



**CITY OF DOVER**

## DOVER PLANNING BOARD – MINUTES

Meeting Type: Regular Meeting  
Meeting Location: Council Chambers  
Meeting Date: Tuesday, June 8, 2010  
Meeting Time: 7:00 pm

**MEMBERS PRESENT:** Ron Cole(Chair), Frank Torr (Vice Chair), Donald Andolina, Dean Trefethen, Linda Merullo, Lee Skinner (Alternate) and Gary Green (Alternate).

**MEMBERS NOT PRESENT:** Marcia Gasses, Doug Steele, John Swartzendruber, Perry Plummer

**STAFF PRESENT:** Christopher Parker (Planning Director), Jean Glidden and Lisa Ertle (Recording Secretary).

*G.Green sitting in for M.Gassess. L.Skinner sitting in for J.Swartzendruber. The Chair called the meeting to order at 7:10PM.*

### 1. CITIZENS' FORUM – NOBODY SPOKE

### 2. APPROVAL OF THE MAY 25, 2010 WORKSHOP MEETING MINUTES AND REGULAR MEETING MINUTES.

**Motion:** F.Torr made the motion to approve the May 25, 2010 Workshop and the Regular Meeting Minutes. D.Trefethen seconded. **Vote:** Unanimous.

L.Merullo noted an error in the regular meeting on page 4 of 10, “pervious” should be added to clarify what kind of strip she is talking about. R.Cole noted correction of his name.

### 3. OLD BUSINESS

- A. Consideration and acceptance of a Conditional Use Permit for Black Dog Car Wash Central Ave., LLC, (Owner: Driscoll Realty, Inc.) Assessor’s Map 38, Lot 9A, zoned B-3, located at 887 Central Avenue. (P10-27)
- B. Consideration and acceptance of a Site Review of land for Black Dog Car Wash Central Ave., LLC (Owner: Driscoll Realty, Inc.) Assessor’s Map 38, Lot 9A, zoned B-3, located at 887 Central Avenue (demolition of abandoned commercial structure & construct an automatic car wash facility). (P10-22)

Both of the items will not be heard this evening.

### 4. NEW BUSINESS

- A. Consideration and acceptance of a request by the City of Dover to remove asphalt along a portion of a right-of-way of a scenic road (Old Garrison Road) and replace with gravel. There is a possibility some trees or brush may need to be trimmed along the construction area. \* (P10-30)

C. Parker, representing the City of Dover, stated this project will replace the travel way with gravel. This will allow for better grading on the road. The conversion of the road, compared to gravel and asphalt, makes for easier maintenance. He also stated the road is scenic, and may need some tree removal, so it will require Planning Board approval. D.Trefethen added that neighbors in the past discussed the condition of the road, and talked about getting rid of asphalt and replace it with gravel.

**Motion:** L.Merullo motioned to accept the application. L.Skinner seconded. **Vote:** Unanimous



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Public Hearing Opened – Nobody Spoke – Public Hearing Closed

C.Parker RSA 231:158 and Chapter 143, Scenic Roads, (enclosed) require that the Planning Board hold a public hearing on any request to remove trees within the right-of-way of a scenic road. The closed map from Community Services Department requests the removal of trees and limbs along a section of Old Garrison Road. The proposal also calls for the removal of pavement in failure along this section of the Class VI portion of the subject highway.

**Motion:** D.Trefethen motioned to approve. F.Torr seconded. **Vote:** Unanimous

- B.** Consideration and acceptance of a Minor Lot Line Adjustment of land for George J. Foster & Co., Inc., Assessor's Map D, Lot 9A & 11A, zoned I-4, located at Venture Drive/Sandy Lane. \* (P10-28)
- C.** Consideration and acceptance of a Minor Subdivision of land for George J. Fosters & Co., Inc., Assessor's Map D, Lot 9A, zoned I-4, located at Venture Drive. (3 lots) \*(P10-29)

R. Cole stated that he's a writer for Foster's Daily Democrat, and doesn't feel that will have any effect on his ability to make any decisions. If anyone wishes he would recues himself.

Kevin McEneaney represented the applicant. He will be addressing both applications (4B & 4C). First application is the lot line adjustment; they're adding 7.5 acres from one lot that they own to an adjacent lot that contains the publishing facility. The next application is for a minor subdivision, which will make Lot D9A into three developmental areas. With this application they are taking advantage of the Transfer and Development rights from the Zoning Ordinances. He stated the incentive to place land under conversations easement, or deed restriction, so there is no further development. Noted what areas will be utilized in the components to the rights on Transfer of Development. K.McEneaney described the area of development and non development on the map. Lots will be serviced by municipal sewer and water, and there will be existing utilities to all of the sites.

D.Trefethen asked for definitions of the "R" and "S" lots on the maps; clarification on which lots are for sending and receiving. K.McEneaney stated "S" lots as undevelopmental area and this is sending lots, and "R" lots are the developmental area which is the receiving. D.Trefethen asked how they get to the developed lots out of 9A-1R and 9A-2. K.McEneaney stated he will state, in the conditions, the proposed right of ways and show proposed driveways. D.Trefethen and K.McEneaney discussed the affects to the "S" lots. K.McEneaney confirmed there will be easement uses on both of these driveways which will have access on current driveway, and new easement will be increased on the lots.

