



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Tuesday, October 09, 2007**
Meeting Time: **7:00 pm**

MEMBERS PRESENT: Marcia Colbath, Dean Trefethen, Linda Merullo, Kirt Schuman, Tony McManus, Ron Stock, Frank Torr, Donald Andolina, Ronald Cole, Doug Steele

MEMBERS ABSENT: John Swartzendruber, Perry Plummer

STAFF PRESENT: Christopher Parker, Planning Director, and Jacqueline Pease, Recording Secretary

Alternate Ron Stock, sat out.

Chairman Cole brought the meeting to order at 7:10 pm.

1. Citizens' Forum

There were no speakers.

2. Approval of minutes

Donald Andolina made the motion to approve.

Dean Trefethen seconded.

Tony McManus indicated on page 13, line 8, it should read "we" and not "they".

VOTE U/A

Chairman Cole asked the Board if anyone had any objections to bringing up Item #6, the public hearing on the rezoning to the top of the agenda. No one objected.

6. Public Hearing and possible vote on the following amendments to the zoning ordinance (Chapter 170):

"Rezoning a 6.6-acre area off Locust St. between Central Ave. and Fisher St. from Restricted Industrial District (I-1) to Rural Commercial/Retail (B-5); rezoning a 11.77-acre area off Locust St. between Central Ave. and Fisher St. from Restricted Industrial District (I-1) to High Density Multi-residential (RM-8); rezone a .62-acre area off Fisher St. from Medium-Density Multi-residential District (RM-10) to High Density Multi-residential (RM-8); rezone an .88-acre area off Fisher St. from Restricted Industrial District (I-1) to Medium-Density Multi-residential District (RM-10); rezone a .36-acre area off Fisher St. from Medium-Density Residential District (R-12) to Medium-Density Multi-residential District (RM-8); rezone a .5-acre area off Central Ave. from Medium-Density Residential District (R-12) to Rural Commercial/Retail (B-5); and rezone a 3.36-acre area off Rutland St. from Restricted Industrial District (I-1) to Medium-Density Residential District (R-12)."

Chairman Cole stated that he; the Planning Director and some members of the Board received some snail mail and e-mail stating they are not in favor of the proposed changes. The public hearing was opened.



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Malcolm McNeill, Attorney, representing Chad Kageleiry, indicated that the rezoning is in the context of the new master plan. On page 36, he read the following: There are three pockets of former industrial areas (Locust Street, Maple Street and Broadway) where factories existed prior to zoning. These I-1 zones should be encouraged for mixed redevelopment, as they are surrounded by residential. They could become neighborhood commercial/residential nodes. Atty. McNeill stated that is exactly what they are proposing. If you adopt this document you should adopt this rezoning. It also says residents support mixed-use development. The highest rated commercial images within the Visual Preference Survey were those that demonstrated reuse of older buildings and those that showed mixed-use commercial buildings in a downtown area. Residents also supported stronger streetscapes and encourage pedestrian friendly designs promoting interaction and community building along commercial corridors. They were before the Board in June bringing the context of the proposal. The proposal that came forward was partially driven by the proponent but various components were driven by the City. Everything that they did in the early stages of this was as a result of consultation with the Planning Department, in contemplation of the Master Plan. They came to a workshop on August 14, 2007, and in his opinion, the Board was generally favorably inclined. At the public hearing, on August 28, 2007, many people came forward to speak. At that hearing, a proposal was made that was different than what you are seeing now. They proposed all of the land under their control (16 acres) be rezoned from Industrial to B-3 commercial uses. They also proposed in the area most contiguous to the residential uses, the B-3 could be utilized for multi-family buildings (under the code could be 5 units or more). The whole idea was a mixed use project utilizing the existing zoning law, as opposed to drafting a new ordinance. Unbeknownst to him, the Planning Director came up with a better plan, but it wasn't communicated to him until the meeting that night. The plan they now have is his plan. As opposed to the B-3 zone for the entire site, the Planner made a great recommendation of rezoning to B-5 and drawing a line so the residential would not be threatened by possible commercial use. Similarly, as opposed to the B-3 that could result in a 5 multiplex unit building, the RM-8 zone is ideal because you could have a mix of single, doubles, triples, multiplex, which is somewhat similar to what the community is already. There are duplexes, a very large multiplex building and single buildings that are in the vicinity of the site. Malcolm had a colored map on the easel showing the various areas for rezoning. They want to work with the City through this process to effectuate the trail system that would be through the railroad area. He said that they redrafted the original petition and added all the Planner's changes coming forward with this revised plan. It makes the industrial area capable of the type of development in a B-5, which is fully acceptable to the developer and compatible with other commercial uses in the area.

When Moore Business Forms was actively involved, there were 250 employees on two shifts, making heavy duty industrial equipment, which was brought in by truck. They feel the evolution on this area is going in the right direction. Regarding the area that is being proposed to RM-8, there are a series of duplexes on Locust St., there is a substantial access area across from the access from Care Pharmacy that can be used as an access. There is also an access onto Fisher St. The likelihood of intense activity on Fisher St. is really quite diminuous because of the wetlands that exist. The amount of acreage is between one or two acres available for either commercial or residential development. He said that the regulations that would restrict traffic going into a residential neighborhood don't apply here. In terms of the utilization of that area, which is upland, if it is rezoned RM-8, there would be residential uses. Because of the wetlands and the limitation of space, the residential would not be that great, but it is valuable land and the developer intends to develop it. On the other side of the wetlands there would



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clearly be access onto Locust St. It would be unlikely to get a permit for a wetland crossing because they have a clear viable option. In terms of the intensity of the development on Fisher St., it would not be a significant impact. They have been trying to use this property for 2 ½ years. They will develop this property and anyone who owned it would want to as well. Is industrial the most desirable use? He went through the list of uses such as oil farms and truck terminals, etc. Is the rezoning that initially came as a recommendation of the Planning Director the most desirable? There will be change. The question is what the best change is. They are not coming here with a specific plan, as it would be inappropriate to right now. The Board will review a plan as it comes forward, and the rights of the public will be to question what they will do. What the applicant is asking for is to enable the ability to come forward with plans for the Board's review. They expect the B-5 zone will be reasonable retail development, whether it will be banks, bakeries, office and other types of uses that would be compatible with the B-5 and consistent with the requirements. There is existing parking on site and across the street, which could be utilized. With regard to the housing site, they fully believe that a variety of housing units similar to what exists up and down Locust St. such as multiplexes, duplexes would be what they would be enabled to do. Locust St. would be utilized because it is the most available means. The access way is large and would meet less opposition and would be permissible. They expect some impact on Fisher St. Just as Fisher St. developed, the applicant now proposes to get your authority to develop for residential uses, consistent with 2007 standards. They requested to be allowed to proceed and have this sent to the City Council. It has been a very constructive process dealing with the City because they have been able to use existing zoning rather than starting from scratch. They believe in this stage of Dover's history, this use is desirable and would not adversely affect surrounding properties and communities. He said that Christopher Parker has a better idea and it is their idea, too.

Chairman Cole explained the discussion is a rezoning with a possible plan. If approved, it would go to the City Council for ratification. Under ordinary circumstances it would take a ¾ vote of Council to reject the recommendation of the Planning Board. If approved by the Planning Board and ratified by the City Council, various plan iterations would take place before the Planning Board. They are not voting on the potential plan that Atty. McNeill showed the Board this evening.

Chairman Cole read the names of people who wrote in with concerns as follows:

Edna Dewherst, Mr. West, The Gitchier Family, Wayne Campbell, Marcia Lyford, Wanda McGee, Melissa Glidden, Rich O'Claire Greg & Laura Smith, Matt Cox, Don Spark, Mary Parker, Sandra Ackler, Lucy & Katherine Cox, Bill McCann, Chris Jacques are all opposed. Some feel this is detrimental to the neighborhood. They are concerned with the financial impact to the schools, open space, drainage, traffic issues, the density and it is a historic neighborhood. They want the Planning Board to reject the rezoning. Jessica Smith and Ann Burns submitted letters in favor of the rezoning.

