

CONWAY PLANNING BOARD

MINUTES

SEPTEMBER 17, 1998

A meeting of the Conway Planning Board was held on Thursday, September 17, 1998, beginning at 7:02 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chairman, Catherine Woodall; Selectmen's Representative, Jac Cuddy; Vice Chairman, Charlene Browne; David Fitch; Robert deFeyter; Arthur Bergmann; Sheila Duane; Robert Barriault; John Waterman; Town Planner, Dawn Emerson; Town Council, Peter Hastings and Peter Malia; and Recording Secretary, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Browne made a motion, seconded by Ms. Duane, to table the Minutes of September 3, 1998. Motion unanimously carried.

THADDEUS THORNE & KINGDON GOULD, JR./HABITAT FOR HUMANITY - 12-LOT SUBDIVISION (MAP 7, PARCEL 37) FILE #S98-17

Edgar Allen of Thaddeus Thorne Surveys appeared before the Board. Mr. deFeyter stated that there were eight (8) items on Tuesday, September 15, 1998, that were still not completed. Ms. Emerson stated that those were technical issues that the Board does not review and they have since been submitted. Ms. Emerson stated that this is a complete application. Ms. Browne stated that the Board should review the items to make sure it is a complete application. Ms. Woodall asked if the Town Engineer, Paul DegliAngeli, reviewed the plans. Ms. Emerson answered in the affirmative.

Ms. Woodall stated that she has a question regarding zoning and whether the applicant has to go before the Zoning Board of Adjustment (ZBA). Ms. Woodall stated that there is not enough frontage nor can this road be accepted as a Town Road. Ms. Woodall referred to the section of Street Acceptance under the Subdivision Regulations, Chapter 131. Ms. Emerson stated that roads are suppose to be constructed to Town specifications and cannot be accept by the Town except at Town meeting. Ms. Emerson stated that this will benefit the Town because it provides a turn around for the snow plow and emergency vehicles.

Ms. Woodall stated that it is still a ZBA issue. Ms. Emerson stated that she would disagree. Ms. Woodall referred to Chapter 131-68.E of the Subdivision Regulations. Mr. Bergmann asked what it the purpose of having a cul-de-sac on private land. Atty. Hastings asked if it will be constructed to Town specifications. Mr. Allen answered in the affirmative and stated that it has been approved by Mr. DegliAngeli. Ms. Emerson stated that it does not have to become a Town road; it can remain private. Ms. Woodall asked if it has to meet the criteria's to become a Town road. Mr. Cuddy stated that it does not meet the build out. Atty. Hastings stated that that is a part of Street Acceptance [Chapter 131]. Atty. Hastings stated that the Town can still vote to accept the road.

Ms. Woodall asked if the applicant can make an extension to Butternut Lane. Atty. Hastings stated that usually the Town would prefer a cul-de-sac at the end of a dead end road. Ms. Woodall asked if this would have to go before the ZBA. Atty. Hastings answered in the negative and stated that the applicant is not asking the Planning Board to accept it as a Town Road. Atty. Hastings stated that the applicant just has to meet the criteria and construct it to Town specifications. Atty. Hastings stated that you would consider the whole road and the Town always has authority to accept a road. Atty. Hastings stated that the applicant would have to bond and construct the road to Town specifications.

Mr. Cuddy stated that there have been times when Mr. DegliAngeli has come to the Board of Selectmen (BOS) and made a recommendation for plowing which may benefit the Town, but it does not mean that a private road is going to be accepted as a Town road. Mr. Bergmann stated that the cul-de-sac was added because the applicant did not meet the road frontage. Mr. Allen stated that the applicant created a cul-de-

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sac to meet the frontage requirements, but also for a turn around for the Town. Mr. Bergmann asked if the applicant would meet the frontage requirement without the cul-de-sac. Mr. Allen answered in the negative. Mr. Bergmann asked if this is a Planning Board issue or a ZBA issue. Atty. Hastings stated that if the Planning Board approves the cul-de-sac the Board is approving the design.

Ms. Emerson stated that the application is complete. Ms. Browne stated that she thought Mr. DegliAngeli was suppose to review the plans and sign off on them before the application even gets to the Planning Board. Ms. Duane made a motion, seconded by Mr. Fitch, to accept the application of Thaddeus Thorne and Kingdon Gould, Jr./ Habitat for Humanity for subdivision review. Motion defeated with Ms. Woodall; Ms. Browne; Mr. deFeyter; and Mr. Bergmann voting in the negative. Mr. Fitch made a motion, seconded by Mr. deFeyter, to continue the application for Thaddeus Thorne and Kingdon Gould, Jr./Habitat for Humanity until October 1, 1998. Motion unanimously carried.