L.Merullo asked if the area to the left of the Foster's building is a buildable lot, if the top 2 lots are buildable but bottom lot is not, and clarification on the "R" and "S" lots. K.McEneaney confirmed the area to the left of Fosters, and the back two lots are buildable. L.Merullo asked if there is concern of what is going in there for manufacturers or abutters, or any of that nature. KMcEneaney stated they are just creating lots, and anything allowed in the "I4" zone will be allowed on these lots.

G.Green stated his concerns of the request for lot line adjustment, and whether there is a parking area there now. K.McEneaney stated that the lot line adjustment is for adding more buildable area in the



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lot, the buildable area is not large enough considering wetland area. Also stated there is parking lot there now, and will remain with the existing building.

**Motion:** L.Merullo motioned to accept the application 4B. F.Torr seconded. **Vote:** Unanimous

Public Hearing Opened for Item 4B-Nobody Spoke-Public Hearing Closed

C.Parker noted (from Item 4B) the Planning Department recommends that the Planning Board approve the lot line adjustment plat with the following conditions:

1. Add note or depict on plat a cross-access and utility easement on Lot 11A in favor of Lot 9A.
2. Add the owner's signature to the plat.
3. Provide a digital version of the plat to the Planning Office.

**Motion:** F.Torr motioned for approval with subject of conditions set forth by the Planning Department. D.Andolina seconded. **Vote:** Unanimous

Public Hearing Opened for Item 4C- Nobody Spoke-Public Hearing Closed

**Motion:** D.Trefethen motioned to accept. L.Merullo seconded. **Vote:** Unanimous

Public hearing opened for Minor Subdivision application-Nobody Spoke-Public Hearing Closed

C Parker noted the applicant has submitted a set of plans for review. The applicant wishes to subdivide lot 9A into two new TDR development lots and three TDR sending area lots.

Planning Board approves the minor subdivision plat with the following conditions:

**Conditions to Be Met Prior to Signing of Plans:**

1. Add the owners' signature to the plan.
2. Provide the Planning Department with a digital version of the plat.
3. Add the surveyor's stamp and signature to the appropriate sheets.
4. Add a note describing which aspects of the TDR ordinance is being used for the new development lots.
5. Applicant shall depict or note the required cross-access and utility easements on all lots.
6. Applicant shall depict the proposed driveway location off the existing Foster building lot 9A.
7. Applicant shall submit deed language for the sending area lots that clarifies no development rights and non-buildable in perpetuity status.
8. Ensure the Assessor's Office approves the new lot designations.
9. If a portion of the land is in current use, provide an updated current use map to the Assessor's Office.
10. Remove the utilities from the plat.

**Conditions to Be Met Prior to Issuance of a Building Permit:**

11. Any structure shall pay the current impact fees in place at the time of building permit application.
12. Any structure shall be assessed the current water/sewer investment fees in place at the time of building permit application.



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**Motion:** D.Andolina moved for approval subject to conditions. L.Merullo seconded.

**Vote:** Unanimous

- D.** Consideration and acceptance of a Conditional Use Permit for Stephen Wood (Owner: Woodwind Farm LLC/Cocheco Water, LLC) Assessor's Map N, Lot 8A, zoned R-40, located at Wisteria Drive/Gulf Road. \* (P10-25)(add driveway in 50' wetland buffer and wetland)
- E.** Consideration and acceptance of a Minor Lot Line Adjustment of land for Stephen Wood (Owner: Woodwind Farm LLC/Cocheco Wter, LLC) Assesor's Map N, Lots 8A and 8-3, zoned R-40, located at Wisteria Drive/Gulf Road. \* (P10-32)
- F.** Consideration and acceptance of a Major Open Space Subdivision of land for Stephen Wood (Owner: Woodwind Farm LLC/Cocheco Water, LLC) Assessor's Map N, Lot 8A, zoned R-40, located at Wisteria Drive/Gulf Road. (6 lots) \* (P10-26)

R.Cole noted his relationships with the clients and Attorney Boldt involved in this case. He stated that if anyone objects to him voting on the case he would recuse himself. Nobody voiced a concern.

Attorney McNeil, representing abutters to this property, addressed R.Cole that he has no objections to him sitting on the case, however asked that they address this application different from the usual order of business. Normally you would allow the applicant to proceed, and then decide to accept or not accept before other parties are to speak. He stated that the Board will find that there are unique circumstances in this case relating to the acceptance of this application, which will be discussed by the Planning Director. He stated that he would like the opportunity to address the Board before the application is accepted. R.Cole informed Attorney McNeil that he would have the opportunity to address the Board.