Cark Paulson, Hamilton St., speaks for his wife also, opposes the rezoning. Not happy with industrial but the kinds of industrial uses are limited. Once the rezoning occurs there is no guarantee as to what will be put in there. The wetlands can be permitted for a road crossing and other activities. Residential development is the most expensive for the City. In another rezoning in the north end, the City rezoned residential to business. He asked to see a cost analysis showing why this would be good for the City. Concerned with an opening to Fisher St. Many children in the neighborhood ride on their bikes and walk. He was concerned with flooding. On several occasions raw sewerage was pumped out of some



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basements. A discharge of sewerage was discharged in the Bellamy and the Cocheco River. He believes that is illegal and would probably result in fines. He doesn't want to say "not in his backyard," but doesn't see residential as appropriate, especially that density.

Matt Cox, stated that he submitted a letter. He has 3 young children and his wife shares his concerns. He respects the rights of a developer as he bought the property. He appreciates the position of the Planning Board as it is their job not to decide what he will look at as he sits on his porch, but look at what is best for the City. It is with that in mind that he feels that it should not be developed. It is not in the City's best interest. Atty. McNeill mentioned the master plan several times. Once the area is rezoned, they don't know what will happen. It could be sold. McNeill read page 37 of the Master Plan but it is not the portion that deals with this property. He said that it is on page 49 where it suggests that existing I-1 zones be rezoned to create neighborhood transition nodes. That makes the most sense. Mr. Kageleiry's intent may be to put in tasteful housing but he could sell to a developer that would not put in tasteful housing. The contract zoning that is mentioned in the Master Plan and recommended makes sense for that reason. What makes sense is to maintain the contract zoning approach, where the neighborhood would have the right to be involved as it goes into the future. He suggests a contract zoning mode.

Dawn Hanes, 15-17 Elm Street, stated there are homes of character in this neighborhood and they don't know if it would be tasteful housing. This is one of the most elegant and regal neighborhoods in the City. She can't understand why this area is not a Historic District. This is too subjective.

Charles Mone, 7 Fisher St., stated he is in opposition of the proposal, as proposed. Not against the owner. To his knowledge, there are no multiplexes on Locust or Fisher St. This will ruin the neighborhood and cause congestion. The street they narrowed by 20 inches, which causes congestion and side swipes as people park on both sides of the street. It's a pedestrian route for all the children going to Woodman Park School. If you put in a multiplex with 10, 12, 14 units, it will increase the traffic flow on Fisher St. and put the children in danger. Not against the development of the property, but would like to sit with the Planning Director and come up with a better plan.

Catherine Cheney, City Councilor for Ward 5, is against the zoning change. She is against the high density that could be 60 units. The whole property does not have enough land to support the neighborhood, look and feel. She lives in R-12 and she thinks it is too dense for this neighborhood. It will cause water problems for cellars. Multi-family and rooming houses she feels is zoning that is too way too dense for this parcel. There are a lot of condos across from where she lives and there have been a lot of water problems. It has to be rethought. She served on the Master Plan Committee and conducted the Ward 5 Speak Out session. Small town sense of community was said tonight. Traditional neighborhoods and Locust St. was mentioned. If anything is developed here it must be by contract zoning in order to fit in with the surroundings. She said that they just got the Master Plan tonight and there should be no rush to build this. Children walk and ride their bikes. The developer has a right to develop his land but the Board is the caretaker of the City. This has to be reconsidered.

Kevin Hughes, represented his mother, who lives at 223 Locust St., next to the proposed entrance of this multiplex. In 1907 his great-grandfather purchased that house. It was on Dover Point Road and they moved it by oxen to its present site. To take and put a housing project in the backdrop of these houses would be a shame to the history of Dover. He doesn't live at his mother's house. He spoke of the



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congestion that he goes through to get his children to school. He doesn't allow his children to play in his Mother's front yard because of the speed and traffic on Locust St. The area is way too congested.

Leslie Hawkin, 54 Fisher St., also represents her husband. She has same concerns as the people who have spoken. Lived here all her life and teaches at Dover High. Doesn't know what kind of housing would go in and if the tax base would support the additional high school students. The possible loss of wetlands concerns her. The Councilor stated that this will be developed and we should find the best way to develop it. The wetlands should be addressed as it would be a shame to loose them. .

Phil Casey, 36A Fisher St., stated there is an old 6 inch water line, which could be a problem. It is being studied now. He explained how the sewer line runs by gravity from Moore Business Forms down to Water Street. The sewer line that is in Rutland St. has some problems. It is old and full of roots. More sewerage in this line represents a cost to the City.

Lori Smith , 36 Fisher St., is a lifetime resident as is her husband. She is trying to avoid the "not in her neighborhood" but they have issues with this. Historic area and a lot of well preserved homes. The Master Plan wants to keep the same profile of neighborhoods but she can't see how putting high density multi-residential in with a lot of Victorians and duplexes fits that mold. She understands that the developer has rights, but there are a lot of issues. The sewer is an issue. She learned that there are over 200,000 gals of raw sewerage was pumped into the Cocheco & Bellamy River because the sewer lines could not handle the capacity. The basements of Rutland Manor and a couple homes on Rutland St. flooded with sewerage because the lines were full. The little patch of woods with wildlife is one of the very few green spaces left in this part of town. Open Lands are only preserving land on the outskirts of the City. Small neighborhoods were mentioned. They have very cohesive block parties, Christmas strolls and if someone has a problem, with a phone call, 20 to 30 people would be there. They only have 28 residential units and homes on Fisher St. so 14 units is a 50% increase. There are many children on the street. She is opposed to the zoning changes and feels contract zoning should be considered.

Bill McCann, 20 Fisher St., lifelong resident, sent a letter in opposition. The Open Lands Committee developed buttons to conserve Dover. The petition has potential problems for the neighborhood. The increase of 14 units represents a major increase. Children would be impacted. If the status quo remains and the petition is denied, there couldn't be an access to Fisher St. This is the type of area that in the new Master Plan speaks about changing from Industrial to contract zoning. They need to have something that is compatible with the neighborhood. There is a potential to 70 units. You are looking at \$810,000 cost to the school. Concerned with the sewerage pumping into the Bellamy River. Concerned with the MTBE contamination on the lot on the south end of Locust and Rutland St. This should be looked at with regard to clean up cost. Urge the Board to look at contract zoning. It is a historic neighborhood and they don't want to look like Indian Brook Drive. They want trees and a green space.

Wes Tater, resident of Dover, 12 Landing Way, is a commercial realtor. It is his observation that it is an area that needs some investment. There has been talk about flooding; clearly, it won't get better if things continue as they have been. He would be concerned with what might happen in the case of development but not enough is known to be overly concerned. The City would have concerns if they don't develop, as the Moore building is an eyesore. When he gets off the turnpike to come into town, he doesn't get a great feeling about his home town when passing that property and it won't get better if not addressed. There is



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not much demand by most industrial companies to get into a tight congested area, where they have to fight the kids for the street. He would be further concerned about what might happen with a large parcel of land that is left dormant. This is the kind of area where things don't stay static - they either get better or they get worse. They can get worse in a variety of ways from an infrastructure standpoint, or socially. I-1 uses are not the kinds of uses that Dover particularly wants. He has empathy and appreciation for what it is to live in a community and not be able to control the community. Looking at this area as a whole, the proposed zoning change would allow for a transition from the Rt. 108 area into a residential. He feels that the proposed zoning does just that.

