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DOVER PLANNING BOARD
MINUTES OF MEETING

Meeting Held: March 25, 1986, Municipal Building, Dover, New Hampshire.

Members Present: Craig Williams, Robert Seaver, H. Les Elder, Pierre Bouchard, Reynold Perry, Otis Perry, Thomas Scharff, George Maglaras (arrived late in the meeting).

Alternates Present: Nancy Sousane, Patricia Torr

Also Present: Richard Selleck-Acting Planning Director, Berrie Donovan-Recording Secretary.

In the absence of the Chairman and Vice Chairman at the start of the meeting, Craig Williams called the meeting to order at 7:05 P.M.

Mr. Elder nominated Craig Williams as Chairman; Mr. O. Perry seconded.

Mr. Scharff nominated Les Elder as Chairman; Ms. Torr seconded.

Votes for Mr. Williams: 3

Votes for Mr. Elder: 5

Mr. Elder was voted acting Chairman for the meeting.

Item #1: Public hearing on minor subdivison of land owned by Earle Goodwin, Assessor's Map 11, lot 14B, zoned RM-10 at 36 Arch Street.

No one was present initially to explain the proposal.

Mr. Elder stated that the item would be moved to the April 8, 1986 meeting.

Mr. Alfred Catalfo, abutter, asked to speak before the Board.

Mr. Scharff stated that there was no reason not to let the abutters speak.

Mr. Williams stated that the plan has not been presented, the item should be delayed until April 8.

Mr. Elder opened the public hearing.

Alfred Catalfo, 20 Arch Street, expressed concern over the right of way indicated on the plan, stating that it may be on his property.

Mr. Williams stated that Mr. Goodwin has been to the Zoning Board of Adjustment and was granted a variance for relief of frontage on a public right of way.

Mr. Elder responded to Mr. Catalfo by stating that the Board is considering a plan by a licensed land surveyor, and that the boundary dispute would be a civil matter.

Earle Goodwin arrived and explained the proposal. He stated that he intends to sell the parcel in front with the house and live on the proposed new lot to the rear in a retirement home. He noted that he has two quit claim deeds on the 48 foot right of way.

Mr. Catalfo stated that if Mr. Goodwin is only building one house he has no objection to the proposal.

Public hearing closed.

Mr. Seaver motioned to approve the minor subdivision subject to obtaining a Driveway Permit and that the sewer easement over the front lot be noted on the plan. Mr. Scharff seconded.

Vote: U/A

Item #2: Old Business.

a. Final approval of major subdivision of land owned by Philip and Mary Crosier, Assessor's Map 17, lot 117, zoned R-12 off Stark Avenue.

Mr. Elder explained that this item has been postponed to the next Planning Board meeting.

b. Minor subdivision of land owned by Paolini Trust, Assessor's Map 10, lot 169 at the corner of Silver and Lexington Streets.

Donald Bryant, abutter, asked the Chairman to reopen the public

hearing.

Mr. Scharff noted that Chairman George Maglaras had stated that the public hearing would be reopened.

Mr. Elder noted that unanimous consent from the Board is necessary to reopen the public hearing.

Mr. Seaver stated that he objects if no new information will be presented.

Mr. Elder reopened the public hearing stating that only new information will be heard.

Mr. Bryant passed out a sheet of information showing that the property was sold to four separate owners, not Paolini Development Trust as noted on the application. He stated that the applicant stated publicly that the house would be rented as a single unit and that there were no plans for the proposed new lot. He noted that the applicant was granted a Building Permit on February 28 to convert to four units. He asked the Planning Board to hold matters in status quo while the request for the rezoning of the area proceeds.

George Maglaras arrived at the meeting at this point.

He did not accept the Chairman's position when offered by Mr. Elder, but did sit in as a Board member.

Mr. Seaver asked Mr. Selleck if the Building Permit on the four units would be invalidated if parking requirements are unable to be met if the subdivision is approved.

Mr. Selleck indicated that the present Building Permit would be void.

Alex Nossif, a member of Paolini Trust, stated that he has applied for a simple subdivision and has met every legal requirement. He stated that this is not a courtroom, and the Planning Board is not a jury. He stated that there is nothing before the Planning Board right now in the way of a proposed rezoning change, and it should not even be considered by Board members.