C.Parker stated that on everybody's desk there is a copy of RSA 674.21A. C.Parker stated the applicant has submitted a set of plans for review. The applicant wishes to construct a driveway within the wetland, and 50 ft. wetland buffer. A minor lot line adjustment is required in order to subdivide the lot into six new lots. There is question if the RSA precludes that. C.Parker suggests to the board that if they accept this case to take into consideration that there may be an issue in the future. He is working with the City Attorney to flesh out whether this is a problem or not. C.Parker has contacted the applicant and the abutters on this concern, with the understanding that R.Cole will advise to allow the applicant to make their case, and the abutters to describe why not to accept this application.

Attorney Chris Boldt, of Donahue, Tucker & Ciandella, Pllc., represented the applicant. He emphasizes that they are here seeking permission under the open space regulations of your subdivision regulations. Attorney Boldt addressed the 21A issue and its written language, and recited conservation restriction under Article 477:45. They are asking for permission to amend the restriction. They over committed the area when they developed the parcel, and had more non developmental space than needed. The plan as approved did preserve a 50 foot strip, to serve as access if acquired. Attorney Boldt stated that C.Parker indicated that strict covenants were shown, and shows the developer Woodwind Farms has the right to amend and develop the land for more lots, and this is what they are looking for approval on.



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Attorney McNeil stated that if Dover reviewed the application that they will see that his clients bought into an open space subdivision approved for 5 lots. Now the open space will have to be moved and will be added to adjoining property. He added that the open space will be subdivided, which is prohibited under regulations. Secondly it will be added to continuous lots, which will then utilize Wisteria drive as an entry drive, which is a private drive now. When clients purchased this lot it was five lots, if approved they will be moved into a 10 lot subdivision. They were protected from the street by utilizing this as access points by adjoining lots which were protected by open space. Attorney McNeil cited the Article RSA 674:21A, and noted they have more than enough open space. Attorney McNeil cited the conversation easement utilized by the Nature Conservancy, and revised it by saying "If you make the deal you have to stick with it." Attorney McNeil states this application will not comply with this provision. He read Article 155:20, and stated that if it is illegal to bring an application before you for a use that is not permitted; it is equally illegal to bring an application before you that does not comply with a state statute. He suggested before they act on this, because he became aware of some of the issues later this afternoon, suggests before they act on this they should get written opinion from Attorney Krans, in order for council from both sides an opportunity to respond.

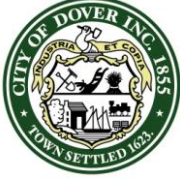
L.Merullo expressed her concern of changing plans after they have been approved. She stated that she was not on the Board in 2005, and asked if this plan was intended to have a phase two. She was under the impression it was for 5 homes, and there was never going to be a phase two. C.Parker stated that there is an easement on this property for connectivity. There was no concept in plans on a Phase 2. G.Green confirmed with Attorney Boldt that Wisteria Drive is a private road, and collective unit of homeowners. D.Trefethen stated that each party has different point of views, and suggests having a neutral party view, such as Attorney Kran's, before we do anything with the applications. D. Andolina agreed and states that he doesn't know how we can expect or deny with out legal consult from our City Attorney. L.Merullo noted that our regulations lead us in the right direction, and also stated her notion of why this will need legal consult from Attorney Krans. She also stated her concern of Attorney Krans understanding the regulations, and how he can come up with something different than what we have on records. C. Parker stated that he thinks Attorney Krans will hear their interpretations, as well as the interpretations of 67421A. L.Merullo said that is she willing to wait for Attorney Krans before taking action on this. Attorney Boldt asked that the application be continued to the next meeting, after consultation with Attorney Krans.

Motion: D.Trefethen made the motion to move application to June 22<sup>nd</sup> meeting. L.Skinner seconded. R.Cole noted to move Items 4 D, E, and F to the 22<sup>nd</sup> and/or the next available date, after consulting with Attorney Krans. Vote: Unanimous

- G.** Appointment of a Planning Board member to the Ad-Hoc Stormwater Utility Study Committee.

Chair noted G.Green was appointed to the Ad-Hoc Stormwater Utility Study Committee.

### 5. STAFF COMMENTS



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C.Parker stated that they are looking into the problem that D.Andolina addressed at the last meeting in concerns with the water usage ratio with the Black Dog Car Wash application. C.Parker stated S.Bird is back to work. He also noted the June Planning discussion session this morning, and said it was successful.

### 6. COMMITTEE REPORTS

7. **ADJOURNMENT:** D.Trefethen moved to adjourn at 7:58. L.Merullo seconded. **Vote:** Unanimous

\* Indicates that if the application is accepted for discussion, the public hearing will be held the same evening, at which time any interested party may offer comment to the Planning Board.

Persons with questions or wishing to see the plans are invited to visit the Planning Office, weekdays from 8:00 am to 4:00 pm. You may also view materials at [www.dover.nh.gov](http://www.dover.nh.gov), a map showing project locations can be found at [www.dover.nh.gov/planhome.html](http://www.dover.nh.gov/planhome.html). Follow us on Twitter @DoverNHPlanning and find us on Facebook at [www.facebook.com/CityofDoverNHPlanning](http://www.facebook.com/CityofDoverNHPlanning).