Phyllis Howard, resident for 70 years, hates to see what is happening to Dover. She asked about the rights of the residents of this neighborhood. Why can't they say what should be done with it. She has had the consequences of some wonderful condominiums. The wetlands were covered. There was no drainage put in and it was approved by the Planning Board. At the time they thought everything was going to be ok. Dover doesn't need to build these big developments because they are not in the best interest of the City, but in the best interest of the developer. People are being driven out of their homes and their properties are being infringed upon. Take a ride on Atlantic Avenue. You go to bed one night and the next day there is a condominium in your back yard. Take a look at the end of Third St. Before you make any decision, think about the tax payers that have been here all their lives and have made Dover, NH what it is. Before you make any decisions, think twice and put yourselves in the shoes of the people who live in the homes where these condos have taken over their land and nice views from their back yards.

Melissa Glidden, 26 Fisher St., stated that she agrees with many of the speakers. She has a vested personal interest in that she has woods close to her home and her children have been able to be very safe. They have had some issues with traffic because of McIntosh's growth and students cutting through. She has concerns with the congestion on Locust St. She desires to see Moore's building sit forever. There could be a lot of things that that they could benefit from, however she doesn't want to be pushed with the threat of oil storage. She asked that the current zoning be rejected. She was pleased that the City is talking about contracts zoning with respect to industrial zones in the City. She would volunteer to be involved in speak out groups.

Marcia, 116 Cataract Avenue, asks that the Planning Board reconsider rezoning a half acre of land bordering the railroad bed and their properties. They want to change it from R-12 to B-5. There will no longer be a buffer between the businesses and the residents. She was concerned that the existing sewer lines would not handle more development on Rutland St. She said she has a contour map that shows the grade and they are literally a bowl, right behind Locust St. The property lines of the railroad are in question and she would like some information on that.

Dennis Campbell, Hamilton Street, said that Ms. Glidden did mention the growth of McIntosh College. When he hears high density multi-level housing in the proximity of McIntosh College, he tends to think of a student ghetto. The institution will bear none of the financial responsibilities that the City will incur in terms of law enforcement, trash collection, etc. Especially, if the present developer sells the property to another developer once the zoning has been changed. He might be worried about nothing but he is worried.



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Chris Nossiff Ford, 94 Belknap, lifelong resident, agrees with everybody else regarding the concerns of the area. Objects to the rezoning and wants to keep it the way it is. The schools are way too congested. She doesn't let her 10 year old son walk to the middle school because of congestion. She wants to keep the green space. The taxpayers deserve better than what they are getting.

Sandra Ackler, Fisher St., for 14 ½ years, chose Fisher St. as a community and neighborhood to live in and hates to see it change. Scared for the children. Doesn't want to loose the trees, the birds, the wildlife and there is no space for more houses. That land is very wet. The water problem will only get worst.

Marylyn York, 52 Fisher St., reiterated all that the other speakers have said. She's a newcomer to Fisher St. It is a beautiful, historic area. She has the same concerns about the traffic, water problems and the financial impact on the schools. There is a tremendous sense of community. She wants the Board to reconsider and look at the neighborhood again as a whole.

Paula Forbes, 188 Locust St., has the same concerns as the people on Fisher St. They know all of their neighbors. They were there when Moore Business forms was open. She has no problem with the zoning as it is and no problem with a business. She is concerned with the residential and objects to the proposal. She likes the idea of the contract zoning.

Rebecca Jacques, 52 Rutland St., has lived there for 3 years. They have had sewerage backups several times. She cringes at the thought of more residential sprawl. They have spent a lot of money taking care of runoff. They have had to redo parts of their home because of the sewerage backup. They feel that adding residential is not in the Master Plan.

Malcolm McNeill said the people in Fisher St. are complaining about residential units coming into a residential zone. It is incredulous where people of a residential zone would be asking that the backs of their houses be zoned Industrial. Dover does not have a Historic District. One of the concerns expressed by people on Fisher St. is that the houses may not be desirable. If someone owned an empty lot in that neighborhood they could build any kind of house they want. If you were planning a residential neighborhood you would provide for connections between residential neighborhoods. That is what exists there. Duplexes, multi-families and singles and that is what they are proposing. The RM-10 zone can have multi-family by Special Exception. It's not a single family zone. There is a school impact fee to address that issue. With regard to the development of the industrial property, there has been no discussion as to what benefits that would bring, as opposed to a stagnant building. Zoning is not a popularity contest or an election issue. It is an issue based on the Master Plan. Any time a project is proposed in a neighborhood, the neighborhoods come out to object. There is no contract zoning in Dover. There is discussion about it, but no legislation or a clear path. They believe that the Master Plan speaks for itself. It is frequently like a bible, as there is something in it for everybody. When you have a specific section in a master plan that recommends multi-use in the exact zone that we are talking about, it is not unusual for a neighborhood to come up and oppose change. It happens everywhere. The issue becomes what is in the best interest of Dover, under the circumstance. He asked that the Board vote one way or the other, as this process has been going on for a long time and they wish to move on. It is not just his rezoning; it has been recommended by the City and done in consultation with the City. They believe that there is a balancing act that has to come forward. There is no doubt that any residential will be scrutinized and reviewed but it should not detract from the logic of the master plan, as it relates to this



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use. For a community to come forward and say they wish to retain industrial in their backyard, the true message is that they want nothing to change.

Matt Cox, stated Atty. McNeill indicated that he would defy anybody to define contract zoning. It is defined in the City's Mater Plan. It indicates that it would be a practice that allows a property owner to enter into a written agreement with the City as to setting a restriction for a particular parcel. He doesn't advocate that the property stay industrial. The strong sentiment is that it be changed to contract zoning. He thinks that it would work like the comments were tonight, to the extent that people came forward and said they want green space. The City would say they can't do that because they did not buy the property. You cannot have everything that you want but there would be a process where there would be more control exercised by the City and more give and take, so they could be sure that there would be a transition consistent with what is in the master plan, between the historic neighborhood and the commercial uses.

Karen Westen, French Cross Rd. isn't in the neighborhood. She came because she is interested and was on the Rollinsford Planning Board. The number one point was the infrastructure. People spoke about raw sewerage being pumped into the rivers and about the pipes for the sewer being inadequate. Anything more than is there, is too much. The City needs to have their infrastructure fixed and she feels that the people would support some form of light residential or moderate. The water and the sewer need to be fixed. Will this be in the budget? Will it be the developer or the taxpayers' responsibility for the infrastructure? She feels that all the questions need to be answered prior to changing the zoning.

Phil Casey, gave a history on that area. In his house there is a line that goes under his foundation to the site that is next to them on Fisher St. When they owned that land they thought they would build another house there because it would be easy to tie into that house to his house. It didn't happen. More Business Forms was going to expand and they needed land. What they needed was green space. If they had built, they could not have built across the brook, as it would have covered too much of that parcel. For light industry, they will need the green space if they are going to cover a large area. He explained that when light industry goes in, it doesn't mean that it will destroy an area. He would rather see light industry stay as it is.

The public hearing was closed.

Chris Parker stated it is important to point out if there are any capacity issues, which it sounds like there are, they would need to be addressed whether it is industrial, residential or commercial during the site plan approval. Atty. McNeill pointed out that they had a lot on input from the Planning Department, and that is true. He explained how they came up with a better alternative. He thinks that contract zoning is best. They looked at the comprehensive area and wanted to get a lot into one, zone such as the area of the R-12 that they suggested zoning B-5, along the railroad bed. It would bring the area into conformity with their neighbors. They felt that there was a better need for a mixture for housing types out there. The existing duplexes and single family homes that exist on Locust St. are non-conforming today. Under the proposed B-3, they would have been non-conforming. They felt RM-8 zone allows for single, multifamily and duplexes and they felt that it was a better proposal. The B-3 would have needed variances to do any thing more than a 5 unit building. He said that you should not rezone just to have another hoop to go through. He agrees that this is a better option than what was initially brought before



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the Board. He agrees that the I-1 zone is out of date. Is it the best opportunity, he feels it is for the community to decide.