Mr. Williams stated that the proposed subdivision meets the zoning requirements and that if the neighbors feel the zoning is inappropriate, it is too late for it to have an effect on this

proposal.

Iris Valley, 129 Silver Street, read a letter from David Dopp, 120 Silver Street, who was against the subdivision.

Mr. Bryant asked to reply to Mr. Nossif, he was denied.

Mr. Scharff stated that the question of ownership of the parcel is a civil matter, that the Building Permit is a separate issue, that the request for a zoning change is inappropriate at this point, it has not been before the public yet. He noted that the Planning Board is in a position to make a decision now. He noted that the area is an historic one and there have been attempts in the past to establish an historic district; there is a concern to preserve the area.

Mr. Scharff motioned to deny the subdivision. Ms. Sousane seconded.

Mr. Maglaras asked what the specific reasons for denial are, to which Mr. Scharff explained that they are not obligated to grant approval if the best public interest of the City is not served.

Mr. Maglaras stated that a Supreme Court decision necessitates specific reasons for denial.

Mr. Scharff stated that the subdivision would add to various traffic problems and interfere with pedestrian safety.

Mr. Seaver asked Mr. Maglaras if he was sitting as a Board member, and whether Ms. Sousane was a voting member on this issue.

Mr. Maglaras noted that when a regular member of the Board arrives at a meeting, that person takes the place of the sitting alternate.

Mr. Elder noted that Mr. Maglaras did not accept the Chairman's position and therefore he (Mr. Elder) assumed that Mr. Maglaras denied his seat.

Mr. R. Perry stated that the By-Laws state that if the Chairman is present, he is the Chairman.

Mr. Maglaras assumed his position as Chairman and noted that Ms. Sousane would sit in as an alternate for Mr. Preston.

Mr. Scharff motioned to deny the subdivision based on Chapter 155-4, that it is not in the best public interest. Ms. Sousane seconded.

Mr. Seaver noted that the Board would not be acting in good faith or in a responsible manner, and it would be a tragedy if this denial was passed on a whim.

Mr. Williams motioned to limit debate, Mr. Elder seconded.

Vote to limit debate: 8-1 (R. Perry)

Vote on main motion: 1-8 (Scharff; motion defeated)

Mr. R. Perry stated that he personally agrees with the area residents that something needs to be done regarding this area of the City. He noted that he is not sure that rezoning is the answer, and that there is no legal basis to deny this subdivision.

Mr. O. Perry concurred.

Mr. Seaver motioned to approve the subdivision as submitted; Mr. Elder seconded.

Vote: 7-2 (Sousane, Scharff)

Item #3: New Business.

a. Discussion of petition for rezoning Silver/Lexington Street area from RM-10 to RM-12 as passed on to the Planning Board by the City Council.

Mr. Maglaras apologized to residents for Mr. Preston's having previously sent them to the City Council on this item and stated that it is the Planning Board's job to plan.

Mr. Maglaras noted that if the proposed change is implemented, 90 percent of the current lots and uses would be non-conforming.

He recommended that the Board ask for a 90 day extension from the City Council to discuss the issue, and come up with a feasible proposal.

Mr. Williams questioned the neighbors as to whether they were trying to preserve the aesthetics or the density.

Mr. John Guy responded that the neighbors are concerned with both.

Mr. Maglaras noted that there are only about six lots that can be subdivided in the area in question.

Mr. Donald Bryant insisted that the Planning Board hold a public hearing as this petition has come from the City Council.

Mr. Maglaras stated that the Planning Board has the opportunity to ask for a 90 day extension.

Mrs. Bryant cited the proximity to Woodman Park School, the traffic problems are increasing.

Mr. Seaver motioned to request a 90 day extension from the City Council; Mr. Elder seconded.

Mr. O. Perry stated that the Planning Board has been presented with the petition and cannot change the wording. He suggested holding a public hearing and listening to the public.

Mr. Seaver withdrew his motion.

Mr. Maglaras stated that he is uncomfortable putting the public through a hearing with a proposal having inherent problems.

Mr. Seaver noted that this may hamper constructive change to the zone, but if this is the way the public wants to set it up the Board should go along.

Mr. Elder agreed to withdraw his second to the motion.

Mr. Bryant reiterated the fact that the Planning Board has no alternative but to schedule a public hearing.

