

CONWAY PLANNING BOARD

MINUTES

MAY 11, 2000

A meeting of the Conway Planning Board was held on Thursday, May 11, 2000, beginning at 7:00 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chair, Sheila Duane; Selectmen's Representative, Gary Webster; Vice Chair, Stacy Sand; Arthur Bergmann; John Waterman; Conrad Briggs; Alternate, Martin Frank; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

APPOINTMENT OF AN ALTERNATE MEMBER

Mr. Frank was appointed a voting member for the evening.

REVIEW AND ACCEPTANCE OF MINUTES

The Minutes of February 24, 2000 were amended as follows: page 1, paragraph 4, line 5, should read, "...what is there...". Ms. Sand made a motion, seconded by Mr. Webster, to approve the Minutes of February 24, 2000 as amended. Motion carried with Mr. Bergmann abstaining from voting.

The Minutes of March 16, 2000 were amended as follows: page 3, Under Charles S. Marshall, paragraph 1, line 2, should read, "...three-dimensional envelope requires...". Ms. Sand made a motion, seconded by Mr. Webster, to approve the Minutes of March 16, 2000 as amended. Motion unanimously carried.

The Minutes of March 30, 2000 were amended as follows: page 2, paragraph 2, line 2, should read, "...poles you're eliminating safety..." page 2, paragraph 4, line 2, should read, "...more room for green space..."; page 4, paragraph 1, line 4, should read, "...accept the application for Linda..."; and page 7, paragraph 3, line 10, should read, "...to come in, unless...". Mr. Webster made a motion, seconded by Ms. Sand, to approve the Minutes of March 30, 2000 as amended. Motion unanimously carried.

Mr. Briggs made a motion, seconded by Mr. Webster, to approve the Minutes of April 20, 2000 as written. Motion carried with Ms. Sand abstaining from voting.

The Minutes of April 27, 2000 were amended as follows: Martin Frank's name does not have an "e" on the end. Mr. Briggs made a motion, seconded by Ms. Sand, to approve the Minutes of April 27, 2000 as amended. Motion carried with Mr. Bergmann abstaining from voting.

GORDON AND DANIEL STIMSON – BOUNDARY LINE ADJUSTMENT (1999 TAX MAP 277, PARCEL 193 & 194/OLD TAX MAP 27, PARCEL 61 & 62) FILE #S00-04

Doug Burnell of H.E.B. Civil Engineers appeared before the Board. Mr. Burnell stated that there are two lots in the family and the garage sits over the boundary line. Mr. Burnell stated that the applicant wanted to have the garage entirely on one lot. Mr. Burnell stated that it meets the setbacks and has a cross-easement. Mr. Irving reviewed his staff review. Mr. Irving stated that there is a waiver request and there is no impact on drainage. Mr. Briggs made a motion, seconded by Ms. Sand, to accept the application of Gordon and Daniel Stimson as complete for a Boundary Line Adjustment/ Subdivision Review. Motion unanimously carried.

Ms. Duane read a waiver request for Articles 131-24.N. and 131-24.O. Ms. Duane read the criteria to grant waivers. Mr. Bergmann asked what is the reason for the waivers. Ms. Duane read the justification for the waivers. Mr. Bergmann asked if the waivers are granted, what happens if they sell one lot. Mr. Irving answered nothing. Mr. Bergmann stated that they own both so it doesn't matter where it goes, but what happens if they sell one lot and it drains onto the other lot. Mr. Bergmann stated that it is against our regulations.

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Mr. Irving stated that this does not make the site any more or less compliant. Mr. Bergmann stated that if they sell one lot, how do the regulations come into play. Mr. Irving stated that it doesn't have any impact and doing a calculation doesn't effect the drainage pattern with a boundary line adjustment. Mr. Irving stated that we couldn't make any stipulation. Ms. Sand stated that she has been to the site and it is quite level behind the house until you get a ways from the garage. Ms. Sand made a motion, seconded by Mr. Webster, to approve the waiver request for Articles 131-24.N. and 131-24.O. Motion unanimously carried.

