



CITY OF DOVER

DOVER UTILITIES COMMISSION - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Conference Room – 271 Mast Road, Dover, NH 03820
Meeting Date: Monday, February 8, 2010
Meeting Time: 6:00 pm

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

Members Absent:

Staff Present: Doug Steele, Director of Community Services, Bill Boulanger, Superintendent of Public Works and Utilities, Allan Krans, City Attorney, Jennifer Bretz, Recording Secretary

1. CALL TO ORDER

The meeting was called to order at 6:07 PM.

2. REVIEW OF AGENDA

3. APPROVAL OF MINUTES OF JANUARY 11, 2010

Motion: Perry made the motion to approve the minutes, Stephens seconded.

Discussion: Perry stated that on item 5A he had recused himself. The minutes never state that Perry sat back in for item 5B.

Vote: U/A; Moeller abstained.

4. USER'S FORUM - NONE

5. ABATEMENT REQUEST

A. 48 Oak Street

Lisa Demarsico, applicant stated that she purchased the home 2 ½ years ago. The water bill has always seemed high. She could not find the water meter. She found the remote sensor sitting in 2 ft of water in the cellar hole. She does not have a basement; it's a cellar hole and a crawlspace. The remote sensor sits in the cellar hole. They located the water meter sitting in 12 inches of soot and water. She called the City and Bill Boulanger went out to her house. After asking Boulanger if the City could raise the remote sensor, Boulanger stated she would need to hire a plumber to go from the meter into the house. She called her plumber and he raised it up from the water meter into the house. She received a bill for \$160 and doesn't understand why. Her water bill is consistently over \$200. She's changed out her faucets, she purchased an energy efficient washer and there are only 2 people living in the home.

Stephens asked Boulanger if the radio read number matched the number on the meter.

Boulanger stated that the transponder reads what is on the meter. They can't open the meter to compare the two devices. From what the transponder was reading to their bill, the billing is accurate. He stated that they did not test the meter, they replaced it.

Perry stated that the abatement is only for the materials not on the flow of the water.

Moeller asked if the new meter was reading consistently with the old one.

Boulanger stated by viewing the billing history, the meter is consistently reading 18-20 units per quarter.

Perry stated that an abatement had already been granted, for the cost of the labor, in the amount of \$61. She's requesting an abatement for the cost of the materials.



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Boulanger stated that she does not have a cellar, she has a crawlspace. She has a meter pit so that the meter can be submerged. The sensor is above the water. They weren't having a problem getting a reading, she called the Water Department. He responded and she asked if the meter could be raised. He told her that it could be but he it was on her service so they would have to charge her for it. His concern with raising it was if it were to freeze. It would be closer to the surface so it could freeze. She told him that she would insulate it.

Discussion ensued regarding the meter pit.

Motion: Perry made the motion to deny the abatement because the materials were installed and now belong to the owner, Stephens seconded. Vote: U/A

Meeting recessed at 6:29pm

Meeting resumed at 6:32pm

B. PRPC Development – Rosanna Drive

Motion: Perry made the motion to remove the item from the table, Moeller seconded. Vote: U/A

Packy Campbell, applicant, stated that he is asking for the abatement of four impact fees. He reiterated his request as stated at the previous meeting.

Steele stated that Boulanger and he met with the current Planning Director, Christopher Parker and the Building Inspector, Tom Clark. City Attorney, Allan Krans was present by speaker phone. The consensus was that the Planning Department was aware that the one year extension would expire in May 2008.

Stephens asked if Parker and Clark had explained the one year extension to anyone else.

Boulanger stated that Parker and Clark couldn't recall but the previous Planning Director, Steve Stancel, was the person that Campbell met with at that time.

Coyle asked if a public notice was put out when the one year extension was started.

Boulanger stated that all of the DUC agendas and minutes were published. The Council had public hearings on the rule changes.

Moeller asked Campbell at what point they discuss the fees when estimating the cost of a project.

Campbell stated that they usually discuss it during the planning process. He was aware on May 9 that the fee was changing. When he went in after the May 9 meeting, he was specifically told that the project would not be affected. He was told that there would be a grace period for the water sewer investment fee. On January 14, 2009 he had received a bill for \$6200. He e-mailed Tom Clark to ask if something could be done about the bill. His bill was then reduced to \$1900.

Moeller asked if the triggering date is the date the permit is pulled.



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Boulanger stated that the fee is based on when the permit is submitted. Mr. Campbell is correct that there were two buildings that were improperly billed. They billed at the new rate but with further research it was discovered that he had pulled the permits within the grace period which is why he was given that rate.

Campbell stated that he was never told about the May 10, 2008 deadline when he questioned the impact fee for both buildings.

Earley asked what the best way for someone to research the May 10, 2008 date?

Boulanger stated that it's on the City of Dover website under the Utilities Commission chapter.

Discussion ensued regarding the grace period.

Spuler stated that it would help him clarify things if he had the document that Council passed, with the minutes, which states that May 10, 2008 will effectively be the waiver date.

Boulanger stated that the document you have as the DUC Rules and Regulations is the document that was passed by the Council, including the waiver date. It went to the Council as you see it in the Rules and Regulations. The DUC does not have the power to change it. The DUC has the power to change it but it still has to be sent to City Council. Boulanger asked, after the year date was up, if they should remove the date but the DUC said no. That's why it's still in the Rules and Regulations.

