Bobinsky seconded.

VOTE U/A

Mike Bobinsky made the motion to approve with the following conditions:

1. A waiver from the Board is required for the 20 ft. radii dimension at the entrances. The waiver would be for the right-of-way line radii only, as the pavement radii will meet requirements. The City Engineer has indicated that he is in favor of the waiver. The length of the cul-de-sacs due to temporary construction phasing of the project also required a waiver from the Board.
2. A fair share off-site improvement fee for Henry Law upgrade in the amount of \$1,000.00 per unit for a total of \$50,000.00 be assessed on the developer. This has been agreed upon by the owner's engineer. Refer to the data sheet and a fair share cost allocation formula that you received at the last meeting.
3. Homeowners' Association documents be submitted for review. Pond maintenance issues shall be included in the documents. Trail maintenance issues and shared driveway documents for the 3 driveways.
4. The applicant shall submit temporary construction easements regarding the existing homes to the front of the site.
5. Add a note to the plat stating that as-builts and subdivision plat be submitted in digital form.
7. Add a minimum 4' fence around the detention pond to the plans.
8. The private sewer force mains should be located on private land in the development. Show the new force main locations and the private sewer easements on the plans. This is a result of a decision voted on by the Dover Utilities Commission at the May 14, 1996 meeting.
9. The power hookups for both the residential units and the sewer pump station shall use the electric distribution system located on Henry Law Avenue.

10. The driveways at the front of the development be restored.

Jerry Reese seconded.

VOTE U/A

Joe Sawtelle said that to run the pump station we need 3 phase power. He said it may not be available off Henry Law Ave.

John Chagnon stated that he needs Conditional Use Permits for the areas in the Conservation District.

Otis Perry made the motion to grant the Conditional Use Permits.

Jerry Reese seconded.

VOTE U/A

Steve Stancel reminded the Board of the truck route meeting which would be taking place at the Madbury Town Hall.

Steve said that Bruce Woodruff prepared a table on the available open land in the RM-8 zoning district. He recommended that the subcommittee that was appointed to look at the economic section of the Master Plan look into the RM-8 zoning. The subcommittee comprises of Martin Smith, Lee Martel and Brian Preston.

Jerry Reese made the motion to adjourn.

Dennis Ciotti seconded.

VOTE U/A