

**MINUTES  
COUNCIL WORKSHOP  
DOVER CITY COUNCIL  
CITY COUNCIL CHAMBERS  
WEDNESDAY  
JULY 7, 2004  
7:00 P.M.**

Mayor Myers opened the meeting at 7:00 p.m.

Members Present: Mayor Scott Myers, Mayor Pro Tem Jason Hindle, Councilor Robert Keays, Councilor Doug DeDe, Councilor Matt Mayberry (arrived at 7:20), Councilor Dean Trefethen, Councilor Darlene Colwell-Ellis and Councilor Otis Perry. Also, Mike Joyal sat in for the City Manager.

**A. PLEDGE OF ALLEGIANCE**

Mayor Pro Tem Hindle led the Pledge of Allegiance.

**B. DISCUSSION RE:**

Planning Director Steve Stancel reviewed the proposed zoning ordinances stating that both of these came about as a result of a petition to the Planning Board to rezone these two areas. He stated that the Planning Board approved the Dover Point petition on a 4-2 vote and approved the Columbus Avenue petition unanimously. A protest petition has been submitted for the Dover Point rezoning, so therefore, it will require a 2/3 Council majority to pass. The Columbus Avenue ordinance will require a simple majority.

**1. Rezoning a 20-acre area of Dover Point Rd. The area is on the west side of Dover Point Rd between Dover Auto World and the Cemetery from R-12 to B-5. Tax map lots included are: K-31, K-32, K-33, K-34, K-35, K-36, K-37, and K-38.**

Attorney Malcolm McNeill representing Bob Paolini and his brother began by stating that he served as Moderator at the City Council debates and remembers that the big issues of concern were promoting economic development through rezoning for most of the candidates. There is too much residential zoning in Dover and therefore any rezoning will involve residences. Both the Planning Board and Planning Department support this proposal and he feels that if there weren't any houses involved, then there wouldn't be an issue against rezoning. The area has basically rezoned itself over the years, but hasn't been changed on paper yet and he feels that this has always been the "3<sup>rd</sup> rail" of politics in Dover. Back in the 80's he did not support rezoning this area because there was no back up in the Master Plan, which now does support rezoning the area. The traffic counts in that area are 13,000 – 16,000 cars a day and historically, these figures will not decrease. There are already established businesses in the area which have been there for many years and portions of the Elliott-Williams property across the street have already been rezoned. He reviewed the area on a map he presented. He explained that currently, the owners of the property could develop the land into more residences similar to the development down the road by Tuttle's, Ivan's Lane, but because of the businesses already there and the traffic flow, they feel the property is more conducive to business use. He explained that there are currently 5 properties under contract with Paolini and Byrnes Chevrolet and the Drapeau's are also in support of this. 1/3 of the property owners are still opposed. They considered including the area across the street for rezoning in this same ordinance, but decided that this should be done gradually, but feel it needs to be done. He explained that the other side of the road is tougher to develop due to the topography. He explained that changing this to a B-5 instead of a B-3 allows more uses such as the Week's Crossing area. There are concerns that an adult material store or gas station

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could be allowed if it is B-5, but a gas station would require a special exception, and there is no intention to put in an adult entertainment store. He stated that this is not currently a residential area where you can walk out in front of your house or push a baby stroller because of all the traffic, but commercial enterprises seek this type of traffic flow. He then referred to the package distributed to the Council by the Planning Board (see 07/07/04 meeting folder) with various letters from neighbors, specifically resident Lon Meneer who has had his house for sale for 20 months and been unable to sell. He went on to state that this area is not a “gateway” to the City and is not identified as such in the Master plan, but is a residential enclave in the middle of a commercial site. He explained that rezoning this area will not take away property and will only enhance property value and again used the Week’s Crossing area as an example. Since rezoning the north end, there has been significant development and have been fiscally appropriate uses. He asked if you can’t rezone this particular area to commercial use, what area can be then. The neighbors who are opposing this rezoning have themselves described waiting long periods of time to get out of their own driveways and the City has always said that there is a shortage of viable space for commercial development. At the “Speak Out Dover” neighborhood forums held several years ago, residents expressed their desire for more south-end services such as a grocery store. He stated that this will not become Saugus MA as some people have said because back when that was being developed there weren’t strict requirements which Dover does have in place and feels that the Dover Planning Department won’t allow there to be a hodgepodge of uses, and that possibly because this will be a destination area, it will alleviate some of the downtown traffic congestion. He also refuted the claim that there is a wildlife refuge on the property. He continued that there is no hidden agenda, no “User X” in the background and although he does empathize with the neighbors, the city has spoken via the Master Plan and if this rezoning is not approved, then the Master Plan should be thrown out. He concluded by stating that this vote would be easy if there weren’t residences involved, but the outcome should be different because there are.

Trefethen asked McNeill to explain how the area had rezoned itself.

McNeill stated that it is due to the high traffic flows and that it is a thoroughfare more conducive to commercial use than residential as was the case at the Weeks Crossing, where property values went down for residential use.

Perry asked how many curb cuts would be allowed.

