



CITY OF DOVER

DOVER UTILITIES COMMISSION - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Conference Room – 271 Mast Road, Dover, NH 03820
Meeting Date: Monday, January 11, 2010
Meeting Time: 6:00 pm

Members Present: Chairman Gary Green, Otis Perry, Jay Stephens, Marty Coyle, Mike Earley, Alternate Ted Mortner

Members Absent: Mark Moeller, Ed Spuler

Staff Present: Doug Steele, Director of Community Services, Bill Boulanger, Superintendent of Public Works and Utilities, Dean Peschel, Environmental Programs Manager, Jennifer Bretz, Recording Secretary

1. CALL TO ORDER

The meeting was called to order at 6:00 PM.

2. REVIEW OF AGENDA

3. APPROVAL OF MINUTES OF NOVEMBER 16, 2009

Motion: Stephens made the motion to approve the minutes, Perry seconded. Vote: U/A

4. USER'S FORUM - NONE

5. ABATEMENT REQUEST

A. Arbor Woods

Perry recused himself

Attorney James Schulte represents David and Robert Paolini. He stated that the application involves the mobile home park located on Mast Road. VC Dover Investments completed the engineering and approval work for the whole tract of land which included the supermarket, the mobile home park and a couple of other buildings that have not been put up yet. It was approved by the Planning Board in January 2007. The company entered into an agreement with Hannaford regarding the supermarket and attempted to market the remaining parts of the project. His clients, Heron Bay Partners, agreed to purchase the mobile home park from VC Dover Investments subject to their review of the project. As part of that review process, they met with representatives from the Planning Department to confirm what had been approved, what they would be allowed to do, what they would be required to do and what the timing was due to zoning. During the course of their discussions the posting of the proposed change to investment fees had taken place. The fee was going to go from \$1900.00 to \$6300.00. The Paolini's went back to the developer and told them that they didn't think they could buy it due to the City increasing the investment fees by a total of \$250,000.00. VC Dover checked with the City and they were assured that this project would be grandfathered with respect to fees. There was an express provision in the Planning Board approval concerning the School Impact Fees which limited the fees because it was primarily an adult community. Those fees are locked in at a certain amount as part of the development agreement. There is no specific provision with respect to the investment fees. The developer and the Paolini's were told, by the Planning Department, that because the project had been filed before the change was posted and because the project was approved before the change was approved they would be grandfathered. He read sections 2.5.2 and 2.5.4 of the DUC Rules and Regulations.

Atty. Schulte stated that based upon the information the Paolini's got that the project would be grandfathered at the old rates, they were able to complete a budget based upon the \$1900 fee per lot. They bought the project in August 2007 based upon those figures. They applied for permits. Some were issued in 2007 and one was issued in February 2008. The initial permits were billed at \$1900. 6-7 months later, they were billed increased fees for the initial lots. They've applied for more permits in 2009 and they are being billed at the \$6300. They are requesting that the increased fees for previous permits and future fees be abated.



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Stephens stated that he would like to defer the case until the Board speaks to the City Attorney. If permits were issued at \$1900 then they were retroactively charged for the \$6300, something doesn't sound correct. If they've applied and paid, he doesn't know why they would be charged the difference.

Green asked how long the Planning Board approval was valid.

Schulte stated that the approval is good forever but if there is a change in the zoning ordinance but once you've made substantial progress toward the project, you are grandfathered four years against changes in the zoning law.

Green asked who the original developers were and what the purchase date was.

Schulte stated that the original developers were VC Dover Investments, LLC. The purchase date was August 2007. After speaking to the Building Inspector about similar projects, Cornerstone Crossing is in the same situation.

Green asked what department told the Paolini's that they were grandfathered.

Atty. Schulte stated that it would have been the Planning Department. Steve Stancel was still the Planning Director at that time. Steve Bird, Chris Parker and Tom Clark were all present at that meeting.

Earley asked if they had received anything in writing from the Planning Department.

Atty. Schulte stated he hadn't received anything in writing. He also looked through his old e-mails but couldn't find anything to confirm it.

Green stated that the Board is in a hard place. They have to go by the rules but he also sees how the Paolini's are caught. At this point, he's not sure how he would vote if the Board had to vote tonight. He believes they need to have legal counsel.

Atty. Schulte asked where it's written, in the DUC Rules, what triggers the imposition of the fee.

Boulanger stated in 2.2-6.

Steele stated that he needs to have a discussion with Planning Staff.

Motion: Stephens made the motion to table until the next meeting and seek legal counsel, Coyle seconded.
Vote: U/A.

B. 207 Locust Street

Perry took his seat.



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Boulanger stated the applicant was not present but would like a decision made regarding the abatement.

Motion: Stephens made the motion to grant the waiver request for the tie in fees based on the fact that the applicant has been paying their utility fees and would relinquish any claims that they paid the fees in error, Earley seconded.

Green asked if there was a second connection for water.

Boulanger stated that there wasn't. They're getting fed water off of the main building. They had an old garage which they built rooms above 20-30 years ago. Someone put a septic tank in which has failed. He sent them a letter informing them that they needed to get tied in. He gave them until April due to the weather. He also let them know that they would have to pay an investment fee since it is a new connection. After doing more research, he realized that they only have one meter.

Discussion ensued regarding the Pilot House.

Vote: U/A

C. PRPC Development-Rosanna Drive

Packy Campbell stated he's been building in Dover for 10 years. Rosanna Driver is a project that he's been working on for almost four years. He would like to be charged the old Water and Sewer Impact Fee on two building permits. When there was a change to the water and sewer investment fee, he was charged the new rate. He went to the City and on two different occasions, at the Staff level, he was charged the old rate. He was told that the City was going to follow the statute which allowed him to be grandfathered for four years, from the date of the approval, for changes in the statute. After talking to Planning and Building Inspection, he was told that the original information given to him was later changed. It is one year from the date of the change to the fee, before the fees go up. If he was aware of the situation, he would have pulled his permits prior to the one year time frame expiring.

