

CONWAY PLANNING BOARD

MINUTES

JANUARY 7, 1999

A meeting of the Conway Planning Board was held on Thursday, January 7, 1999, beginning at 7:03 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; Robert deFeyter; David Fitch; Sheila Duane; Arthur Bergmann; Town Planner, Dawn Emerson; and Recording Secretary, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Bergmann made a motion, seconded by Mr. deFeyter, to table the Minutes of November 18, 1998; November 19, 1998; December 3, 1998; and December 17, 1998 until the end of the meeting. Motion unanimously carried. Ms. Browne joined the meeting at this time.

PUBLIC HEARING - PETITIONED ARTICLE - ARTICLE 147-22.A

Ms. Duane made a motion, seconded by Mr. deFeyter, to take the Public Hearing on the petitioned article out of order. Motion unanimously carried. A public hearing was opened at 7:08 p.m. Thomas Dewhurst appeared before the Board. Mr. Dewhurst stated that the petitioned article is being submitted to clarify ambiguous language in the ordinance. Mr. Dewhurst stated that there is confusion on whether this area is in the Highway Commercial District. Mr. Dewhurst stated that he has rewritten the language to place the Santa Maria property in the Highway Commercial District.

Mr. Dewhurst submitted and reviewed a 1982 Map of the Town. Mr. Fitch asked if this is currently in court. Mr. Dewhurst answered in the affirmative. Mr. Fitch stated that it seems clear as it is written and why would the Board make the change. Mr. Dewhurst stated that it was not the intent of the Board when this was first drafted. Mr. Dewhurst stated that 2,300 feet from the intersection is not the Eastern Slope Campground. Mr. Dewhurst stated that in order to make it clear, we have referenced the Northern and Southerly property line.

Mr. deFeyter stated that this went to the Zoning Board of Adjustment and they determined that the language was clear. Mr. deFeyter stated that this is not really a clarification, but a change. Ms. Emerson stated that this is to be determined by the Court, but the Town says that the Santa Maria property is not in the Highway Commercial District. Ms. Emerson stated that the petition is asking to put the parcel in the District. Mr. Dewhurst stated that this petition article is supported by many abutters and towns people.

Ms. Woodall asked for public comment; Angelo Santa Maria stated that the property has been taxed by the Town as a commercial piece of property. Mr. Cuddy stated that we have property on Route 16 that is residential. Mr. Dewhurst stated that they have been taxed commercially since 1994. Ms. Emerson stated that this is not a tax issue, but a land use issue. Mr. Dewhurst stated that the uses around the property are commercial. Mr. deFeyter asked if the Town has an opinion from Town Counsel. Ms. Emerson stated that this is a separate issue and we don't ask Town Counsel for a legal interpretation.

Ms. Browne stated that she is not sure of the implications of changing the zone to commercial. Ms. Browne asked what is the Board's consideration for this. Ms. Woodall stated that the Board needs to vote to recommend or not recommend the proposed change to the ordinance. Ms. Browne asked what would be the implications of changing the zone. Mr. Dewhurst answered nothing. Ms. Duane stated that this would just render the property for commercial development. Mr. Dewhurst agreed. Mr. Cuddy stated that the Planning Board looks at the zoning of the Town; and five years ago we increased the commercial areas.

Robert Barriault stated that rectifying a problem in regards to a zoning issue is different from changing the boundaries of a commercial zone. Mr. Barriault stated that the Board needs to examine and decide if you wish to expand the commercial zone. Mr. Bergmann asked if this would just incorporate the Santa Maria

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property only. Mr. Dewhurst stated that it is not clear if the existing wording includes the Santa Maria property or not, but this clears it up. Mr. Dewhurst stated that the Town Planner determined that the Santa Maria property was not in the Highway Commercial District, and the Zoning Board of Adjustment agreed. Mr. deFeyter stated that the Zoning Board of Adjustment did struggle a while with their determination. Mr. deFeyter stated that the Planning Board does not want to set a precedent, but we do need to clarify the wording.