Dean Trefethen wanted everyone to keep in mind that the new Master Plan is not approved or in effect. Contract zoning was talked about in the new Master Plan. Currently, they do not have a mechanism for contract zoning and they may never have it. Even if the new plan is approved, it still would take several steps, including the City Council, to implement contract zoning. It could be years before there is contract zoning in the City. He said that they won't have complete control if it rezoned but there is control in the existing zoning and site plan regulations. They just cannot go in and do what they want to do, as the wetlands are protected by the State and by the City. He thinks that this area needs to be rezoned. He understands the comments to leave it as it is, but today light industrial is probably not going to happen. It certainly won't happen in the kind of light industrial that we would like to see. It could be light industrial but uses that we don't desire to have. Is this proposal and the suggestions from the Planning Department the way to go, he thinks it would result in too much density in the residential and would not achieve what is wanted in the other part of the plan. Feels the Board should rethink the proposal.

Tony McManus thinks the conversation about contract zoning is important, because it has been recommended by the committee and Planning Dept. He understands it would be a step forward, maybe not in the contexts of this project. He has been a supporter of doing something with the Moore building. He felt the B-5 zoning solved that problem. He doesn't think that the RM-8 solves the residential problem. He doesn't think it is consistent with the RM-10 that surrounds it. He doesn't see this as a mixed use. It is a piece of commercial property on one side and a residential property on the other side. He would like the Board to look at this project in terms of contract zoning, not as a means of delaying it but at looking at both ways to see what could be done. He thinks that contract zoning could be an advantage to the developer and to the City. He would like to see the Moore building made over into mixed retail, commercial and residential in the same building. He doesn't want to vote this down tonight but he doesn't want to vote in favor, there is opportunity of improving it for both sides. He would consider tabling.

Linda Merullo said she was very excited when she first saw this rezoning because the Moore building needed a re-haul. She thought it would become office or retail and create jobs within in the City. It is a blighted area and felt it would increase the value of the abutting properties on Locust. She is concerned after listening to the residents and their concerns of a large influx of residential. She still wants to see the building redone, as it cannot stay the way it is. It would be so helpful to have a plan so that the residents could get an idea what could be put in for residential. She said that the project on Third St. blended beautiful with the downtown area. When a developer comes in and there are no plans in front of us and mentions condos. Everyone's vision of a condo could be different. She would like the requirement that there be something to look at, and maybe, there wouldn't be so much opposition if everyone could see how the buildings would blend in. She is not against this but also has empathy with the residents. She wanted to see what the project would look like.

Doug Steele stated that he tends to agree with what Tony had said. He does like the approach to contract zoning but is not currently in the master plan. He asked if that was something that could be done.



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Chris Parker said it would be something like the Mixed Use that they did last year. They were allowed to put some residential in to get the commercial stimulus. That's a form of contract zoning. The idea is a give and take. There is flexibility in the uses and the return for that there is a flip side to get more design or architectural control. When the City first looked at creating the RCM Overlay District, the petitioner came to the City and asked to put it on this More property, as well. This property did not meet the criteria in place. Just because the 99 Master Plan doesn't say contract zoning, it doesn't mean that you can't do it. The plan going forward, if adopted, does suggest that the I-1 zones be looked at as an area for contract zoning. The idea is you have an opportunity to transition out of time zoning; industrial uses that predated zoning, with their residential surroundings.

Atty. McNeill stated that the process took a year and a half.

Doug Steele said there were many comments on sewer overflows in the Rutland Street area. He wants to make it clear that they do have adequate capacity in these areas for dry weather and normal weather flows. When they get into the situations like Mother's day and the Patriots' Day storms, the system becomes overtaxed with water and that is called an Inflow and Infiltration (I&I), that is groundwater entering the system because the ground becomes so saturated. The City is addressing this problem and spending hundreds of thousands of dollars in improving their sewer lines. There is a problem but it is in extreme weather conditions when this occurs.

Kirt Schuman felt that it is an area that they have spent a lot of time discussing in their master plan deliberations. He sees this as the opportunity for the Board to turn the page away from vinyl sided monolithic structures. He lives on Cushing St. and has a 4 unit behind his house. There is definitely a need to do something with this parcel. The zoning proposal doesn't meet his vision of what this parcel could be. He wants to ensure that if this parcel is rezoned that it has a sympathetic use for the neighborhood. He is reluctant to give away the potential to have the control over making this parcel a marquee parcel for the City. It could be their opportunity to do some innovative things. He's willing to roll the dice that there won't be an industrial use before it is sorted out. He is not willing to sell the farm on this rezoning.

Marcia Colbath said when they first brought this before the Board; her first comment was that she was concerned with anything that would change the character of this neighborhood. The current zoning change is better than what exists now, but it could be so much better than this. The Planning Dept. and Planning Board did not initiate this zoning change. It would be well worth it to hold off and do the very best for this neighborhood and this area of town. This is the first area that you see when you get off the turnpike.

Ronald Cole said that he has mixed feelings. When talking about light industrial, light industrial is in Malaysia now. We will not see light industrial in the near future. Contract zoning peaks his curiosity. It sounds like spot zoning in a different suit. He thinks that it is a great idea and it is the applicant's desire to get something done with this property. Whether he can find something in agriculture, pig farm, veterinary office, auto service, a bank, a commercial recreation are what could happen as it currently zone. It's a transitional zone. He would like to address this contract zoning a bit further because it would be the best of both worlds.



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Tony McManus pledged to the developer that he would be willing to sponsor whatever resolution that is needed to get this underway at the next meeting.

Tony McManus motioned to table.

Donald Andolina seconded.

VOTE 2 – 6

Opposed – Kirt Schuman, Dean Trefethen, Marcia Colbath, Doug Steele, Frank Torr, Linda Merullo

Dean Trefethen said that he is voting against to table is that he doesn't believe that there is a mechanism to do contract zoning next week. We started the master plan a year ago and finishing it is the hard part. His sense is this applicant wants a clear decision tonight so they can move on. The Board gets pretty good at seeing through the "not in my back yard." That is not what he is hearing tonight. There are issues and real concerns. He loves the idea of contract zoning but it also has to go before the City Council as well. It looks like spot zoning and that's a dirty word. In a pure concept it is not spot zoning but most people say if it looks like a duck and walks like a duck, it's a duck. This is not a short term solution, but a long term process.

Dean Trefethen made the motion to deny the applicant and not rezone.

Marcia Colbath seconded.

Frank Torr said that he supports the deny motion strongly. He believes that we have heard that we need to take a softer approach. There needs to be changes, particularly in the Moore building, itself. Every building that lies idle deteriorates. There needs to be a smoother transition point occurring and the Board needs to search that out. He doesn't know if the developer can come up with a better idea or how it is going to happen but it needs to happen. Contract zoning can be a ways down the road and might not meet their needs. As it is proposed, the residential would finance the Moore building so there needs to be another source of financing.

Kirt Schuman hopes this is not the end of the road to rezone that parcel into something we can all be proud of. He believes that something needs to be done but he is not sure we need to do it right now.

VOTE 7 – 1

Opposed – Linda Merullo

Chairman Cole called a 5 minute recess at 9:10 pm.

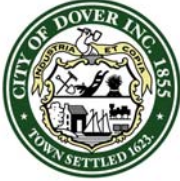
Chairman Cole brought the meeting to order at 9:20 pm.

3. Consideration and acceptance of an amendment to the conditions of approval of a Site Plan for Portsmouth Christian Academy, Assessor's Map J, Lot 1-C, zoned R-40, located on Seaborne Drive.* (P02-41)

Marcia Colbath stepped down as her family is a direct abutter to the property.

Ron Stock took her seat on the Board.