**ALTERNATIVE AUTO BROKERS - MINOR SITE PLAN REVIEW (MAP 61, PARCEL 30-1)
FILE #MR98-07**

David Couture and Robert Gillis, applicants, appeared before the Board. Mr. Gillis stated that they would like to move to office out of the car wash building and into the caboose. Ms. Woodall asked the size of the caboose. Mr. Gillis answered the caboose is 9'x30'. Mr. deFeyter asked if car sales were apart of the original approval of the car wash. Ms. Emerson stated that there was a question of when a zoning permit was granted to sell cars. Ms. Emerson stated that it never came before the Planning Board for a change-of-use. Ms. Emerson stated that the applicants feel the car sales are a continuation of an existing use.

Mr. Bergmann asked who owns the car wash. Mr. Gillis answered that he does. Mr. Bergmann asked who owns the car lot. Mr. Gillis answered that he does. Mr. Bergmann stated that he wants the record to show that the caboose is already there. Mr. Gillis stated that Mr. Bergmann has a conflict of interest as he works at the abutting Irving Gas Station. Mr. Bergmann stated that he is an employee of Irving, but he has not discussed this application with his employer. Mr. Bergmann stated that the caboose was moved without permission. Mr. Couture stated that they were given permission to move. Mr. Bergmann asked who gave them permission to move the caboose. Mr. Couture answered Ms. Emerson. Mr. Bergmann asked Ms. Emerson if that is true. Ms. Emerson stated that she knew the applicant was applying for site plan review. Mr. Couture stated that if they did not move the caboose they would have lost it.

Ms. Emerson stated that it is a minor review for the caboose and after the application was notified there were questions about the car sales. Ms. Emerson stated that there are no permits to sell cars. Mr. Cuddy stated that the Town has been aware of this situation as it was brought to the Board of Selectmen and Jim Somerville gave it to Shawn Bergeron in 1995. Ms. Emerson stated that there is not a question of whether they have to be here or not, but whether it is a minor or a major review. Ms. Woodall stated that in light of the letters and concerns it should be a major review. Ms. Woodall asked how the Town taxes property that is not a building. Ms. Emerson stated that taxes are not in this Board's purview. Mr. deFeyter made a motion, seconded by Ms. Duane, for require a full site plan review. Motion carried with Mr. Fitch voting in the negative and Mr. Cuddy abstaining. Mr. Bergmann made a motion, seconded by Mr. deFeyter, to deny the application for a minor site plan review for Alternative Auto Brokers. Motion carried with Mr. Fitch voting in the negative.

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

Tom Burke, applicant; Edgar Allen, Thaddeus Thorne Surveys; Thomas Dewhurst, Attorney for applicant; and Peter Hastings, Town Council, appeared before the Board. Atty. Hastings stated that the BOS can alter the location of the right-of-way without Town vote. Ms. Woodall asked if Roger Drew would have to approve the location of the right-of-way. Atty. Hastings stated that usually if you have to move a right-of-way it can be moved to a reasonable location, but usually they will ask the person who has the right-of-way if they agree with the location. Atty. Hastings stated that the location has to be the same or better.

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Mr. Bergmann asked who maintains the right-of-way. Atty. Hastings answered the person who uses it. Atty. Hastings stated that the owner has to construct the road in a same or better location than the existing road. Ms. Browne stated that the road is proposed in a steep area and since it has not been constructed it can be moved. Ms. Emerson stated that this is a driveway and the Board agreed on the location with the granting of a waiver. Mr. Drew stated that he agreed to move the location, but he does not agree that he has to maintain the new location. Mr. Drew stated that he has been operating this site for eighteen (18) years and asked if he has to approve the location.

Atty. Dewhurst stated that he did not think Mr. Drew objected to the new entrance, but now the Board is discussing the entire location of the road. Mr. deFeyer asked if the owners of the property can move the right-of-way. Atty. Hastings stated that it has to be something equal to what he had before. Mr. deFeyer asked if the Town has any interest to what happens to the run-off. Atty. Hastings answered in the affirmative. Atty. Hastings stated that it is an issue with the owner of the right-of-way to come to an agreement on the location. Atty. Hastings stated that the applicant and the owners of the right-of-way need to decide what they want to do. Mr. deFeyer stated that there is nothing else that can be done until they come to an agreement.