Mr. Dewhurst stated that we would just take this property, where there is a discrepancy, and include it in the Highway Commercial District. **Mr. Bergmann made a motion, seconded by Ms. Browne, to not recommend the Petitioned Article to change Article 147-22.A.** Mr. Cuddy stated that he would like to see the Planning Board review the entire commercial zone and bring to the Town for a vote and not do it through a petitioned article. Mr. Cuddy stated that he would recommend realigning the commercial zone and straightening it out. **Motion unanimously carried.** The public hearing was closed at 7:25 p.m.

PUBLIC HEARING - PROPOSED WETLANDS ORDINANCE

A public hearing was opened at 7:25 p.m. Glen Harbeck, Planning Consultant; Mark Kern, EPA; Richard Cook, Audubon Society; Conrad Briggs and Paul Pinkham, Conway Conservation Commission, were all in attendance. Ms. Woodall asked for public comment; Bayard Kennett asked if there was a list of types of vegetation. Mr. Kern stated that there is a list published by the State. Mr. Kennett asked if the list should be referenced. Mr. Kern stated that indirectly it is referenced under the Administrative Rules. Ms. Browne asked if it is referenced by the Soil Conservation. Mr. Kern answered in the negative. Mr. deFeyter stated that it is referred to by many organizations and not just particular to this. Mr. Kern agreed.

Mr. Briggs stated that several concerns were raised and addressed and agreed upon. Mr. Briggs stated that the Town now has a viable wetlands ordinance which is supported by the Conway Conservation Commission. James Hill, Sr. stated that if you were taking virgin timber uncut then these premises would hold true, but in the third and fourth cutting of vegetation it does not hold true. Mr. Hill, Sr. stated that even though these might be common rules and definitions, there insubstantial. Mr. Hill, Sr. stated that the definition should be modified so wetlands are determined by soils and not by vegetation.

Steve Morrill stated that adopting these ordinances is preliminary because of the 9A bypass. Mr. Harbeck stated that because the bypass was going to have a major environmental impact, the EPA was looking for the Town to take action to litigate the effects of the bypass. Mr. Morrill stated that the alignment of 9A is so poorly designed where it goes through so many wetlands that they would rather have everyone adhere to this ordinance to put the road in a stupid position. Mr. Kern stated that the EPA has a limited input on the location of the road. Mr. Morrill stated that if it is so important it would go to a State level and not a Town level.

Mr. deFeyter stated that if the bypass never happens, would this be a benefit to the Town. Mr. Harbeck answered in the affirmative and stated that it is a good plan. Mr. Kern answered in the affirmative. Mr. Briggs stated that this resembles the Shoreline Protection District which the Town passed and has been successful. Mr. Cook stated that a presence of a buffer will have an effect on the water quality. Mr. Cook stated that the actual edge of a wetland will be determined by Army Corp. of Engineers Wetland Delineation Manual.

Rich Schartner stated that this ordinance addresses agriculture a little, but he would personally rather see it stated in the purpose. Mr. Schartner stated that sometimes the intent is lost. Mr. Schartner stated that he believes that it is a mistake to classify all wetlands the same. Ms. Woodall stated that this ordinance pertains to wetlands five (5) acres or more. Mr. Schartner stated that we keep losing more and more of our rights. Mr. Schartner stated that there are a lot of wetlands or impressions in the earth with impervious soils that water sits in. Mr. Schartner stated that the Board should consider classifying wetlands to their importance. Mr. Schartner stated that the map is produced by the Audubon Society.

Mr. Cook stated that the map is not produced by the Audubon Society, but by the University of New Hampshire. Mr. Cook stated that it is all published information on the map. Mr. Cook stated that property

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should comply with the best management practices for agriculture, timber, and farm land. Mr. Kern stated that agriculture, timber and farm uses are allowed in the buffer zone. Mr. Schartner stated that it can still be removed from the ordinance. Mr. deFeyter stated that if a wetland over the years ceases to be a wetland, it will not be included. Mr. Kern stated that you cannot go the other way, if it is not a wetland now, but it becomes a wetland, it will not constitute as a wetland.