Ms. Duane asked for public comment; there was none. Mr. Bergmann made a motion, seconded by Ms. Sand, to approve the Boundary Line Adjustment for Gordon and Daniel Stimson. Motion unanimously carried. The plans were signed.

OTHER BUSINESS

Guldies/Roof Top Mechanicals (1999 Tax Map 230, Parcel 52/Old Tax Map 65, Parcel 33): Robert Roy and Edward Lebonville appeared before the Board. Mr. Roy stated that he feels greatly insulted. Mr. Roy reviewed the materials submitted to him from the Planning Board research (attached). Mr. Roy stated that the mechanicals are still in the basement. Mr. Roy stated that they know the letter [from Dawn Emerson] was sent to them. Mr. Roy stated that the information clearly separates vents from mechanicals. Mr. Roy stated that the next statement was just a comment made by Mr. Couture.

Mr. Roy stated that the first page said the basement, not out the back of the building. Mr. Roy stated in regard to the process, they came before the Board and hired an architect, engineer and surveyor. Mr. Roy stated that they couldn't claim a grease trap as a prior use. Mr. Roy stated that they hired an architect who recommended Ammonoosuc Survey Company. Mr. Roy stated they dealt with Shawn Bergeron [former Building Inspector], Dawn Emerson [former Town Planner] and Wayne Derouin [former North Conway Fire Chief]. Mr. Roy stated they communicated with them all the time.

Mr. Lebonville stated that they wanted every step of the way reviewed so they wouldn't have to do it twice. Mr. Roy stated any time there was a change we went to those people. Mr. Roy stated that Town staff told us that Mr. Bergeron and Ms. Emerson could approve changes. Mr. Roy stated that they made sure they were a part of the process. Mr. Roy stated that Ms. Emerson stated that the Board interprets rooftop mechanicals as needing to be covered. Mr. Roy stated that we went by the book all the time. Mr. Roy stated that they were in the building all the time. Mr. Roy stated that they came to us the day before opening stating they had to be covered.

Mr. Roy stated that they continued to operate their business. Mr. Roy stated there was a letter in the paper from Luigi Bartolomeo and they wrote a letter back. Mr. Roy stated that he thought the Town would have been in touch with them. Mr. Roy stated that they did not hear anything from the Town. Mr. Roy stated then these three no longer worked for the Town. Mr. Roy stated then there were three new people in the office and we thought they would come see us. Mr. Roy stated they didn't. Mr. Roy stated maybe they didn't because the Muddy Moose would have had a lawsuit.

Mr. Roy stated that lastly we were told that this was an interpretation. Mr. Roy stated that is when we decided to come to a meeting. Mr. Roy stated that we have done everything we were supposed to do. Mr. Roy stated that they think the information sent to them backs up everything they have been saying. Ms. Duane stated that the Planning Board believes roof top mechanicals include roof top ventilation units. Mr. Roy stated that "some sentiment" is just a comment. Mr. Roy stated that the information clearly separates mechanicals from ventilation. Ms. Duane stated that the silver duct on top of the roof is a mechanical. Mr. Roy stated that he doesn't have a problem with that statement. Mr. Roy stated that he dealt with Town staff.

Ms. Duane stated if you had vents that were going to go out the back of the building, we would have been satisfied with that because they could not have been seen from the road. Ms. Duane stated when it was changed to the roof someone should have said that they should have been covered. Ms. Duane stated that you stated that you did adhere to our rules and regulations. Mr. Roy stated that Michael Couture, Shawn Bergeron and Dawn Emerson didn't make anything about it. Mr. Irving stated that it the applicant should

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be asked if he has any new information and then ask the Board members to make a ruling. Ms. Sand asked if they are connected to vents and other mechanicals. Mr. Roy answered in the affirmative. Ms. Sand stated that they are a part of them. Mr. Roy answered in the negative.

Ms. Sand stated because they are connected it is a part of the device. Ms. Sand stated that her concern is there have been changes in the field and have not made the changes on the plans. Ms. Sand asked what do the plans mean. Mr. Roy stated if we had gone out the back it would have been fine, but we put it up through the roof and now it is in our kitchen. Ms. Sand stated that we have to honor the previous Board's decision. Ms. Sand stated that these plans were changed. Ms. Sand stated that she could understand the position.

