

CONWAY PLANNING BOARD

MINUTES

SEPTEMBER 3, 1998

A meeting of the Conway Planning Board was held on Thursday, September 3, 1998, beginning at 7:01 p.m. at the Conway Town Office. Those present were: Chairman, Catherine Woodall; Selectmen's Representative, Jac Cuddy; Vice Chairman, Charlene Browne; David Fitch; Sheila Duane; John Waterman; Town Planner, Dawn Emerson; and Recording Secretary, Holly Meserve.

APPOINT ALTERNATE MEMBER AS A VOTING MEMBER

Ms. Woodall appointed Mr. Waterman as a voting member for this evening.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Fitch made a motion, seconded by Mr. Cuddy, to approve the Minutes of August 6, 1998, as written. Motion unanimously carried.

Mr. Cuddy made a motion, seconded by Mr. Fitch, to approve the Minutes of August 20, 1998, as written. Motion unanimously carried.

**ROBERT BOLLINGER - REVOCATION OF SUBDIVISION (MAP 15, PARCEL 20A)
FILE #S96-07**

Ms. Emerson stated that this was improperly noticed and cannot be discussed this evening.

**TOM & C REALTY, INC. - CONCURRENT SUBDIVISION AND SITE PLAN CONTINUED
(MAP 12, PARCEL 33C) FILE #FR98-10 & #S98-16**

David Douglass of Thaddeus Thorne Surveys; Tom and Curt Burke, applicants; and Thomas Dewhurst, Attorney for the applicant, appeared before the Board. Ms. Emerson stated that this application was accepted on August 20, 1998. Ms. Emerson stated that the drainage is approved; the New Hampshire Department of Transportation Driveway Permit was amended; and the greenspace has been met and exceeded. Ms. Emerson stated that the Board conducted a site walk on Tuesday, August 25, 1998. Ms. Emerson stated that the easement needs to be discussed.

Ms. Woodall stated that there has to be an agreement with the Town in regards to the easement because the Town has an interest in the easement. Ms. Emerson agreed and stated that Roger Drew also has an interest in the easement. Mr. Douglass stated that the Town does not have a deeded easement, but if the Town has an interest then we will need to clear it up. Mr. Douglass stated that the Town would have to construct a road in the floodplain to gain access to the Town property.

Atty. Dewhurst tried to explain the easement, but Ms. Woodall asked if he was representing the applicant. Atty. Dewhurst answered in the affirmative. Ms. Woodall stated that she would rather not have Atty. Dewhurst speak as the Board needs to be noticed seven (7) days in advance in writing so the Planning Board can decide if Town Council should be present. Ms. Emerson stated that up to this afternoon the Town did have an interest in the easement. Ms. Emerson stated that the applicant has requested a waiver in regards to the location of the easement.

Atty. Dewhurst stated that he has some information that could be important if the Board would allow him to address the situation. Ms. Woodall stated that Atty. Dewhurst could proceed, but then the Board will decide if they want to continue this application. Atty. Dewhurst stated the wording is such on the deeds that he is not sure if the Town has legal interest in the right-of-way. Atty. Dewhurst stated that if the Town

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does have legal interest then the applicant will incorporate with the Town and Roger Drew. Atty. Dewhurst stated that he has given everything he has to Ms. Emerson.

Ms. Woodall stated that the Board will go forward to determine the location. Ms. Woodall stated that if any legal questions arise, the Board will have to refer to Peter Hastings. Ms. Woodall asked for public comment; there was none. Ms. Woodall stated that the Town's ordinance requires the road to be fifty (50) feet back and it is only twenty-five (25) feet. Roger Drew asked where the road is located. Mr. Douglass explained the road location and stated that the Board is taking issue on its location. Ms. Woodall stated that the road is suppose to be fifty (50) feet back and it is only twenty-five (25) feet back. Ms. Woodall stated that the setback was increased to accommodate future growth.

Ms. Woodall stated that when the road is widened or when it comes to snow plowing it will be a problem. Ms. Woodall stated that there is not a hardship involved as it is a flat lot. Ms. Woodall stated that there is no reason why it cannot comply with the ordinance. Ms. Woodall stated that the width has to be looked at for future development of the back lot. Mr. Douglass stated that back land is the Town landfill and Roger Drew's land which is in the floodplain. Mr. Douglass stated that it is a 27% to 42% slope which would be a hardship to construct a road. Mr. Douglass stated that the road is only going to be used for farm purposes.