Nancy Simard stated that we need to be pro-active. Ms. Simard asked how this ordinance relates to the existing wetland district. Ms. Simard asked if this ordinance can be incorporated into the existing regulations. Mr. Harbeck stated that Article 147-13 applies to the wetland or the wetland ground. Mr. Harbeck stated that the proposed ordinance applies to the buffer area around the wetland. Mr. Harbeck stated that it is two different items that apply to two different areas. Mr. Kennett stated that he sent a memo to the Board before Christmas suggesting postponement of the vote because of the difference of opinions. Mr. Kennett stated that he will again request that tonight. Mr. Kennett stated that areas in both proposed ordinances, if defined further, would be more acceptable. Mr. Kennett stated that he does not see a pressing need to get these on the ballot for March, 1999. Mr. Kennett stated that there could be a special Town Meeting in the spring dealing only with these two ordinances.

Mr. Kennett stated that it is unfortunate that the Board of Selectmen's participation was not greater and this will let them deal with it a little longer. Mr. Kennett asked the Board to listen to the comments, but consider more time to allow these issues to be resolved. Ms. Browne thanked Mr. Kennett for the suggestion, but stated that this has been going on for over a year. Mr. Bergmann asked where Mr. Kennett has been over the last year when they've been discussing this issue. Mr. Kennett asked how long the written document has been available. Mr. Bergmann stated that they've worked over a year to get to this document and the current written document has been available for approximately three (3) weeks. Mr. Kennett stated that he does not think it has been a very long period of time to deal with the particulars.

Ms. Woodall stated that the first draft was available in the middle of September, 1998. Ms. Woodall stated that the Board has listened to the public and revised the ordinance according to some suggestions. Ms. Woodall stated that this is not a quick turn around and not hastily done. Ms. Woodall stated that lot of thought and time has gone into this. Mr. Barriault stated that as far as the overlay district, the specifics are virtually unchanged from the recommendations from the joint meeting with the Planning Board and the Board of Selectmen back in November of 1997. Mr. Barriault stated that he personally feels, other than some minor changes that doesn't effect the ordinance, this has been in place for some nine (9) months. Mr. Barriault stated that it is unfortunate that some of those issues have come up during the eleventh hour. Mr. Barriault stated that we had a workshop on this early in the year which members of the Board of Selectmen and the Town Manager attended and reviewed the ordinance.

Mr. Barriault stated that we reviewed the time line when activities had to be completed and both times the wetland and overlay district needed to be ready for March, 1999. Mr. Barriault stated that the NHDOT has identified where the road is going to be. Mr. Barriault stated that if we are going to meet intent to provide protection from the roadway it is imperative to get these in place. Mr. Morrill stated that he hopes the voters will reject the ordinance, therefore, sending a message to the State of New Hampshire in regard to the 9A bypass.

James Hill, Jr. asked if the Town received a copy of the Army Corp. of Engineers manual. Ms. Emerson answered in the affirmative. Mr. Hill, Jr. asked how many pages is the manual. Mr. Cook answered approximately 100 pages. Mr. Hill, Jr. asked if it addresses single family homes. Mr. Kern answered in the negative and stated that it exempts existing home lots. Mr. deFeyter stated that there is an exemption for existing structures and existing structures can be added onto as long as it is not making it less non-conforming. Mr. Hill stated that in order to find out how far a home is from a wetland you have to refer to the Army Corp. of Engineers manual. Ms. Woodall disagreed and stated that this only covers wetlands five (5) acres or greater. Mr. Hill stated that if you have a puddle attached to a stream then it is considered a wetland. Mr. Kern disagreed.