Ms. Duane stated that the issue on the table is the roof top mechanicals. Ms. Duane stated we should come to an agreement. Mr. Webster stated that there is some shared responsibility. Mr. Webster stated that not everyone is clean on this issue. Mr. Webster stated that the Fire Chief is an employee of the precinct and not the Town. Mr. Webster stated that we couldn't make a decision that will satisfy all of us. Mr. Webster stated that he thinks we understand the issue and we need to deal with this situation. Mr. Webster stated that Mr. Irving has helped get the house back in order. Mr. Webster stated that he would like to see this resolved this evening.

Ms. Sand suggested drafting a waiver for this particular guideline for this case so it won't come back. Ms. Sand stated that it would be on record. Ms. Sand stated that after the fact it is hard to do and in an attractive manner. Mr. Waterman stated that there are two sides to every story and he would like to find out from Mr. Bergeron and Ms. Emerson if this is what went down. Mr. Waterman stated that he would like to get to the bottom of it. Mr. Roy stated that they are all for that. Mr. Bergmann stated that he agrees with Mr. Waterman. Mr. Webster stated that what ever we decide to do it should not be considered grand fathered if it comes back. Mr. Lebonville stated that they would agree with that.

Mr. Frank asked if there is a specific definition of a rooftop mechanical. Mr. Webster stated that it is something that will have to be addressed. Mr. Roy stated if the Board told them if there were any changes you will need to come back, this wouldn't have happened. **Mr. Briggs made a motion, seconded by Mr. Webster, to table this issue until the issues brought up by Mr. Waterman are clarified.** Mr. Webster stated that we should solicit information from Mr. Bergeron and Ms. Emerson. Mr. Webster asked when does the certificate of occupancy expire. Mr. Roy answered that he was not sure. Mr. Webster stated that we do not want it to expire. Mr. Bergmann stated in the Town of Conway there is no such thing as a temporary certificate of occupancy. Mr. Roy asked if they do have a certificate of occupancy. Ms. Duane answered in the affirmative. **Motion unanimously carried.**

Mr. Irving stated that compliance issues go to the Board of Selectmen. Mr. Irving stated that we assemble the information and then it goes to the regulatory board, i.e. the Board of Selectmen. Mr. Webster stated that we are working together on this. Mr. Bergmann stated there are other issues that need to be addressed. Mr. Lebonville stated they are addressing them now as it is spring. Mr. Lebonville stated that they want a building that looks just as nice as the Railroad Building.

Steve Morrill/Zoning proposal (1999 Tax Map 260, Parcel 58/Old Tax Map 8, Parcel 22): Steve Morrill appeared before the Board. Ms. Duane stated that Mr. Morrill submitted information to the Board. Mr. Morrill apologized for errors in the proposed changes hearings. Mr. Morrill stated that he would like to put 2,000 feet into commercial and put the rest into a conservation easement. Ms. Duane asked if the total acreage is 650. Mr. Morrill answered in the affirmative. Ms. Duane asked how much is he proposing to be turned to commercial. Mr. Morrill answered approximately 186 acres, but there is only about 50 buildable acres minus the bypass taking.

Mr. Bergmann stated that the first item addressed in his letter is to make amendments to minutes from 1994. Mr. Irving stated that we can incorporate his comments into tonight's minutes, but you cannot amend the Minutes from 1994. Mr. Morrill stated that there was a two, 12-acre subdivision on Conway Lake. Mr. Morrill stated that it was a lot line adjustment and the other was an existing building which would be a subdivision. Mr. Morrill stated that the minutes state that he promised to put the rest of the land

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in the legacy program. Mr. Morrill stated that we have people who were at the meeting stating that that was not part of the deal and it couldn't be done anyway.