Connie Laurence, Head of School at PCA , asked that the condition #8 be removed, not because they are not willing to do the directing of all busses to stay off the road, and they have done that consistently, but because they are reported in violation when those buses travel on that road. They don't have the ability to



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keep them off that road. They are not the police. They have provided the direction to all visiting teams several times. They have two busses in the a.m. and two busses in the p.m. Their busses are for their student busses, the others are visiting busses from other towns. They have all received the information, but if a driver chooses to go down that road, they don't have the authority to keep them from doing that.

Chris Parker said that staff doesn't support the removal of the condition of approval. Nothing has changed since 2002 and the condition should hold.

Connie Laurence explained the problem they have is the violations that are reported. They cannot keep a vehicle off the street. It is not they are in objection to keeping those busses off that road, but if someone chooses to go right instead of left on a public highway, they don't have that authority.

Chris Parker said that nothing has changed. There is more traffic because of the increased enrolment, but nothing has changed to warrant this that he can see.

Ten Ham, Facilities Manager at PCA, stated he is confused. They said they would direct all busses to use Garrison Rd. They are perfectly willing to call the buss company and tell them to use Garrison Road. They have consistently done that since the school started. They actually sent a letter to this Board back in 2004. It was received and stamped by this Board on August 31, 2004, and this issue was addressed. They have directly contacted school busses and directed them to use Garrison Rd. They have also contacted visiting busses to do the same. Mr. Rooney's letter stated that they do not have the resources, or authority to insure that every bus complies with their request. What has happened is that they have received a letter from the Planning Board saying that they are in violation. PCA, in his opinion, is not in violation as they directed the busses. That is what they said they would do and they have done that. If the driver or a new driver or someone who is just going to Durham turns left, they don't have the authority to stop him from doing that. Consequently, he gets his picture taken and sent to the City and City then calls PCA and they call the bus company and there is no solution that he sees. They don't believe they are in violation; they have done what they promised they would do very faithfully. Can the police stop that bus from driving down that road?

Chris Parker said that he sympathizes as it is a public way. It was not the Planning Director's conditions of approval but a condition that was added subsequent to a public hearing after abutter concerns were addressed by the Planning Board. He doesn't think that the director necessarily agreed with it. He tends to think it is complicated by the fact that the City of Dover now uses the same bus company so there is some confusion since they allow the City of Dover buses to use Spruce Lane. It was an agreed upon condition of approval. What is different today, that wasn't in place in 2002? The abutter concerns are the same, the transportation path is the same, and the road conditions are the same. He can't see how he can support removing the condition if nothing has changed. He recommends not to support.

Frank Torr said that PCA is complying with condition #8. They agreed to direct all busses to use Garrison Rd., and you have substantiation of that. Periodically, it doesn't happen but it is not their fault.

Ron Stock suggested that maybe not every driver is getting the notification. He asked if there could be a sign at the exit stating "no left turn for busses" or "right-turn-only busses" so busses coming to that intersection realize they only have one choice.



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Chris Parker said it was suggested. An abutter suggested a similar idea and they sent a letter to PCA indicating where signs could go.

Tony McManus made the motion to accept the application for any amendment to the conditions of approval.

Dean Trefethen seconded.

VOTE U/A

The public hearing was opened.

Mary Hebbard, 97 Spruce Lane, stated she understands that the school believes that they have made an effort to direct the busses. They have not attempted to put up signage. They were able to pull that off for periods of time when there wasn't a problem. Part of this issue is how much of an impact PCA has had on their neighborhood. She thinks that it is a small thing to ask. There are large tour busses at all hours. They are simply asking that they make more of an effort. Why not send a letter saying that it is a condition of their approval and have the drivers sign off on it. Put something on their website. Use Garrison Rd. it is designed to have more traffic, where Spruce Lane is a country road. It has become a speedway. The parents are very arrogant and feel they have a sense of entitlement. All they are asking is that they make the effort to keep their busses and visiting busses on Garrison Rd. She understands that a driver may make a mistake. She doesn't fault that at all. As far as the same busses, Dover School Dist. is clearly indicated on the Dover busses. The school has very strict standards for its own students. PCA needs to take more aggressive techniques to make the surrounding community more livable. The City has impacted the residents severely by putting them down there. It is a small thing to ask.

Pat Wilson, Rainbow Drive, off of Spruce Lane, stated for a long time she was able to do a loop safely on Garrison Rd. and Spruce Lane. Since this school has arrived with all the SUV moms, she has not been able to walk at her convenience or comfortably at various times. Have a contract and make the bus drivers accountable. Bus companies probably would have a hard time keeping the drivers if the drivers were held to this standard. She feels signage at the entrance of Seaborne Dr. would work. What is so hard about signage?

Gentlemen 7 Birkshire Lane, anything that PCA could do to make their lives easier would be appreciated. He said had he known of PCA and the traffic impact, he would not have moved into that area of Dover. There is no real good time to use the road to exercise in. Spruce Lane is a very narrow street with no sidewalks. The speed limit is 30 mph. When he first moved there he couldn't understand the traffic and out of state plates until his neighbors told him there was a private school down the road. One additional vehicle, whether it be a tour bus, is one vehicle too much. If anything can be done to make their life better, it would be appreciated.

Lisa Leighton, 79 Spruce Lane stated that Spruce Lane has become incredibly busy. She watches the children try to get on the bus and cross the street. She can count on one hand how many times someone has actually stopped to let them cross the street. It is terrible to try to get out in the morning. She asked to please keep the busses in the bus zone. Maybe a sign would be a perfect solution.



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Rick Hebbard, 97 Spruce Ln, differs with Mr. Parker that things have not changed. More houses have been built since 2002. There are more people, more vehicles, etc. It is a very simple thing to do to tell the bus companies to stay on Garrison Rd. The school's Certificate of Occupancy could be revoked and the school could be closed if they violate that stipulation. It's pretty sad when Mr. Runney said that he would make sure that those busses would not go down there. He was trying to do something, however he dropped the ball because since then there have been hundreds of violations that they have violated. He has taken photos. He came up with the idea of signs that can be placed at the end of Seaborne Dr., as well as Spruce Lane. It's a very simple thing to do for about \$100.00. It would be an easy fix. It's shameful for a school that is a Christian school to do this to a community and basically, thumbing their nose at the neighbors. They are a neighborhood. He lived there all his life and things have grown a lot, but nothing has changed that neighborhood more than that school and not in a pleasant way. They have been very arrogant. They are tired of the busses and if they want to stay open, they should keep their busses off of Spruce Lane.

Connie Laurence said they have no problem with signage at all. It's the concern that they have that even with a sign, they can not enforce it. The signage part is fine.

Alice Gasses, abutter of PCA, stated she was home watching this on TV and ran out to come here to speak. She thought that neighbors are supposed to get along. Now they are talking about closing PCA because of violations. Is Spruce Lane a private road? They are taxpayers, as they pay taxes to the State. Even if there are not, we are taxpayers and the people who are going there are from NH and they are taxpayers. A lot of the students are from Dover and they are taxpayers. She doesn't understand this. It is discrimination. What about Garrison School, what about Dover High and the Middle School, their busses are going that way. She couldn't sit at home and watch this going on.

Lisa Slaton, 78 Spruce Lane, moved there in 1991 on a quiet street. It was a wonderful to raise their family. The entire time her children attended Garrison School she had to drive them to school and pick them up because the traffic was so intense. She had to go out herself to stop the traffic so her son could go up the street. At that point, she chose to drive her child. As a tax payer of Dover, she did not use the public transportation because she was afraid for their safety. She thinks that they have a choice to control the busses coming up and down their street. They should be a resolution to this problem.

The public hearing was closed.

Ron Cole said a letter that was sent on the 16th of July, 2007 from Tom Clark, Building Official, to Connie Laurence at PCA. In paragraph three, Mr. Clark said that he had enclosed some suggested signs for the proposed locations to assist the drivers to adhere to the conditions of approval. Ron Cole said that living next to a school can be a curse at time. He suggested to the Board that he would like to have Mr. Clark contact Mr. Ham to see what the City can do to assist in getting the signs up, as soon as possible.