Ms. Browne stated that the major issue with the setback is that that is the rule and for the expansion of the road. Ms. Browne stated that rules were set up for long term and not for short term. Ms. Browne stated that if you bring the road back to the fifty (50) foot setback your dealing with the same grade. Mr. Douglass stated that you will increase grade if you move the road to the south. Ms. Browne stated that the rules are the rules. Ms. Woodall stated that she spoke to Atty. Hastings and he stated that when an applicant walks in they walk in to the current site plan regulations. Mr. Cuddy stated that the only concern was the drainage problems and they have been addressed. Mr. Cuddy stated that there is a potential drainage problem with the easement size, but he does not have a problem with the easement.

Mr. Douglass stated that there is a large ditch adjacent to the road. Mr. Fitch asked Mr. Drew if he was okay with the proposed location of the road. Mr. Drew stated that he did not have a problem with the location of the road. Mr. Fitch asked if there would be a bigger problem with a higher grade. Mr. Drew stated that the less steep it is the better. Ms. Browne asked if the road is moved back twenty-five (25) feet is there going to be a big difference. Mr. Drew stated that it would have to be stumped. Ms. Woodall stated that the setback was increased for long term planning for the widening of East Conway Road. Ms. Woodall stated you would have to come back to the Planning Board if the widening of East Conway Road effected the right-of-way. Mr. Drew stated that he does not want to come back.

Ms. Browne asked if the contours are that different if the road is moved back. Mr. Drew asked if she meant moving the right-of-way away from the road. Ms. Browne stated moving the right-of-way out of the setback. Tom Burke stated that they did not do the work on the road. Tom Burke stated that the widening of East Conway Road is a future issue for the State and should not be used against us. Ms. Woodall stated that the reason for the setback was for potential development. Mr. Douglass stated that he does not think there is any plan. Mr. Cuddy stated that things get voted on for a reason, but things change and it lies within the common sense of who was elected. Mr. Cuddy stated that everything is a guideline.

Mr. Cuddy stated that there is nothing in writing that the East Conway Road is going to be widened. Mr. Cuddy made a motion, seconded by Ms. Duane, to approve the waiver request for Article 123-30.A(2) & (4) of the Site Plan Review Regulations. Ms. Woodall stated that Mr. Cuddy was out of order. Ms. Browne stated that the problem has been that there is no long term planning. Ms. Woodall stated that the justification for the setback is for long term planning and when the road is widened it won't be up to someone's front door. Ms. Woodall stated that the driveway is now in the setback and there is no hardship to move the road back. Ms. Emerson stated that the setback is created for greenspace and thinks the Board is going overboard speculating what the State is going to do. Ms. Emerson stated that the applicant has justification for the waiver. Ms. Woodall stated that the reason for the 50% was for greenspace, but also for expansion. Ms. Woodall stated the Board looked at long term planning.

Mr. Drew stated that if the road is suppose to be fifty (50) feet back, he doesn't want a problem in the future. Tom Burke stated that if the State takes the right-of-way then they would build Mr. Drew another road. Tom Burke stated that when the road was begun to be constructed the setback was twenty-five (25) feet. Tom Burke stated that Mr. Drew has a recorded right-of-way and we cannot take that away from him. Mr. Drew stated that he does not want to create hard feelings, but he wants to make sure he is all set. Mr. Fitch asked if the original setback was twenty-five (25) feet. Ms. Woodall answered in the affirmative and stated before it was changed. Mr. Fitch asked when it was changed. Ms. Woodall answered last year. Mr. Drew asked if it was changed before Mr. Forde sold the property. Ms. Browne stated that the applicant is before the Board now.

Ms. Woodall stated that an excavation permit does not have anything to do with this approval. Tom Burke stated that Atty. Hastings had dealings with this with Mr. Forde and would prefer the Town refer to a different Attorney. Ms. Woodall stated that Atty. Hastings would have to decide that. Ms. Woodall read the waiver request for Article 123-30.A(2) & (4). Mr. Waterman stated that he is in favor of granting the waiver provided that Mr. Drew is going to be protected down the road. Mr. Cuddy stated that the applicant is asking for an easement that three (3) years ago would not have been a problem. Mr. Cuddy stated that the law changed because the Planning Board decided for long term planning. Ms. Browne stated that the increase was for if the State decides to widen the road.

Mr. Fitch stated that the Town does not responsibility for the right-of-way as it would be a civil matter. Mr. Fitch asked if the Planning Board can approve this plan without a waiver request. Ms. Woodall answered in the negative. Ms. Woodall read the requirements to grant a waiver under Article 123-41 of the Site Plan Review Regulations. Ms. Woodall asked for public comment; there was none. Mr. Cuddy made a motion, seconded by Ms. Duane, to approve the waiver request for Article 123-30.A(2) & (4) of the Site Plan Review Regulations. Motion carried with Ms. Woodall and Ms. Browne voting in the negative.

