

## CONWAY PLANNING BOARD

### MINUTES

JANUARY 21, 1999

A meeting of the Conway Planning Board was held on Thursday, January 21, 1999, beginning at 7:00 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chairman, Catherine Woodall; Selectmen's Representative, Jac Cuddy; Robert deFeyter; David Fitch; Sheila Duane; Arthur Bergmann; Town Planner, Dawn Emerson; and Recording Secretary, Holly Meserve.

#### REVIEW AND ACCEPTANCE OF MINUTES

Mr. Fitch made a motion, seconded by Ms. Duane, to approve the Minutes of November 18, 1998, as written. Motion unanimously carried.

The Minutes of November 19, 1998, should be amended as follows: page 3, paragraph 3, line 4, should read, "...Ms. Woodall stated that [~~the application should be continued until~~] the Sheraton..."; page 3, paragraph 6, line 7, should read, "...waiving the fine. Ms. Duane..."; and page 5, paragraph 5, line 1, should read, "Mr. Bergmann made a motion, seconded by Mr. deFeyter, to deny...". Mr. Fitch made a motion, seconded by Mr. Cuddy, to approve the Minutes of November 19, 1998, as amended. Motion unanimously carried.

Mr. Bergmann joined the Board at this time. Ms. Duane made a motion, seconded by Mr. Cuddy, to approve the Minutes of December 3, 1999, as written. Motion unanimously carried.

Ms. Duane made a motion, seconded by Mr. Cuddy, to table the Minutes of December 17, 1998, and January 7, 1999, until February 4, 1999. Motion unanimously carried.

#### EASTERN SLOPE INN ASSOCIATES - FULL SITE PLAN REVIEW CONTINUED (MAP 69, PARCEL 15) FILE #FR98-12

Ms. Woodall stated that the applicant, Joe Berry, has asked for this application to be continued. Mr. Cuddy made a motion, seconded by Ms. Duane, to continue the application for Eastern Slope Inn Associates until February 18, 1999. Motion unanimously carried.

#### HALE HIGHLAND - PUBLIC HEARING - REVOCATION CONTINUED (MAP 11, PARCEL 16 & 17) FILE #88-05

Peter Hastings, Town Counsel; Robert Quint, Developer; James Shannon, Attorney for Developer; James Kelley, Hale Highland Association President; and Rick Sager, Attorney for Association, appeared before the Board. Mr. Hastings stated that the developer has obtained a letter of intent. Mr. Hastings stated that Paul DegliAngeli, Dawn Emerson, Mr. Sager and himself had a meeting and have agreed with the letter of intent. Mr. Hastings stated that if the letter of intent can become a working document it will then require the developer to produce a cash bond to complete the amenities and begin finishing the project.

Mr. Hastings stated the Board approved the entire development under one application and the bond for the entire project is out of site. Mr. Hastings stated that a bond should be made for the current thirty (30) lot owners [lots 1-38, excluding lots 4-11]. Mr. Hastings stated that the issue is to obtain bonding for the sections of the development that are the most critical. Mr. Hastings stated that they will then have to come back to the Board as each phase goes along. Mr. Hastings stated that this will put in a road system and water system with appropriate storage in place. Mr. Hastings stated that due to the fact that they do need to phase they would come back to the Board in February to add phasing to the project.

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Mr. Hastings stated that hopefully if all id in line there would be a cash bond to the Town for completion of the amenities by a certain date. Mr. Hastings stated that any further sales outside of phase I would have to come back to the Planning Board to satisfy bonding only. Mr. Hastings stated that they can also complete the amenities instead of bonding. Mr. Hastings stated that if the developer does not phase the project or bond the project by March 4, 1999, the Board would reconsider their vote of tonight to revoke the approval. Mr. Hastings stated that if the developer does meet the conditions by phasing the project and bonding the project, then the revocation action terminates the Board's pending action. Mr. Hastings stated that that does not mean the Board cannot revoke it again.