Doug Steele said that he sees that the school has attempted to adhere to condition #8. He thought this should be turned over the Traffic Advisory Committee and have them come up with appropriate signage. Then it would go to the Council and passed as an Ordinance so it would allow police to ticket those busses. He felt that would be reasonable.



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Doug Steele made the motion to have the school go before the Traffic Advisory Committee and have the committee come up with appropriate signage that would be installed on Seaborne Dr. and the other street Mr. Hebbard recommended. Have it then go before the City Council to pass it as an ordinance, which would allow the police to ticket the busses in violation.

Dean Trefethen seconded.

Linda Merullo stated that they do have responsibility to the neighborhood. She would like to see the signs put up, instantly.

VOTE U/A

Mr. Ham stated the complaints that he has heard were about speeding vehicles. PCA can't control that and the private vehicles are not in question. As far as the lady who spoke with regard to their web site, they try to have discipline and they don't thumb their noses at the neighbors. They have always gone out of there way to be a good neighbor. The kids mow the lawn of some of the neighbors. If you come up with some signage that would relieve them from receiving letters from the City, the letters would go to the buss company and not to them.

Marcia Colbath took her seat on the Board and Ron Stock went back to the audience.

Tony McManus stated that there must be a coordinator of busses who can hand the driver something in writing. After 3 or 4 years this should not be happening.

Dean Trefethen motioned to not alter the condition.

Tony McManus seconded.

VOTE U/A

4. Consideration and acceptance of an Open Space Subdivision of land for Raymond Martineau, Jr., Assessor's Map K, Lot 1A, zoned R-40, located at 38 McKone Lane.*(P07-50)(1 lot)

Bruce Pohopek represented the applicant. Stated this is an amended open space subdivision that was approved in February 2006. It was not recorded but approved by the Board. He had a layout on the easel, colored in several colors depicting the various areas. What they are proposing is just a lot line adjustment to the original design. He said that the Conservation and Natures Conservancy plan to combine an area.

Donald Andolina made the motion to accept the application.

Frank Torr seconded.

VOTE U/A

Dwayne Harten, Natures Conservancy, explained which parcel is under the conservation easement and what parcels are under contract.

Tony McManus asked if there were any direct contact between the pieces without trespassing on the middle piece.

Dwayne Harten said that there is no property connection except through McKone Lane.



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The public hearing was opened.
There were no speakers.
The public hearing was closed.

Chris Parker stated the Planning Board conditionally approved an Open Space Subdivision for this parcel on February 14, 2006 and numerous extensions have been received. The Nature Conservancy has been negotiating with the owner for the purchase of lot #2, which was 9.68 acres on the original plan. This revised plan increases the size of lot #2 to 11.37 acres. All other aspects of the plan, including the yield plan, remain the same. The plan also merges lots 1B and 1C, which are presently under a conservation easement to the Nature Conservancy. This proposal is for an Open Space Subdivision to create one additional lot.

Frank Torr made the motion to approve with the following conditions:

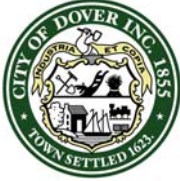
1. Add all of the owners' signatures to the plat.
2. Add the surveyor's seal and signature to the plat.
3. Provide the Planning Department with a digital version of the plat.
4. The applicant shall add a note to the plat indicating that if lot #2 is not sold to the Nature Conservancy that a conservation easement covering the open space area is required to be granted to the NH Fish & Game or a private land trust, prior to the issuance of a building permit on lot #2.
5. Provide the Planning Department with a draft of the shared driveway access easement document prior to signing the plat.
6. The new dwelling unit shall be subject to any impact fees in place at the time of building permit application.

Linda Merullo seconded.

VOTE U/A

5. Consideration and acceptance of a Conditional Use Permit for Temple Associates, LP, Assessor's Map 2, Lot 14, zoned O, located at 90 Washington St.(P07-49)

Mark Bougier, represented the applicant, and stated that Temple was before the Board to add housing units to the fourth and fifth floors of the Masonic Temple. The second and third are office the first floor retail. They are asking for a Conditional Use Permit to reduce the parking requirement. There will be 15 units, 5 two bedrooms, 8 one bedrooms 2 studios. They believe that 30 spaces is excessive and they have made arrangements for 20 spaces to be available. These spaces will be available to the tenants between the hours of 6:30 pm and 7.00 am. 7 days a week and 52 weeks per year and will be available during the winter months. The spaces they have located are within 1,000 feet and there will be a 5 year lease with a renewable option. They will be discussing with the tenant as part of the lease, they will be getting only one parking space



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for the 1 bedroom and 1 for the studios and two spaces for the two bedrooms. The 30 space is excessive and the 20 spaces will fill the need of the project. The project is consistent with the adopted Master Plan which encourages downtown investment, mixed use projects and supports reduced parking for project with private or existing parking nearby. He went over the criteria for the Conditional Use Permit. The locations of the building allows for the residents to use public transportation, reducing the need to have a private vehicle. The tenants of the 1 and studios will not require more than one space. Due to the nature of the downtown parking, there is ample public supply nearby. The ITE studies show for a project like this, only 1.1 parking spaces are required per unit for a total of 18, and they will have 20. With their location downtown there are between 9 municipal parking lots nearby that are available to the tenants during the day, if needed. There is also a parking lot adjacent to their site that is oftentimes half empty. There are numerous public transportation options available to the tenants such as: Wildcat Transit, C&J Trailways, Downeaster and COAST. He said that they believe this proposal is consistent with the City's adopted Master Plan. Downtown restaurants and business will benefit from these new residents living and working in the area. There should be no detrimental effects from this use. This new investment and residents will continue to keep downtown a viable place.

Doug Steele asked where the parking lot was located.

Mr. Bougier stated at the request of the owner, his wish to not make the location public. They did discuss with staff the specifics and did tell them the location and staff is satisfied with it

Marcia Colbath still has concerns. People who use public transportation still require a space. Her concern is that the parking that is being provided is for only at night. The lot they will be in is fully utilized during the day and that will dump those cars onto the streets in an area of town that tends to be very full during the day. She is not comfortable with the numbers.

Mr. Bougier said that people will be working because they have to pay rent. If they don't take public transportation, they will be driving. The people will know up front what the conditions of the lease will be and if they are not comfortable with that, they lose a potential tenant. They need to be out of the parking space by 7:00 am. If they don't want to move it at 7:00, they will not lease from them. He said that the parking lot next to their building is usually half empty.

Christopher Parker asked when they would be signing that lease if this is approved.

Mr. Bougier said it would be immediately.

Doug Steele stated his concern is that it could promote shuffling or take up valuable City spaces. He voted against it originally and he continues to be concerned with the parking.



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Tony McManus made the motion to accept.

Dean Trefethen seconded.

VOTE 7 – 1 Opposed – Doug Steele.

Chris Parker explained that this application was conditionally approved by the Planning Board on August 22, 2006. The applicant never complied with the conditions of approval or requested an extension of the approval. The applicant has applied for re-approval of the project and has filed for a Conditional Use Permit for a reduction of parking spaces from the required 30 to 20, as provided for in Chapter 170-44-I. Tonight it is just the Conditional Use and the site plan will come up at the next agenda. If the conditional use was not granted the applicant would have another opportunity to find adequate spaces. There are two separate issues here. The site plan will have to come off the table. They should be able to come in with the site plan with the lease in hand. Staff recommends approval of the Conditional use Permit for the reduction from 30 spaces to 20 spaces. He said that he gave the site plan conditions as a preview.

Tony McManus asked if the Planning Department would you want the number of spaces to go up if there is a parking garage, or would they still be limited to the 20.

Chirs Parker said they would have the option of 20 spaces but they might want to go up to 30 spaces to help their marketing. There is more flexibility in a garage, than in private parking.