Mr. Maglaras stated that historical precedent has said otherwise.

Caroline Foley, 129 Silver Street, stated that the residents did not know of the pending subdivision until a week or so before the meeting and did not have time to set up a change in the zoning. She encouraged the Board to hold a public hearing as soon as possible.

Mr. Elder motioned to send the petition to public hearing as

soon as possible. Mr. Seaver seconded.

Vote: U/A

Mr. Maglaras held a five minute recess.

Mr. Bryant urged the Board to set a date for the public hearing tonite.

Mr. R. Perry stated that it would be decided administratively, probably either April 15 or 22.

Mr. Elder stated that due to administrative tasks and because of a time frame, Mr. R. Perry would decide.

Mr. Bryant again insisted that a date be set now.

Mr. Williams stated that the Planning Board could stipulate that a date will be set within a week, perhaps hold a special meeting to set the date.

Mr. Bryant insisted again that the date be set this evening.

Mr. Maglaras stated that there would be no further testimony on the subject, and noted that the Growth Management III has been delayed because of this issue.

3. Discussion of Growth Management III.

Mr. Seaver stated that he was not sure he was behind this item 100%.

Mr. O. Perry stated that this is an interim solution in place for only one year allowing the Planning Board to act on the sewer situation.

Mr. O. Perry motion to set a public hearing for Growth Management III, but remove the section on the Disposition of Available Pump Station Capacity dealing with the number of units or employees. Mr. Scharff seconded.

Vote: 8-1 (Seaver)

d. Discussion of Tolend Associates proposal on Tolend Road for major subdivision.

Mr. Maglaras explained that this proposal has received final approval based on the condition that wording be placed on the deeds and mylar of the close proximity of the toxic Tolend Landfill. He further explained that the City Attorney has determined that it is not in the best interests of the City to require this condition on the deeds and mylars, and that a written communication to this effect is forthcoming.

Mr. O. Perry asked if this topic should be brought up under executive session.

Mr. Maglaras stated that it could be done, but would have to be when the City Attorney is present.

Mr. R. Perry stated that the Planning Board has the right to require the notation on the deeds and mylars, but the end result could be a Supreme Court case.

Mr. Elder suggested requiring the developer to share in the cost of an engineering study.

Mr. Maglaras stated that it would not hold up in court and would be prohibitive in cost.

Mr. R. Perry noted that the study on the Tolend site is held up for financial reasons right now.

Mr. Bouchard stated that he has a genuine concern for the migration of leachates in the ground and definitely wants the statement on the deeds and mylar.

Mr. Seaver noted that the Planning Board has certainly tried its best to discourage this development as required by the City Council's resolution, and that the public can read the minutes and listen to the tapes.

Mr. Elder noted that the Board owes it to the developers to make a decision one way or another.

Mr. R. Perry stated that we have the obligation to protect the future public, but that there is not sufficient information now to determine the path of any leachates, and the Board has met the spirit and intent of the City Council's resolution.

In response to a question from Mr. Bouchard concerning the State's response to our concern, Mr. Maglaras stated that he spoke with the Attorney General who was reluctant to give any

information on the subject.

Alex Nossif, representing Tolend Associates, stated that there is no documentation indicating leaching of the landfill, that Mr. Galt has stated in the past that this development is not in "close proximity" of the landfill.

Mr. Williams asked Mr. Nossif if he could get an engineer to state that there is no risk to develop the area to which Mr. Nossif responded that this would be an incomprehensible request money-wise.

Mr. Seaver motioned to remove the contingency on the approval of Tolend Associate's major subdivision requiring the wording on the mylar and deeds indicating the close proximity of the toxic Tolend Landfill. Mr. R. Perry seconded.

Mr. Scharff stated that if this motion passes, the Planning Board should follow through with an intent to provide public notice of the location of the landfill.

Mr. R. Perry stated that it could be binding via the actions of the administration to require the zoning maps be noted in City Hall with the location of the landfill.

Mr. Elder motioned to move the question, Mr. Scharff seconded.

Vote: U/A

Vote on main motion: 3-5 to deny (Williams, Elder, Sousane, O. Perry, Bouchard - against)

Mr. Maglaras stated that Tolend Associates must meet the condition.

Mr. Maglaras adjourned the meeting at 10:20 P.M.