Ms. Woodall asked if the developer would have to submit a new plan. Mr. Hastings answered in the negative and stated only to re-phase the project. Ms. Woodall asked how can the Board take a ten (10) year old application without it being resubmitted and re-phase it. Mr. Hastings stated that the plan the developer has now meets the regulations of the Board now. Ms. Woodall stated that it was ten (10) years ago and how can the Board approve without a full site plan. Mr. Hastings stated that the developer is only phasing opposed to re-phasing. Mr. Hastings stated that the developer is not resubdividing. Ms. Woodall asked if the Board will review the project as if it is a new application. Mr. Hastings stated that the developer is not changing the project. Ms. Woodall stated that she does not understand why it is not a new application.

Mr. Hastings stated that it is a new application in respect to phasing. Mr. Hastings stated that the developer is submitting a plan with phases and the Board is allowing them to phase. Mr. Hastings stated that the developer will then not have to bond the entire project, but phases of the project. Mr. Fitch asked why the phasing of the project has to come before the Planning Board. Mr. Hastings stated that the subdivision was approved as a total project. Mr. Hastings stated that the developer cannot get bonding for the entire project, but he can obtain bonding for phases.

Mr. deFeyter stated that the Board should then treat this as if it was a new application. Mr. Hastings answered in the affirmative in a sense that abutters need to be notified, but entire content of the subdivision does meet current regulations. Mr. Hastings stated that phases are a different concept. Mr. deFeyter stated that the plans are being modified to add phasing. Mr. Hastings stated that the developer is proposing phase lines. Mr. Hastings stated that no lots will be sold in the other phases until bonded or the amenities are constructed. Mr. deFeyter asked what happens if there was a change in the ordinance between phases. Mr. Hastings stated that the developer would be protected. Mr. deFeyter stated that he spoke to Mr. DegliAngeli, and there has been a change in the road standards. Mr. Hastings stated that the developer would have to meet the current road standards.

Mr. Cuddy stated that the original application ten (10) years ago has not been revoked and this is a public hearing to revoke. Mr. Cuddy stated that this is coming in as an addendum or different approach. Mr. Cuddy stated that this is not a new application because it has not been revoked. Mr. Cuddy stated that the Board is revisiting an approved site plan and making some revisions to an existing site plan which is just phasing. Ms. Emerson stated that this is similar to Stan Szetela's approval. Ms. Emerson stated that the Board did not review lot size, etc. Ms. Emerson stated that the density is the same and it meets all of today's standards, except the road standards. Mr. Hastings stated that it is a win/win situation. Mr. Hastings stated that the Association will get the amenities paid by the developer, and the developer can accomplish the project is small bites instead of one large bite.

Ms. Duane asked if a subdivision could come back to the Board because they haven't started work and phase the work. Mr. Hastings stated that the application is going to ask the Board to act on phasing. Mr. Bergmann stated that the developer has asked for a continuance, but if they don't have to have it done until March 4, 1999, why is the Board arguing how there going to phase the project. Mr. Hastings stated that before March 4, 1999, the developer will have to have a phased plan that is approved. Mr. Hastings stated that if it is approved, the developer has to give a cash surety. Mr. Bergmann asked why. Mr. Hastings stated that that is their time schedule. Mr. Bergmann asked if the application could be conditionally approved conditional upon bonding by March 4, 1999. Mr. Hastings stated that the developer has to

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submit new plans with phase lines and update the road and water systems. Mr. Hastings stated that the developer has to come in with construction plans to figure the unit costs for this. Mr. Hastings stated that all these have to come with construction plans in unit devices. Mr. Hastings stated that the developer has to come in with 115% of the estimated cost. Mr. Hastings stated that if this is done by March 4, 1999, the action of the revocation will become final, meaning there is no revocation.