Mr. Cuddy stated that according to the State driveway permit, Mr. Drew no longer has access and needs to find a new access. Atty. Hastings stated that the State does not have the authority to close the right-of-way without making sure he has another access. Mr. Cuddy stated that the State is recommending that they close the old curb cut. Atty. Hastings stated that if the Burke's arbitrarily move the right-of-way they risk the court saying that they did not go through the procedure correctly. Ms. Duane stated that she was under the assumption that when the Board reviewed and granted the waiver, Mr. Drew agreed to the new access location. Ms. Duane stated that she thought the State was requiring the old curb cut to be abandoned.

Ms. Woodall stated that Mr. Drew has not signed anything. Ms. Woodall asked if this is a road or a driveway. Atty. Hastings stated that it is an access. Ms. Woodall asked what if the back land is developed. Atty. Hastings stated that Mr. Drew does not have access for development rights at this time. Atty. Hastings stated that he does not have fifty (50) feet and he only has a field road. Ms. Woodall read the definition of a driveway. Atty. Hastings stated that this is a right-of-way and long proceeded any subdivisions. Atty. Hastings stated that you cannot take away the right-of-way because it does not meet the definition. Atty. Hastings stated that the Board cannot stop Mr. Drew from using this access and the Board cannot force the Burke's to accommodate.

Loren Billings of the Conway Daily Sun asked if Mr. Drew did not object to the waiver, has he lost his right to object the location. Atty. Hastings stated that you cannot take away his right. After a brief review of the items still needed, **Mr. Bergmann made a motion, seconded by Mr. Cuddy, to continue the application for Tom & C Realty, Inc., until October 1, 1998.** Mr. Cuddy stated that the Town and Mr. Drew have to agree that this location is equally the same or better. Mr. Cuddy stated that the Town will want to make sure that it meets Town specifications. Ms. Brown stated that Mr. Drew has to accept some sort of an agreement.

Mr. Barriault stated that he agrees with Mr. Cuddy and that the Board is going beyond their scope. Mr. Barriault stated that the two parties involved need to make an agreement which could be a condition of approval. Mr. Barriault stated that the Board has already granted the location now the design needs to be determined. **Motion was defeated with Ms. Duane, Mr. Cuddy, and Mr. Fitch voting in the negative and Ms. Browne abstaining.** Ms. Woodall asked if a right-of-way can be put in the setback. Atty. Hastings answered in the affirmative if a waiver is granted. Ms. Browne asked what if Mr. Drew does not agree. Atty. Hastings stated that it will be a civil issue.

Ms. Duane made a motion, seconded by Mr. Cuddy, to conditionally approve the application for Tom & Realty, Inc. conditionally upon the Town of Conway Board of Selectmen and Mr. Roger Drew releasing the original location of the ROW to the proposed location; Design of the newly located portion of the driveway approved by the Town Engineer and Mr. Roger Drew; a performance guarantee for 50% of all

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the site improvements; and this approval is good for sixty (60) days. Motion carried with Ms. Woodall and Mr. Bergmann voting in the negative and Ms. Browne abstaining.

OTHER BUSINESS

Conway Village Post Office: Chris Madden appeared before the Board to discuss possible locations for the new Post Office.

Joe Berry/Eastern Slope Inn - Conceptual Review: Joe Berry appeared before the Board. The Board reviewed the proposed plan agreed with the concept.

State Line Store - Expansion of a Parking lot: Mark Bush and Allan Russell appeared before the Board. Ms. Emerson stated that they expanded their parking lot without Planning Board approval. Mr. Allen stated that they cleared an old field to make a seasonal parking lot for the canoe business. Ms. Woodall asked how many parking spaces. Mr. Bush answered fifty (50). Ms. Woodall asked if it was gravel. Mr. Bush answered in the affirmative.

Donald Drown, an abutter to land owned by Mr. Bush, but not to the store, stated that land the store is on is one (1) acre by deed. Mr. Drown stated that he paid a surveyor to survey the land the store is on and they placed iron pipes. Mr. Drown stated that he does not think the iron pipes remain and he thinks apart of the parking lot is on the residential lot. Mr. Bush disagreed. Ms. Emerson stated that she located the iron pipes. Mr. Drown asked if the parking lot was located within the iron pipes. Ms. Emerson answered in the affirmative. Mr. deFeyter asked the size of the parking lot. Mr. Russell answered 1,000 square feet. Mr. deFeyter stated that it would require a full site plan review.

Ms. Duane made a motion, seconded by Mr. Bergmann, to require Mr. Bush and the State Line Store come before the Board with a Full Site Plan Review for the expansion of the parking lot. Motion carried with Mr. Cuddy abstaining.

Meeting adjourned at 10:34 p.m.

Respectfully Submitted,

Holly L. Meserve
Recording Secretary