Ms. Emerson stated that there is a question on whether the Town has interest in the right-of-way. Ms. Emerson stated that the applicant could receive a conditional approval based on a performance guarantee for 50% for all site improvements; an easement agreement with the Town of Conway; and rescinding the excavation permit. Mr. Douglass stated that he would like to see a clarification on the Town right-of-way. Ms. Emerson asked if there are any other concerns. Mr. Fitch stated that he does not see a conditional approval being granted this evening. Mr. Fitch made a motion, seconded by Ms. Browne, to continue the application for Tom & C Realty, Inc., until September 17, 1998. Motion unanimously carried.

Mr. Cuddy asked if there was anything else on this plan that were concerns of the Planning Board other than the conditions set forth. Ms. Woodall stated that the application has been continued and will have to be discussed at the September 17, 1998 meeting.

GAIL MOSMAN - MINOR SITE PLAN REVIEW CONTINUED (MAP 48, PARCEL 4) FILE #MR98-06

Gail Mosman appeared before the Board. Ms. Emerson stated that the applicant has received a N.H. Department of Transportation driveway permit; and Conway Village Fire District approval. The Board reviewed pictures of the site. Ms. Mosman stated that she may not construct the additional parking. Ms. Woodall asked for public comment; there was none. Mr. Fitch made a motion, seconded by Mr. Cuddy, to approve the Minor Site Plan Review for Gail Mosman. Motion unanimously carried.

OTHER BUSINESS

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Conway Village Fire District - Maintenance Garage - Conceptual Review: Thomas Steele, Superintendent; and Lianne Boelzner, of the Conway Village Fire District appeared before the Board. The Board approved the proposed plan.

Hales Highland Estates (Map 11, Parcel 17) File #88-05 - Request for Revocation: Jim Kelly stated that the Association met with the Board of Selectmen and they suggested that we meet with the Planning Board to rescind approvals for Phase II, III, and IV. Mr. Kelly stated that the roads, the water system and the septic system have never been completed. Mr. Kelly stated that this was approved in 1988 and it is still not completed.

Mr. Cuddy stated that they came before the Board of Selectmen and Atty. Peter Hastings attended. Mr. Cuddy stated that they discussed different avenues for these people to move on. Mr. Cuddy stated that if the plan of 86 lots was revoked and because of the amount of lots in Phase I then only one road would be required and Heather Hill Road could be abandoned. Mr. Cuddy stated that the recommendation from Atty. Peter Hastings was to come before the Planning Board and discuss possibility of revoking the subdivision to the current build out and ask for a betterment to complete the road.

Ms. Woodall asked how many lots are in Phase I. Mr. Kelly answered that there are thirty (30) lots. Mr. Kelly stated that only twelve (12) lots are built on, but twenty-eight (28) lots are sold. Mr. Kelly stated that the State is not allowing any more hook-ups to the water until it is brought up to meet the demand of thirty (30) homes. Mr. Kelly stated that he would like the Board to revoke all Phases except Phase I. Mr. Kelly stated that the Association has met with the State and the State is receptive to the fact. Mr. Kelly stated that there is a grant program to finish the water system.

Ms. Woodall asked if wells can be drilled on the individual lots. Mr. Kelly answered in the negative and stated that the Town granted a waiver for undersized lots because they were providing water and sewer. Mr. Kelly stated that the water and sewer system was supposed to be deeded over to the Association, but the Association will not except it because they are not complete. Mr. Kelly stated that the Association cannot receive the grant until we take possession of the water system. Mr. Kelly stated that if it is consolidated to Phase I, the Association would have a better chance to present a betterment to the Town.

Ms. Browne asked if there was any surety. Mr. Cuddy stated that the bank folded. Mr. Cuddy stated that if the subdivision was revoked other than Phase I, then they would only need one (1) entrance which would allow one entrance to be abandoned. Ms. Emerson stated that the Association would like to see Phases II, III, and IV revoked under RSA 676:4-A which permits the Planning Board to revoke five different criterias. Ms. Emerson stated that if the board votes to revoke, the Town will send notices to abutters and the developer. Ms. Emerson stated that we would then have to wait thirty (30) days if no one asks for a public hearing then the approval would be revoked.

Mr. Simeone stated that the developer is the same involved with the Robert Bollinger Subdivision (Map 15, Parcel 20). Mr. Fitch stated that he would like to see something from Atty. Hastings that this is the way to proceed. Mr. Cuddy stated that Atty. Hastings is not going to put something in writing. Mr. Cuddy stated that the homeowners came to the Town for guidance. Mr. Cuddy made a motion, seconded by Ms. Browne, to revoke the 1988 Subdivision for Hales Highlands for Phases II, III, and IV dated December 15, 1988. Motion unanimously carried.

Meeting adjourned at 9:30 p.m.

Respectfully Submitted,

Holly L. Meserve, Recording Secretary