Green stated that after looking at a copy of the permits issued, he had a question regarding lots 29 and 31. He wanted to know if they were still unpaid.

Campbell stated that he had received a waiver due to an existing house that already had water and sewer connection.

Perry asked how many units the applicant is requesting the abatement on.

Campbell stated four units.

Motion: Stephens made the motion to table the application until the February meeting and seek legal counsel.

Earley stated the date that the investment fee went into effect was May 10, 2008.

Boulanger stated that that is the one year expiration date.



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Campbell stated he pulled the two permits on 6-21-07. The other two permits were issued on 9-5-08 and 7-29-08. He understands the Board wants legal counsel but he's in a little bit of a different situation than the Paolini's. There is a unit under agreement that is supposed close at the end of the month. If he has to wait until February to get an answer on the impact fee, would it be possible to pay the fee at the old rate.

Green stated that those dates were well beyond the May 10, 2008 cut off date. Everyone wants to do the right thing. He sees a communication problem. He stated that he is in favor of getting legal counsel.

Motion: Stephens made the motion to table and seek legal counsel, Perry seconded. Vote: 4-2. Earley and Mortner oppose.

Earley stated that instead of tabling the case to the next meeting, they should have expedited it and have a special meeting in consideration of the closing date.

Perry stated that they didn't table it to any particular time. They can have a special meeting if they want to. Perry stated that they can't table something to a specific time.

Earley stated that he thought the Paolini's were tabled until the February meeting.

Green stated that it was.

Earley stated he would like to expedite the meeting. They should be swift with their decision because Campbell is waiting on a closing. If it's something that was communicated to Campbell erroneously, it should be up to the Board to work swift and do their due diligence.

Green asked Steele if he could expedite contact with the City Attorney.

Steele stated he would.

6. REPORTS

A. Abatement Review Team Report

The report was discussed and clarified by Staff.

B. Utilities Report

The report was discussed and clarified by Staff.

C. Finance Report

The report was discussed and clarified by Staff.

Motion: Perry made the motion to approve the reports, Stephens seconded. Vote: U/A

7. NEW BUSINESS

A. Master Plan – Utilities Chapter

Passed out for Board members to view at their leisure.

8. OLD BUSINESS

A. Stormwater Utility Feasibility Study



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Peschel stated that they received a grant from DES to do a feasibility study. They put together an RFP and received five proposals back on December 22, 2009. He's currently reviewing the five proposals. Within the next month or so, they'll have consultants selected to begin the process.

Perry asked if they were going to look into the question of whether they should establish a new Board.

Peschel stated as part of the feasibility study there's going to be a number of meetings that will include the Staff and the decision makers of the community. They'll be invited to attend the meetings and give input. It's going to be a collaborative effort. They'll facilitate an opportunity for them to do it the best way for Dover. From what he's seen of the proposals, several of them have brought in people that are very familiar with the process. It's not something that's been done too much in New England but it has been done in the Northwest. The consultants have teamed up with people who do have experience and bring a lot of valuable insight.

B. Griffin Well Contaminants

Peschel stated he recently received a report that was prepared for Madbury Metals by their consultant. It was required by DES. They've identified the location of the MtBe and a dioxin plume. Close to the Griffin Well, they have detected the MtBe and dioxin in the water but at very low levels. They will be continuing to monitor that on a monthly basis.

Green asked if the source has been eliminated.

Peschel stated that the consultant for Madbury Metals has informed them that the plume closest to the well is from activities that had been done many years ago. What's important for the City is that DES is on top of it, supporting Dover and making sure that we know what the situation is and what could become of it.

Discussion ensued regarding MtBe.

C. Willand Pond

Peschel stated the consultants did a review of all of the existing data, went through the DES files and came back with a short report. They reviewed all of the information and if there was something that told them to stop, they would have pulled the plug on the project. There was nothing that said they should stop. At that point, Boulanger and his crew went out and found the old wells that were there. The consultant hired a well driller; they cleaned the well out and found a lot of free flowing water coming out of the well. They were optimistic that the 12" well was in good condition. The next thing to be done is a step test. They'll pump it at a low rate. They'll pump it higher and higher to see how good that well is still able to produce and what flow they're able to get through it. They've also been preparing a ground water model of the aquifer so the City can understand, over a longer term, if they pump the well how much can they pull out of it.

Steele stated he would like to mention that Boulanger and his staff have found the two old wells. The consultant has cleaned one of the them.

Boulanger stated there is a 12" and a 6" well. They are only going to use the 12" well because the best pump results will come from the larger well.

9. AREAS OF CONCERN



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Stephens stated that he had received a letter from Water & Sewer billing. They were concerned that his water use had gone up 5 units and that he had a high bill.

Green asked if that was a standard policy.

Boulangier stated that as they come across above average normal usage readings, it triggers the Water & Sewer billing office to notify the resident to look for themselves to see if there is a reason for a high bill.

Green stated that there was an article in the 12-18-09 paper, “Missing Road Delays Asset Audits”.

Steele stated back in the late 90’s, the procedure of when a new subdivision came on and the streets and utilities were turned over to the City, the value of those assets were never turned over to the Finance Department.

Perry asked how they assessed that value.

Steele stated that for a majority of them, they had the letter of credit. For a big subdivision, Alden Woods for example, it was done in phases and they were combined. He had to calculate out the length of the roads and pipes.

Steele stated that the purchase and sale went through for the water tower land.

10. ADJOURNMENT

Motion: Perry made the motion to adjourn at 8:00 pm, Coyle seconded. Vote: U/A