Mr. Bergmann stated that we cannot change the minutes and we cannot change the vote of the Town. Ms. Duane stated that Mr. Morrill wants to start the process over again. Ms. Duane stated that the item of discussion this evening is the 180 acres. Ms. Duane stated that Mr. Morrill would like it to be sent back to a town vote. Mr. Irving stated when it comes to rezoning the Board should deal with that as its own separate issue. Mr. Irving stated that he doesn't think we want to get involved in contract zoning and it should be dealt with on its own merits. Mr. Briggs stated that the Master Plan laid out areas that would be commercial. Mr. Briggs stated that he thinks we have an abundance of commercial land and we don't need anymore.

Mr. Waterman asked how much frontage is there on Route 16. Mr. Morrill stated that it is approximately 3,000 feet. Mr. Morrill stated that the land is at the end of the commercial zone at Ceramco to an area around the Route 302/113 intersection. Mr. Morrill stated that it would have three accesses down from five. Mr. Bergmann asked if only 50 acres are buildable why rezone 186 acres. Mr. Morrill stated that there are wetlands, good land and buffers. Mr. Morrill stated that this could be an incredible thing to the Town with a lot preserved forever. Mr. Morrill stated that this is residential land. Mr. Morrill stated that he is being forced to do something with this land or lose the whole thing through eminent domain.

Ms. Sand stated that the buffer zone around the bypass is to preserve it in a natural state and that is going to effect a part of this. Ms. Sand stated that she is concerned with adding more commercial land at this time when it looks like we have enough. Ms. Sand stated with the study of the master plan we may determine a need and then decide where, but she doesn't think we have enough information to go that next step. Ms. Sand stated that this is a request to get the Board's support before the master plan is complete. Ms. Sand stated we have to look at this to see if it is a benefit to the Town. Ms. Sand stated that that is the issue for us. Mr. Morrill stated that the remaining 400 acres shouldn't be discussed. Ms. Sand agreed.

Ms. Duane polled the Board to see if they supported changing the zone to commercial. It was unanimous that the Board did not support changing the zone. Mr. Webster stated that we need to review the whole procedure and we need to go through the master plan process.

Bylaws: Ms. Sand stated that we have been putting the procedures on hold since the first meeting and they should be addressed. Ms. Sand asked for the Board to discuss these changes this evening. After a brief discussion, Mr. Bergmann made a motion, seconded by Mr. Webster, to table the bylaw discussion until the next meeting. Motion carried with Ms. Duane and Ms. Sand voting in the negative and Mr. Waterman and Mr. Briggs abstaining from voting.

North Conway Retirement Village (former Drive-In Theater)/Site Visit (1999 Tax Map 246, Parcel 23/Old Tax Map 60, Parcel 2): The Board set up a site visit for 4:00 p.m. on Thursday, May 25, 2000.

Precincts/Site Plan Review: Mr. Irving asked if it is the policy of the Board for precincts not to enforce site plan review regulations in lieu of a conceptual review or is this an item that should be looked into. The Board agreed that this is something that should be reviewed.

Changes in the field: Mr. Irving asked if it is the position of the Board that looking at elevation drawings is to determine if it is in the character of the ordinance or because every window is there, etc. Mr. Irving stated that we will always have modifications and the Board will have to decide so staff will know how to interpret. Mr. Irving stated if a change is substantial then a review would be required. Mr. Irving stated that his suggestion is the reason to look at the elevations is to make sure the building design keeps with the intent of the ordinance. Mr. Irving stated if there is a change that takes them out of compliance than that is not acceptable. Mr. Irving stated that a window removed here or there that does not change the character does not subject it to site plan review.

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Ms. Sand stated that the changed plans for Comfort Inn had a date before the plans were signed. Ms. Sand stated that there should be some staff discretion. Mr. Irving stated that we need to know limits and asked the Board to give it some thought. Mr. Irving stated that he would put together a draft.

Certificate of Occupancies: Mr. Bergmann stated that we should consider doing something with Article 123-37, if we are going to issue temporary certificate of occupancies. Ms. Sand stated that he should fill out an ordinance deficiency form.

Meeting adjourned at 9:06 p.m.

Respectfully Submitted,

Holly L. Meserve
Recording Secretary