Douglas Swett stated that this is going to drastically cut down of the use of farmland. Mr. Cook stated that the ordinance as written gives exemption to farmland. Mr. Cook stated that there is a ten (10) foot buffer

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from waters or enough area to turn around equipment. Mr. Swett stated that the fertilizer company has cut down on what you can use. Ms. Woodall closed the public hearing to public comment at 8:15 p.m. Mr. Cuddy stated that he is voting representing the Board of Selectmen and not personally. Mr. deFeyter stated that we all recognize this is not a perfect ordinance, but this is a good place to start. Ms. Duane stated that this is a good place to start, but the Board should look at expanding it and look at a special Town Meeting to make sure everyone's comfortable.

Ms. Browne stated that you can keep modifying this ordinance, but not everyone is going to agree. Ms. Browne stated that it is a good ordinance, and we have dealt with many issues. Ms. Browne stated that the Board should go forward with it. **Mr. Bergmann made a motion, seconded by Ms. Browne, to recommend and post the Wetland Overlay District to the warrant.** Mr. Cuddy stated that there have been a lot of good comments this evening and everyone here has been working closely with a community that is land sensitive. Mr. Cuddy stated that moving forward and not willing to have a special Town meeting does not allow the populous to go through an education process. Mr. Cuddy stated that if this does not pass then it is another whole year before it can be brought back to the voters.

Mr. Cuddy stated that there has to be an education period that has not been done. Mr. Cuddy stated that if this goes forward there is a good chance that it will not pass, but if you have a special Town meeting there is a better chance of passing. Ms. Browne stated that we have up to Town Meeting to educate the public. **Motion carried with Mr. Cuddy, Mr. Fitch and Ms. Duane voting in the negative.**

PUBLIC HEARING - SPECIAL HIGHWAY CORRIDOR DISTRICT

A public hearing was opened at 8:55 p.m. Ms. Woodall asked for public comment; Bayard Kennett stated that he has a couple of concerns and that he feels the same as the wetlands ordinance in regard to postponement. Mr. Kennett stated that he would like to propose the five hundred (500) foot buffer be reduced to two hundred (200) feet. Mr. Kennett stated that this will make the corridor seven hundred (700) feet wide. Mr. Kennett stated that he is speaking as the general manager of the Kennett Company and a lot of land is being effected by the 9A bypass. Mr. Kennett stated that it is an increased taking and by committing so much width it is an infringement on private land owners rights. Mr. Kennett stated that it should be purchased by either the Town or State.

Mr. Kennett referred to the wording on page 6, letter Q. Mr. Kennett stated that he understands that the Board is leery of big box developments, but the figure should be 15,000 square feet. Mr. Kennett stated that the wording added has made it more restrictive. Mr. Kennett stated that anything more than an average size footprint for a house is not allowed. Mr. Kennett stated that this is far too restrictive. Mr. Kennett referred to page 3, Article H.(1) and stated that this highway has not been platted and does have meets and bounds. Mr. Kennett asked how do you deal with a project that does not have meets and bounds. Mr. Kennett stated that this is implementing something that has merit, but being rushed so fast that we don't know where the bounds are.

Mr. deFeyter stated that we some what have a problem, but less than what you expect. Mr. deFeyter stated that we define the corridor from the plans that the NHDOT has developed. Mr. deFeyter stated that it is possible that when they construct the road that it might be a few feet off one way or the other, but it is locked in where there going to go. Mr. deFeyter stated that Mr. Kennett is correct, but it is detailed enough to work with it. Mr. deFeyter stated that if the ordinance is accepted by the voters and the bypass is built, there will be markers out there. Mr. deFeyter stated that at that point the Planning Board will have to revise the language.