Dean Trefethen said he thinks the effort to emphasize other transportation choices for their tenants would apply more to their guests. The tenants would have a vehicle and what they do with it during the day may or may not be a problem. The visitors are likely to be here at times of the day when there is parking available. He agrees they will have an incentive to do something else down the road.

Linda Merullo felt that the applicant has tried to access parking. Knowing that they are putting the spaces in their lease contract, it will be up to the tenants to decide what to do with their autos.

Linda Merullo made the motion to accept.

Dean Trefethen seconded.

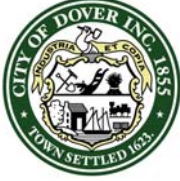
VOTE 6 - 2 Opposed – Doug Steele, Marcia Colbath

Linda Merullow made the motion to approve subject to any conditions.

Dean Trefethen seconded.

VOTE U/A

7. Old Business



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a. Discussion and possible vote on a Open Space Subdivision and Conditional Use Permit for Woodwind Farms, LLC, Assessor's Map N, Lot 8-1, zoned R-40, located on Gulf Road.(P07-43)(9 lots)

Ron Cole left the meeting as he has not been involved in the process on Woodland Farms and there could be a potential conflict. He asked that Tony take over the meeting.

Tony McManus took over the chair.

Dean Trefethen made the motion to take this item off the table.

Frank Torr seconded.

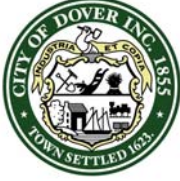
VOTE U/A

Dana Lynch, Civilworks, represented the applicant. A site walk was held in early September and as a result, they have made some revisions to the plans. They adjusted the driveways to lots 7 and 8 to pull the separation point between the two driveways back just to the edge of the woods. They have met with staff to make some adjustments. On Sheet 6 on the table of contents, as they have said before, there is currently no plan in the works to change the use of lot 10. They are proposing it to maintain the existing barn and horse facility. The reason that the phase II plan was developed was to present a concept which would preserve the development rights for the unused portion of the 22 lots that this site yields. They are showing in conceptual format, those 12 single family residences arraigned in a cluster with no lot lines, how they could fit on lot 10, to use the existing lot credits. The purpose is to put in a reservation for whatever future need might be, to reserve those and document it with this application. There is no intent to go ahead with that aspect of that project. The nature of the plan is that if they were seeking an approval, they would have to go back and engineer and permit all of that work. That is not in the content of this plan whatsoever. That is the one single change that is most noteworthy. They are aware of the conditions of approval and are acceptable to them and easily attainable.

Tony McManus stated it was his understanding that it would give them rights to pursue that development. He felt they would have to come back with a subdivision plan from ground zero.

Dana Lynch answered that the Board is not approving those 12 units tonight, but they are making it publicly known that there is a reservation right to do so.

Christopher Parker said that the reason that they had the applicant provide that sheet was the yield plan does show 12 units. Under the Open Space Subdivision regulations, what you get approved are your development rights. There are no more development rights, especially when you are dealing with a private road. To do any development subdivision you need frontage on a public road. In discussions with the applicant, they wanted to prevent a misunderstanding where the applicant came in a few years stating they have 12 lots left and they are ready to move forward. They have this precedence with a project that was approved 2 or 3 years ago on McKone Lane. Dan Ayer did Falcon Drive, off Back Rd., where there is a concept for 29 lots. He got 5 approved as part of the approval, but there was a concept plan for phase II and III. The applicant chooses to come forward with 12 units. A fully engineered plan would have to come before the Board. They wanted to avoid at that point whenever it may be. They wanted to be sure it was clear that the yield plan was sufficient and was not fully built out under this plan.



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Tony McManus said assuming we would change the ordinance in some way, it would reduce the number of lots and still, they would be able to come back and the City would be bound.

Chris Parker said that he believes they would be vested.

The public hearing was opened.

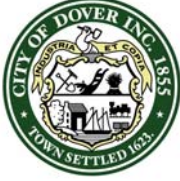
There were no comments.

The public hearing was closed.

Chris Parker stated the Planning Board accepted the application on September 11, 2007 and held a site walk on September 15, 2007. The applicant appeared before the Conservation Commission on September 10, 2007. The applicant has requested four waivers to the Subdivision Regulations related to the road design, involving the angle of intersection, road grade, length of cul-de-sac, and the width of pavement. Based on the justification given by the applicant, the fact that the road will be private and the results from the site walk, the Planning Department supports the waiver requests. The Planning Department recommends approval of the subdivision plat and Conditional Use Permit with the following conditions:

1. Add the owners' signatures to the plat.
2. Approval includes the granting of the four requested waivers.
3. Approval includes the granting of the Conditional Use Permit.
4. The applicant shall provide the Planning Department with a copy of the NH Department of Environmental Services Subdivision Permit and add the permit number to the plat, prior to signing the plat.
5. The applicant shall provide the Planning Department with proof that the Environmental Protection Agency Notice of Intent Permit has been filed, prior to signing the plat.
6. The applicant shall submit proposed Homeowner's Association Documents, addressing road maintenance, drainage easement maintenance, open space preservation and maintenance, and 50-foot and 100-foot buffers remaining in their natural state. These documents shall be reviewed by the Planning Department, with consultation by the City Attorney on the proper form of the documents, prior to the signing of the plat.
7. The applicant shall provide the Planning Department with proposed easement documents for the access easement over Tax Map N, Lot 8, the septic system easement in favor of Tax Map N, Lot 8, and the driveway easement in favor of lot #8, prior to the signing of the plat.
8. The applicant shall amend the plat by revising all applicable sheets to specify that this is an open space subdivision with a commercial component.
9. This plan is subject to the impact fees at the time of the Building Permit.

Tony McManus said he didn't recall what they did in the Dan Ayers case. In essence, the Board is not approving a 9 lot subdivision, but agreeing to a 21 lot subdivision. He will vote against it.



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Tuesday, October 09, 2007**
Meeting Time: **7:00 pm**

Chris Parker said that The Board is approving the subdivision shown on the plan and acknowledging that there are 12 units that would be further processed at a later date should the applicant agree to that.

Chris Boldt, attorney for the developer, explained what they are doing is at the request of the Planning Department to clarify this in essence, a bookmark of those additional units that they are allowed under the yield plan. They are not part of the phase I, the Board is being asked to approve a 9 lot subdivision, with this bookmark provision, that if they wish to develop, they have to come back to the Board for that second phase. The other concept is these units can be traded in somehow so that they were not built here, but that is another variable. The intent is they are asking the Board's approval of this subdivision as shown on this plan, with the bookmark.

Chris Parker explained if this was a public road, they would not have needed this bookmark as they would have the proper frontage. But because this is to be a private road with no frontage, they need the bookmark.

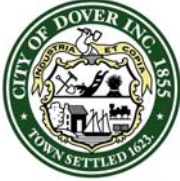
Tony McManus said they don't have frontage now because it is a private road. If we decide six months from now to change the yield plan process, the City is stuck as far as this development is concerned. There is a four year rule for the approval of a subdivision. We are not approving a subdivision for phase II, because we don't have a subdivision plan for phase II.

Chris Boldt said that they are not asking for approval of Phase II. They are only recording the one plan showing this 10 lot subdivision. They have the extra rights and we want to use them.

Dean Trefethen said that the way this was presented to the Board was that they have a yield plan for 22 lots, but they are only doing 9, and the 10th is the barn. It is low density and because of that they want a private road, and the list goes on and on. It was presented to the Board that you were not going to build as many houses as the yield permitted. He was ok with that, but this completely changes the situation, because 2 or 3 years down the road they want 12 more houses. He felt that private road of 18 feet is not adequate. The future owners of these lots won't be too happy.