Stancel explained that there are new site review regulations but if it is the original developer the requirement would be one entrance every 400’ but if it is a different one, it would be an entrance every 230’.

Perry asked if they will be putting in traffic lights.

Stancel stated that ideally the master plan for this area would include 8 parcels and feels that there would be a traffic light at the Thornwood Farms entrance.

Myers asked about the current businesses in homes in that area ie., hair salon, chiropractor, and how is that allowed and could future homes have small businesses as well.

Stancel stated he is unsure, but explained that in a single family dwelling the person living in the home may have an in-house business, and that yes, future homes could as well.

Myers asked if this does get rezoned to B-5 then there is a good possibility for more signalization.

Stancel stated yes at Thornwood as well as additional lanes and an upgrade to Stark Avenue.

Myers asked if there has been a traffic study regarding if businesses in this area would actually attract more people off the highway that would usually go to the north end to do their business.

Stancel stated that realistically it would attract more traffic, but there would be a detailed traffic analysis required and the developer would have to upgrade accordingly.

Myers asked if this does pass with the land the developer already owns, how long before something else goes in without the other parcels.

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McNeill stated it is hard to predict, but once rezoned he feels that people will realize the value of their property and understand the future of the area. He stated that yes, traffic will increase but it is unlikely to lessen regardless of if it is developed or not. He also addressed the home business issue stating that he doesn't feel that this type of business will gravitate to this area because the land is too valuable for that small use.

Myers asked if it is likely that the area across the street will also be rezoned if this passes.

Stancel stated it is inevitable but there are some constraints on that side such as the land is sloped and there are wetlands issues.

DeDe asked about the previously mentioned gas station and what are the general restrictions for that use.

Stancel explained that the concept plans are reviewed by the Planning Dept and Technical Review Committee (made up of Police, Fire, Engineering, Planning staff), then Planning again before going to Planning Board and a Public Hearing. He explained that there are new stricter regulations regarding landscaping, lighting etc.

DeDe asked how long the tanks can remain in the ground before being replaced.

Stancel stated he is unsure but the tanks are double lined and it depends on if it is in a wetlands protection area.

McNeill recalled the recent situation with the Silver Street Texaco (now Shell) that was looking to add a permitted use (Dunkin Donuts) but was still denied regarding traffic issues.

Colwell Ellis asked if this doesn't pass how often, can it keep coming back.

Stancel stated there are no guidelines or time limits.

Colwell Ellis asked if it is approved will the contractors be required to put in sidewalks as well as upgrade the roads.

Stancel stated yes because there are already sidewalks in the area.

Trefethen asked Stancel to define "spot zoning" and would this be considered as spot zoning.

Stancel explained that spot zoning would be putting something in the middle of something else that is unrelated to the surroundings and that this would not be spot zoning because it is already zoned as B-3 around the proposed B-5.

Mayberry asked if they considered converting the existing B-3 to B-5.

Stancel stated that yes this was discussed and may come forward at a later time, but this ordinance is in response to the specific petition.

Mayberry asked if this doesn't pass, what are the options for the developer for residential use.

Stancel stated it could be a subdivision of 14-17 lots.

Mayberry asked if it is rezoned, how long before we see construction.

Stancel gave the example of Weeks Crossing stating that it's been 5 years and it is just now reaching full fruition and that it was about 2 years before the first project began.

Mayberry asked if the Planning Department/TRC/Planning Board put on additional landscaping restrictions i.e., berms, trees, in consideration of the neighbors and can they do it if it remains residential as well.

Stancel explained that this is one of the reasons they chose to go to B-5 instead of B-3 because the landscaping restrictions are more stringent, but yes they can impose additional requirements, but don't usually do so for residential.

Mayberry asked did Planning look at the area globally.

Stancel explained that as far back as 1998 the Master Plan indicated that the city would need a minimum of 400 acres of commercial zoning to capture their fair share, but only had 200 at the time.

Mayberry clarified that he meant the physical street itself and how far down Dover Point Road i.e., Dover Brook for the effect of the rezoning.

Stancel stated yes, they will require analysis of that area as well as Stark Avenue intersection and even the Burger King area.

Perry asked about asphalt pollution and which zone would mitigate this better. Stancel stated the site review plan process takes this into consideration.

Trefethen discussed the recent meeting of the State Dept. of Transportation regarding the new bridge and feels that there are no plans to move the toll booth so the same traffic issue will remain as far as people using Dover Point to avoid the tolls.

Myers clarified that even if this passes the people can still remain in their homes, but will they have to declare if they have a home business.

Stancel stated yes, they can remain in their homes and technically home businesses are supposed to be declared every year, but our Assessing Department does this automatically.

**2. Rezoning a 17.3 acre area of land located off the Spaulding Turnpike between Tolend Rd and Columbus Ave from I-4 to R-20. Land is a portion of tax map lot G-19B.**

Planning Director Steve Stancel reviewed the area stating that originally the boundary line for the I-4 zone was randomly drawn with no particular reasoning. There have been several parties interested in the area recently but would need approximately 20 acres of the area zoning changed from I-4 to R20. He explained that there is a large area of wetlands and small upland areas which are not conducive to industrial development and feels that there is a natural buffer for residential development. He stated that the Planning Board is in favor and there has been little opposition.