Mr. Harbeck stated that he does feel comfortable in saying that the district as proposed is not a taking and not prohibiting the development of the property. Mr. Harbeck stated that the Town is citing provisions to develop. Mr. Harbeck stated that he is not a land use attorney, but he works with them all the time. Mr. Harbeck stated that when the NHDOT buys the right-of-way, then it is a taking, but they pay for it. Ms. Browne stated that 5,000 square feet does not restrict you from developing. Ms. Browne stated that it restricts the size per unit. Ms. Browne stated that several 5,000 s.f. structures can be placed on the property. Ms. Browne stated that when we went back to the original intent people were concerned about

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strip malls, but the idea was suppose to be a greenway. Ms. Browne stated that breaking up the structures will allow it to look something other than that.

Mr. deFeyter stated that it is his understanding that the footprint was 5,000 s.f. Ms. Emerson stated that she interprets the 5,000 s.f. as the total square footage inside the walls. Mr. Kennett stated that a fire wall that can separate does not constitute a separate building. Ms. Duane stated that the Board did not want someone to construct buildings inches apart in order to get a large building. Mr. Fitch suggested adding "per floor" or "per story". Mr. Harbeck stated that adding Mr. Fitch's suggestion could be treated as a typographical error. Mr. Barriault asked what was the objection with the original language. Ms. Woodall stated that she had a problem with the way a building was defined under the fire code. Ms. Duane stated that there was a way around it.

Ms. Woodall stated that the Board could amend it to Mr. Fitch's suggestion. The consensus of the Board agreed to add "per floor". Mr. Cuddy asked if that is still considered a typographical error. Ms. Woodall answered in the affirmative as it clarifies the intent. Mr. Harbeck stated that you need to use building footprint. Mr. deFeyter stated that the Board is not trying to change the intent, but to make it clear. Dot Seybold stated that there are a lot of vague terms in the document and she referred to some of those terms. Ms. Seybold stated that she does not think it is specific enough. Mr. Harbeck stated that the terms referred to all come under the General Purpose which are not intended to be specific. Ms. Seybold stated that she can assure Mr. Harbeck that it will be used to stop a project.

Mr. Kennett asked where a golf course would fall into this. Mr. deFeyter stated that we touched on driving ranges and they did not meet the intent and is not a permitted use. Mr. deFeyter stated that a golf course is a permitted use because you don't have extensive cutting. Mr. Harbeck stated that there are clear indications that a golf course is permitted because fairways and greens are not impervious surfaces. Mr. Harbeck stated that he doesn't think golf courses would fall in that category.

Ms. Woodall stated that the Board voted in the past that driving ranges were outside amusements which we don't allow. Ms. Woodall stated that golf courses are not the same. Mr. Kennett stated that a driving range is part of a golf course and asked where it falls into. Mr. Kennett stated that it is appropriate to look at paragraph T (page 6) and possibly add "or natural recreation development such as golf courses and ski trails". Ms. Emerson stated that she can interpret that golf courses are a part of this and to add the language would be just to clarify. Ms. Browne asked if that was a clarification. Mr. Cuddy stated that it there is already a natural buffer for Cranmore. Mr. Kennett stated that this type of natural development is part of the heritage of this valley, and not intended to be excluded.

Mr. Harbeck stated that golf courses would be considered "open space", and adding the language would only clarify it. Ms. Woodall polled the Board and asked if golf courses were already covered. Ms. Browne, Mr. deFeyter, Mr. Bergmann and Ms. Woodall agreed that golf courses were already covered. Mr. Cuddy, Mr. Fitch and Ms. Duane disagreed. Mr. Fitch stated that if it is already covered, then why not add the language. After a brief discussion, the wording "natural recreations amenities such as golf courses and outdoor trails." was suggested to be added at the end of paragraph T on page 6. Ms. Browne asked if this would change the intent. Ms. Emerson stated that she would interpret it that way and it is already there, your just clarifying the intent. Ms. Woodall polled the Board to see if the above suggested wording should be added. Ms. Woodall, Ms. Browne, Mr. deFeyter, Mr. Fitch, Ms. Duane and Mr. Cuddy agreed to add the wording. Mr. Bergmann disagreed to adding the wording.