Mr. Hastings stated that the developer will have until September 1, 1999 to complete and the developer cannot start the next phase until bonding is in place. Mr. deFeyer asked if there will be a time frame for the other phases. Mr. Hastings answered in the negative. Ms. Woodall asked if the road standards, water system and everything else has to be in place prior to approval. Mr. Hastings stated that the developer has to have phase lines in order to bond. Mr. Hastings stated that in order to bond, the developer will have to have unit drawings. Ms. Woodall asked if the bond has to be in place by March 4, 1999. Mr. Hastings answered in the affirmative. Ms. Woodall asked about the water system. Mr. Hastings stated that a lot has to be upgraded with the water system. Mr. Hastings stated that some plan approved by New Hampshire Department of Environmental Services (NHDES) is acceptable. Mr. Hastings stated that Mr. DegliAngeli needs to see the plans to determine the cost. Mr. Hastings stated that what they put in now has to satisfy the first phase.

Ms. Woodall stated that the State Attorney General is involved. Mr. Hastings stated that the developer will have to address that and the developer will have to satisfy that and the bonding prior to March 4, 1999. Mr. Fitch asked if both roads into the development will have to be constructed or will just one road be brought up to Town standards. Mr. Hastings stated that both roads need to be brought up to Town road standards. Mr. Fitch asked what happens if the amenities are not completed. Mr. Hastings stated that it is on record and the developer cannot avoid what is on record. Mr. Hastings stated that the developer does not have to start the next phase, there is no requirement to continue to the next phase.

Mr. deFeyer stated that there is no downside for the Town. Mr. Hastings agreed. Ms. Emerson asked if the four (4) year exemption applies to phasing. Ms. Emerson asked if the developer would be vested in phasing if they have not started the second phase. Mr. Hastings stated that it would not be vested as every phase has to come back to the Planning Board.

Mr. Shannon stated that the project was phased for construction, but it was not requested at that time. Mr. Shannon stated that this would be formalizing what was discussed in the past. Mr. Shannon stated that \$77,500 was all that was left in the bond when the bank failed. Mr. Shannon stated that the issues with the Attorney General and David Sands still need to be resolved. Mr. Shannon stated that the extension will give the developer forty-five (45) days to resolve those issues. Mr. Shannon stated that the application for phasing will need to be before the Planning Board by March 4, 1999, but if the application is continued past that date, it will not kill the developer's deadline. Mr. Shannon stated that it will be an extension to allow for paperwork and closing.

Ms. Woodall asked if the developer has to come back to the Board on March 4, 1999, will they have to have a few more weeks. Mr. Shannon answered only on the phasing. Ms. Woodall asked when the plans for the road will be completed. Mr. Shannon stated that the engineering firm is suppose to start on them next week depending on tonight's vote. Mr. Shannon stated that they should be available in three (3) to four (4) weeks. Mr. Shannon stated that they cannot commit to February 18, 1999, for the submission of road plans, but Mr. DegliAngeli should have a set for bonding purposes by mid-February. Mr. Shannon stated that they cannot close and issue checks until they are sure that the revocation is not going to happen.

Ms. Duane asked if the developer will still own the development. Mr. Shannon stated that the development is being sold to another developer and there will be a new entity, but Mr. Quint will still be involved. Mr. Hastings stated that there was discussion that the construction work will be completed by October 1, 1999. Mr. Shannon stated that the water, lighting and septic systems will be started as soon as we can get into the ground. Mr. Hastings stated that all will be completed by October 1, 1999. Mr. Quint stated that the phased plan before the Board recently was not a part of the original application. Mr. Quint stated that there

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was an in house review due to bonding. Mr. Quint stated that they established construction phases at that time, but it was never formally registered. Mr. Quint stated that it was negotiated with Town officials. Mr. Quint stated that the phasing plan will be similar to the construction phases, but there will be some changes so certain amenities will be in phase I.

Ms. Woodall asked about the water system. Mr. Quint stated that when the water system is complete it will supply the whole development. Ms. Woodall asked what if the State says the water system will not provide for the whole development. Mr. Quint stated that they will know that up front. Mr. Hastings stated that the Town will have a bond in place. Ms. Woodall asked about the attachment the Association has to the unsold lots. Mr. Hastings stated that it doesn't mean anything to this. Mr. Hastings stated that when the Town has the cash surety then the Town is in a good position and the Town complete it if the developer does not.