Perry asked how far over to Tolend Road and asked about the exit 8 ½ issue.

Stancel stated it is 400-500' and then explained that approximately 15 years ago there was a proposal for an Exit 8 ½ off of the Spaulding Turnpike which would have allowed access to Route 9 and the Industrial Parks, but the NH DOT said no to this. The most recent Master Plan looked at this but no longer felt it was necessary. Also, the development that has occurred in the area would hinder it further.

Malcolm McNeill representing David Sears of Tolend Properties LLC, who has been working with the City for a number of months on this development including the Planning Department and Engineering Division. He has other developments in Dover including Ezra's Way and Meadowood.

They are requesting that 17 acres be rezoned from I-4 to R-20. Currently, without the rezoning, he could put in 33 residences with individual septic systems as there is no sewer service in that area currently. Because sewer service is not in that area, there has been no development in the I-4 zone. He explained that this developer looked at the area creatively and proposes to run a sewer line through the area at his own cost which will allow the remaining I-4 zone to be more desirable for development. With the 18 acres they are requesting for rezoning the developer is proposing a 75 unit open space subdivision of 55+ residential with all private roads. The extra acreage is needed to meet the density requirements, but 70% will remain open space with possible ball fields, walking trails etc and feels that this is a fiscal win/win situation.

The sewer line needs to be run from Cambridge Tool and Die to this site and they already have an agreement with Cambridge Tool and Die and the Dept. of Transportation to circumvent another piece of property. The cost of this is approximately \$400,000 and again will be paid totally by the developer.

The question was asked if there would be a tie-in charge to anyone after it is installed. McNeill stated no. He stated this sewer service would benefit approximately 474 acres including 179 in the R-20, 55 in the R-40 and the remainder 240 in the I-40. The other component that the developer is looking for in return would be the conveyance of 3-4 acres of city-owned property for access to the site which would continue to provide a city Right of Way to the I-4 zone. It is currently not usable to the city, however they have found another access site further up Tolend Road and may not need it anyway, but feels that this is a reasonable business transaction.

He went on to discuss the Ezra Green Project which wasn't sewerred before, but the developer brought it across at his own cost and because of that 2-3 more industrial business went in across the street.

Trefethen stated that next week is the vote on this rezoning issue, but there is a whole line up of events that come next and asked how we can be sure that these will occur.

McNeill explained the dilemma is that they had to come to the Council for rezoning before they can go before the Planning board for approval of the plan. If the Planning Board does not approve the plan, then they will not put in the sewer. He stated the City Council also needs to agree to the conveyance of the 3-4 acres. If this is not approved, he feels that this whole area should be rezoned back from I-4 since it can never be developed industrial as it stands now.

Trefethen asked for clarification of what they can do with the property without rezoning.

McNeill stated they can put in 33 houses with individual septic systems and it wouldn't be 55+ restricted.

McNeill then reiterated the positive aspects of this project including 55+ residents, sewer extension to the area will enhance remaining industrial property for development, private roads means no maintenance by the city and no opposition at the Planning Board level.

Trefethen asked about the 55+ requirement and how does this get enforced once the initial capacity is reached and people begin selling the property.

McNeill stated that the municipality has the authority to enforce the covenants as well as the homeowners association. He feels that the other homeowners are the best enforcers of the rules and feels that this could be put into the deeds as a condition.

Mayberry stated that he feels that the 55+ concept is a "crock" and is discriminatory against families and children. As a realtor he knows that there are properties that start out with that restriction but are then sold to families. He also discussed the private versus public roads in these developments and that many times people aren't aware that they are on a private road that won't receive city services even though they pay the same taxes.

He then stated that we previously were discussing how there wasn't enough industrial property and now we are taking some away.

Stancel again explained that the original 1600' boundary line was randomly drawn, but the topography and wetlands in the area are not conducive to I-4.

Discussion continued regarding the enforceability of the 55+ restriction.

Perry asked Stancel if the sewer line is going to be big enough to accommodate the potential future industrial development and also asked if the proposal is going to include the waiving of individual tie-in fees to the customers.

Stancel stated yes it has to be big enough to accommodate future use. They haven't discussed the tie-in fee to the customers but that is not usually waived. McNeill stated that this is news to him and it will have to be addressed.

Perry discussed the 3-4 acres to be conveyed and wondered what the city paid for it back when we were looking at the Exit 8 ½ as he feels it was around \$12,000 and if this is the case, then this becomes less of a good deal.

McNeill stated this is usually a "white hat" project and gets the red carpet rolled out because it is fiscally sound.

Discussion then ensued regarding private vs. public roadways and the fairness. Stancel explained that having private roads in developments allows for creativity and choice.

## **B. ADJOURN**

Hindle moved to adjourn at 8:55 p.m., seconded by Perry and passed unanimously.

Valerie A. French  
Deputy City Clerk