Mr. Cuddy referred to page 3, item 3. Mr. Harbeck asked if there was any provisions that exempts "acts of god". Mr. deFeyter stated that when we approve a site plan there is a clause that states that you it must be replaced. Ms. Woodall stated that the intent was to keep a buffer area so it would not end up being cleared. Ms. Woodall stated that it was not the intent that if there was a natural disaster that they would have to be replaced. Loren Billings of the Conway Daily Sun asked if natural disasters would be covered under "undisturbed". Ms. Woodall stated that it is suppose to look like a natural buffer. Mr. Harbeck stated that for a site plan it is a different situation. Ms. Emerson stated that "natural, undisturbed" should cover acts of god. Ms. Woodall agreed that it is a natural state. Mr. Hill, Sr. stated that he agrees with Mr. Kennett in regard to the 500 feet being an issue and a taking.

Mr. deFeyter stated that when the bypass goes through it will have a positive impact on the value of the land along the bypass. Mr. deFeyter stated that there is something of a trade off and in the long run there will be an economical benefit for the landowner and the Town. Mr. Harbeck stated that nobody is taking 500 feet. Mr. Morrill stated that you cannot construct a building over a 5,000 s.f. footprint, but what if you have an existing building with a 6,000 s.f. footprint. Ms. Woodall stated that it would be a grandfathered structure. Mr. Morrill asked if you can expand. Mr. deFeyter referred to Article 147-10.1. Mr. Kennett asked if transmission lines will have to go underground as well. Mr. Cuddy answered in the affirmative.

Mr. deFeyter stated that a portion of the local north/south road is in the district, but going North it leaves the district. Mr. deFeyter stated that when it leaves it is not covered. Ms. Woodall agreed. Mr. Fitch made a motion, seconded by Mr. Bergmann, to approve the clarified Special Highway Corridor ordinance and post it to the warrant. Motion carried with Mr. Cuddy and Ms. Duane voting in the negative; and Mr. Fitch abstaining from voting.

PUBLIC HEARING - PROPOSED CHANGE TO ARTICLE 147-12.A.(2)(e) OF THE CONWAY ZONING ORDINANCE

A public hearing was opened at 9:58 p.m. Ms. Woodall stated that the change is a housekeeping item in order to clarify the meaning. Ms. Woodall asked for public comment; there was none. **Mr. Cuddy made a motion, seconded by Ms. Duane, to post the proposed change to Article 147-12.A.(2)(e) to the warrant.** Mr. Bergmann asked if the existing ordinance is missing the two words that is underlined. Ms. Woodall answered in the affirmative. **The motion unanimously carried.** The public hearing was closed at 10:01 p.m.

PUBLIC HEARING - PROPOSED CHANGES AND ADDITIONS TO ARTICLE 147-6 OF THE CONWAY ZONING ORDINANCE

A public hearing was opened at 10:01 p.m. Ms. Woodall stated that some of these definitions are existing in the Site Plan and Subdivision regulations which we are adding to the Zoning Ordinance. Ms. Woodall asked for public comment; there was none. Mr. Fitch made a motion, seconded by Ms. Duane, to post the proposed changes and additions to Article 147-6 of the Zoning Ordinance to the warrant. Motion carried with Mr. Bergmann abstaining. The public hearing was closed at 10:05 p.m.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Bergmann made a motion, seconded by Mr. deFeyter, to table the Minutes of November 18, 1998; November 19, 1998; December 3, 1998; and December 17, 1998 until January 21, 1999. Motion unanimously carried.

OTHER BUSINESS

Arborview Companies (Map 65, Parcel 33) - Plan Signing: The Board agreed that all the conditions had been met and the plans were signed.

Hydrokinetic EFX LTD (Map 61, Parcel 30-1) - Plan Signing: The Board agreed that all the conditions had been met and the plans were signed.

The meeting adjourned at 10:30 p.m.

Respectfully Submitted,

Holly L. Meserve
Recording Secretary