Perry stated that to call it grandfathering may be some unfortunate terminology. It's not really grandfathering, it's an effective date. The effective date just happened to be a year after it was passed.

Motion: Moeller made the motion to grant the waiver for units 37, 38, 39 and 40 based on the old rate of \$1900, Coyle seconded.

Vote: 4-3 Perry, Earley and Green oppose. Waiver granted.

C. Arbor Woods

Perry recused himself. Ted Mortner will sit for Perry.

Motion: Stephens made the motion to remove from the table, Earley seconded. Vote: U/A

Motion: Stephens made the motion to remove the item from the table, Earley seconded. Vote: U/A

Green stated that the minutes have been distributed and approved from the last meeting and all of the members have read the contents.

Atty. James Schulte represents the applicant. He reiterated his request as stated at the previous meeting.

Stephens stated that assuming everyone has a four year grandfathering and the four years is close to being up, does that mean your clients will be submitting all 59 of their building permits now?

Atty. Schulte stated they could do that. They have 11 units up so there are 52 permits that they could pull but they are probably not going to build 52 units this year. They will sell more units this year than they did last year.



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Stephens stated he's asking the question because there are a lot of units at stake with this project. In most state permits, if you haven't reached a certain level of investment within four years, with a state permit, you would have to start the process all over again.

Atty. Schulte stated they're expecting to get into the second phase. The entire infrastructure is in for the first half. Some of the preliminary work has been done for the road.

Bob Paolini stated the sewer pump station is complete for all 62 units.

Atty. Schulte stated more than 60% of the infrastructure cost has been put in.

Stephens stated that it is a significant fee for 52 lots. He's having a hard time saying that he would hold 52 lots worth of fees for a total unknown length of time which he doesn't think is right.

Moeller stated that one of the first cases he ever took to the Supreme Court was the Riverview Motor Home Park vs. the Town of Hinsdale. It involved some people from Rochester who purchased a mobile home park with the expectation that they could build so many lots. The Town passed a different zoning ordinance that severely limited the number of lots after his clients had purchased the mobile home park. They won because his clients had substantially completed the pads inside the mobile home park. He believes it does have something to do with how far you've developed the project to see whether you're grandfathered. He's having a problem with them thinking they're grandfathered indefinitely.

Atty. Schulte stated that they are prepared to say that they are grandfathered for four years. In the context of the extent of investment, they've already invested 70% of the infrastructure for the whole project which is significantly greater than was the investment for the case in Rochester where the approvals had been granted, some work had been started on it, the project stalled for a while, they came back and applied and the City tried to tell them that their permits were no longer valid. That case also went to the Supreme Court, in a case where only 30% of the total investment had been put in and the Supreme Court said that was sufficient for these people to be vested.

Moeller asked when permits were pulled.

Discussion ensued regarding the dates of the permits. (In file)

Motion: Coyle made the motion to deny the abatement, Moeller seconded.

Coyle stated with such a large project and the time period of when the decision was made, with 52 units going in, he thinks that more due diligence could have been done. He doesn't agree with 52 units receiving an abatement.

Moeller stated he's torn.

Mortner stated if there was a paper trail, he'd feel much more comfortable with how to vote. All they are hearing about is a four year grandfathered clause.

Green stated in response to that they determined that the four year grandfather fee is of no concern.



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Stephens stated his concern is how long things can go. He's not opposed to considering something and he can appreciate that they do have some investment in the project.

Coyle asked if he could amend his motion.

Motion: Coyle made the motion for the 2, 4, 8 and 19 retro bill to be disregarded and deemed paid in full, Moeller seconded.

Boulanger stated that as stated in his memo, they were allowed to pay the \$1900 based on applicants agreeing to go before the DUC.

Spuler stated he is reluctant to grant a waiver for lots that were applied for after the grandfathered zoning are set at the previous rate, where the other three made the grace period.

Motion: Coyle withdrew his amended motion, Moeller seconded.

Motion: Coyle would like to grant a partial abatement for lots 2, 4, 8 and deny request on the remainder of the abatement, Moeller seconded.

Stephens stated that he would like to grant the waiver on the lots built to try and get some equity in and recognizing the effort that the applicants have put in.

Coyle stated that the Paolini's purchased the development in August, 2007, Lot 2 the permit was pulled April 17, 2007. That permit was pulled by the original developer.

Boulanger read the memo from W&s billing. (In file)

Coyle withdrew his amended motions, Moeller seconded.

Atty. Schulte stated this has a potential to go on. If they would approve an abatement for the first phase, they would accept that. The practice of the City is if they had submitted the building applications prior to May 8, 2008 they would have done that.

City Attorney Allan Krans requested a recess.

Recessed at 8:40pm
Resumed at 8:50pm

Atty. Schulte requested for the case to be tabled until the March 15, 2010 meeting.

Motion: Coyle withdrew his original motion to deny the abatement, Moeller withdrew his second.

Motion: Moeller made the motion to table until the March 15, 2010 meeting, Spuler seconded. Vote: U/A

6. REPORTS

A. Abatement Review Team Report



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The report was discussed and clarified by Staff.

B. Utilities Report

The report was discussed and clarified by Staff.

C. Finance Report

Not Available

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

7. NEW BUSINESS

8. OLD BUSINESS

A. Willand Pond

9. AREAS OF CONCERN

10. ADJOURNMENT

Motion: Coyle made the motion to adjourn at 9:00pm, Spuler seconded. Vote: U/A