Chris Boldt said if you look at the configuration they have designed for lot 10, they have built in the sq. footage requirement the same as the lots 1 through 9. It is not something that is intended to be in any way different from what is going on with the 9 lots, because otherwise, they are shooting themselves. This is truly a bookmark. The development rights will be used someplace else but they are book marking them now. They are in complete compliance with the regulations in doing this and with the precedence that was done with Dan Ayer's project.

Dean Trefethen said you may be in compliance but you are asking for 4 Conditional Use Permits. Where is the cut off point? They are exceeding it.



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Chris Boldt said that his feeling is that the road configuration was discussed even at the 22 lot level as being in compliance and that the desire being to keep the existing trees and to keep out of the wetlands. That was something that was viewed as a positive.

Dana Lynch said that if in fact, which he doubts, that there was a move afoot to build those houses, they would have to come back with a plan to allow them to have the road width that they have. The Board would probably say they would have to widen the road.

Chris Parker said that they would want the road reengineered.

Tony McManus said he never heard anyone saying 22 lots. They were shown a 9 lot subdivision and no one said anyone said anything about an additional subdivision and 12 more houses. He doesn't understand what would give them development rights. The City would be locked into 12 houses on Lot 10.

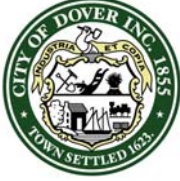
Ron Stock recalled there was a conversation that there would be no development on that lot but they wanted to reserve their rights. You are saying that you would like to see a plan redone to see all these homes listed, even if they are not going to build them.

Marcia Colbath stated that she is flabbergasted she needs time to go over the ramifications of the additional 12 house lots. She has been taken by surprise.

Linda Merullo stated that she doesn't think that the Planning Board likes to be surprised like that. At the site walk she thought that the entire piece would be left open and now they are coming back with phase II. She felt it should be tabled. There is a phase II that they did not know existed until 5 minutes ago.

Frank Torr said that he is completely comfortable with what they are proposing. They have a 10 lot subdivision. There was some concern early on about property rights with what they could do with lot 10. They are now preserving what they could do with lot 10. He said that he doesn't think there will be a subdivision on lot 10, but are just preserving their rights. Remember that you have a stable that is situated on lot 10 already, which has a substantial value and he doesn't believe they will just tear it down. There is a strong interest in the utilization of that stable for the purpose of their horse. If you look at the broader picture, the likelihood of the subdivision of lot 10 is unlikely. It is a bookmark just to preserve their rights. Possibly 25 years from now, they may change their mind.

Christopher Parker said if there is confusion there are 12 more lots. It is probably with the staff saying that it should be in play now, as opposed to 4 or 5 years from now. when the applicant comes in and demands their rights. It was mentioned at the sitewalk that they had more lots.



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This is probably the 3rd concept that they came to the staff with because the first two they felt was not realistic. When a fully engineered plan comes in you would see a wider road.

Tony McManus asked how wide the road is that they are approving tonight.

Dana Lynch went to the map and explained where the road is 18 feet wide and where it goes to 20 feet. He said that it was configured to save the trees. He pointed out the 50 foot right-of-way that could accommodate a widening of the road.

Dean Trefethen said that it would be a shame to move the trees to make the road wider. If we wait 5 more years and the trees become wider there is no way that anyone will make them tear down the trees to make the road wider. The Board can do it now as the trees are not that big and could be transplanted and moved so the road could be made wider, negating a problem down the road. He stated that he has a problem with the 4 requested waivers. They can't have the subdivision if they can't meet the requirements. You are getting relief from the requirements because you were only building 9 houses.

Atty. Boldt asked the Board to remember the discussion when they were here the first time between competing sides of we want no development on 10, this is a property rights issue, and they said whatever goes on Lot 10, will have to be in keeping with the 9 lot subdivision. They had the same conversation during the site walk. Ron Stock is recalling that they were saying that they don't know what is going to go on Lot 10. They have come though with discussions with staff from the get go. Mr. Woods said he has been having conversations with Chris Parker for 4 years. Don't characterize them as trying to pull something from the hat at the 11th hour.

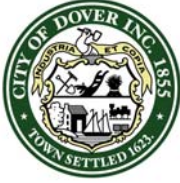
Dean Trefethen said that there may have had a miscommunication between staff and the Board. This does occur but in his mind, its 9 houses with upscale lots, river views. They are all in agreement with that. He was willing to go along with granting the waivers because of that. What has changed in his mind, is that it is no longer 9 houses, but now there are 12. He will not vote for approval of this if the 4 waivers are included.

Chris Boldt asked if they come back and are developing the rights on lot 10, then they could have as a condition of granting the waiver, increase the road. Therefore, the Board is off the hook at that future time in saying that nobody will wants the trees to go.

Dean Trefethen stated that it is not just the width of the road it is all 4 waivers.

Chris Boldt asked what if the waivers apply to lots 1 – 9.

Tony McManus said that he asking them to approve something tonight that may not happen for 3 or 4 years. In the meantime, granting you the rights to re-subdivision of this land when we don't



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have a subdivision plan for the land. That is his problem. When they submitted their application there was no phase II. Phase II was not part of the public hearing on the earlier application. They are asking them to approve 12 more units, now, without having any subdivision plan. He knows nothing about Dan Ayer and we may not have done the right thing with Ayer.

Chris Boldt said that they are bringing in what they were told to bring in by Planning Staff, to maintain those rights that they have always been talking about as having.

Linda Merullo asked if the Board were to accept this application and approve it, would the road become 24 feet wide as if it were a 22 + lot subdivision. We can not approve this with an 18 foot road. Are they proposing to widen the road and reduce that waiver? She said that it was not spoken of on the site walk.

Marcia Colbath stated that she is surprised by the 12 house lots, even though she knew he had lots. She said that she would rather table this and think about it so she can make a decision that she can be comfortable living with.

Chris Boldt, suggested that are truly interested in the units only for the transferable development rights. He asked if that satisfied the Board's concerns that the 12 units will not actually be built. They are wanting to preserve those rights to transfer to other property if that becomes doable, keeping in mind that you can't transfer in the R-40, at this time.

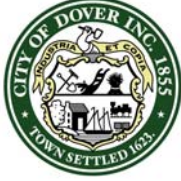
Tony McManus asked if he would agree to a condition that there be no further subdivision of 10.

Chris Boldt said that they would both get what they wanted in that there would be no further subdivision on Lot 10, but they would retain a 12 unit development rights that are transferable either out of the R-40, or if the development rights ordinance is modified within the R-40. He asked if that is a solution.

Kirt Schuman appreciates the intent. If the intention is just to strictly use the rights to potentially transfer, staff needs time to come up with language in a proper form. He is comfortable with that, but doesn't want to take action tonight.

Chris Parker asked if they could make a condition of approval that the units shown on the concept for lot 10, are units solely in the sense of the bookmark development rights, that shall not be created.

Tony McManus asked because of the late hour if it would be agreeable to table to the next meeting and have some language that the Board can deal with.



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Chirs Boldt said it could be a condition of approval that it has to meet staff and City Attorney approval as a condition of approval. It could be done tonight.

Ron Stock stated that we don't want to give an approval for 12 homes for transferability, when we don't have an engineering plan that says they can get 12 lots.

Chris Parker said that the 12 homes show up in the yield plan.

Dean Trefethen said we are still in the in the process of approving the Master Plan and part of that plan may be a change in the TDR. He has a problem with tabling. He has no problem approving the 9 lots and the caption of whatever else ends up being there after it is engineered. He won't be voting for it if there are 4 waivers. When you are looking at a substantial number of house lots on that road, the road as it stands, the intersection, the grades and the length of the cul-de-sac are inadequate. He said that they have created the problem, as you are asking for waivers and that is not the Board's problem.

Marcia Colbath made the motion to table.

Dean Trefethen seconded.

VOTE 4 – 3 Opposed Frank Torr, Kirt Shuman, Doug Steele

10. Adjournment

Frank Torr mad the motion to adjourn.

Linda Merullo seconded.

VOTE U/A

04-09-08