Mr. Kelly asked if the Town has ever been presented roads for consideration of taking over in phases. Mr. Cuddy stated that the homeowners will have to petition the Town and in the past the Town has accepted roads in progressive. Mr. Sager stated that the Association would like the Board to support this proposal. Mr. Sager stated that this is what the Association has been looking for. Mr. Sager stated that by setting this aside for forty-five (45) days it allows the developer to get this in order to take the burden of the Association.

Ms. Woodall asked for public comment; Mr. Kelly stated that if this happens to become bogged down and doesn't move ahead will it effect the financing. Mr. Shannon stated that the money can only come out after closing. Mr. Kelly stated that there is no time frame if not approved, but continued. Mr. Shannon answered in the negative. Mr. Quint asked if the Board would agree to a conceptual review. The Board agreed to a conceptual review on February 4, 1999.

Mr. Bergmann made a motion, seconded by Ms. Duane, that the pending motion to revoke the approval for subdivision granted on December 20, 1988 to Hale Highlands Development Corporation of North Conway, New Hampshire of a plan entitled "Hale Estates Conway, NH Hale Highlands Corp. West Side Road North Conway, NH," is hereby NOT APPROVED; such vote to not approve, however, is subject to the following conditions subsequent:

1. That the developer shall satisfactorily complete, to the satisfaction of the Town of Conway Planning Board, as may be appropriate, the following:
  - a. Formal application and approval to convert the existing subdivision into a phased subdivision in a form satisfactory to the Town of Conway Planning Board. Such application shall be filed with the Planning Board no later than February 3, 1999 for consideration at the planning board meeting of February 18, 1999.
  - b. Placement of security for completion of the infrastructure in Phases I (meaning amenities to serve lots 1 thru 38 per said plan, but excluding lots 4 thru 11), in the form of a cash surety the amount and form of such security to be satisfactory to the Town of Conway Planning Board, Board of Selectmen and Engineer, for completion of work required in Phase I of the plan to be approved in paragraph (a) above.
2. In the event that the developer complies, on or prior to March 4, 1999, with the conditions set forth in paragraph 1 above, then the vote to not approve the pending motion before the Conway Planning Board to revoke the subdivision shall be a final decision of the Board.
3. In the event that the developer fails to comply, on or before March 4, 1999, with the conditions set forth in paragraph 1 above, then the Planning Board shall entertain a motion to reconsider this vote on January 21, 1999 on the motion to revoke the subdivision, and may thereafter vote to approve such revocation pursuant to RSA 676:4-A as the Board may

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determine without further notice thereof which the Developer, Hale Highlands Development Corporation shall expressly waive in writing.

4. Upon the vote to not revoke the subdivision becoming final pursuant to paragraph 2 above, the developer will be authorized to commence sale of lots owned by the developer in Phase I, it being understood that the bonding for completion of all construction set forth in paragraph 1 above shall be in full force and effect and the conditions to be completed thereunder having a final date for full satisfaction of October 1, 1999.

Mr. Fitch asked if lots 4-11 fall into phase I. Mr. Hastings answered in the negative. Mr. Fitch asked which phase they do fall into. Mr. Shannon answered phase II. Ms. Woodall asked for public comment; there was none. **Motion unanimously carried.**

**OTHER BUSINESS**

Richard Lake - Request for Revocation of Kearsarge Building Company/3-lot Subdivision (Map 14, Parcel 357) File #S96-22: Richard Lake appeared before the Board. Mr. deFeyter stepped down at this time. Ms. Woodall stated that Mr. Lake wanted to come before the Board in regard to a subdivision revocation. Ms. Woodall stated that Mr. Hastings has stated that this is a civil matter, but Mr. Lake wanted to know why he could not come back before the Board. Mr. Hastings stated that Mr. Lake wrote a letter to the Planning Board that was forwarded to him. Mr. Hastings stated that he did respond directly to Mr. Lake, but the letter just went into today's mail.

Mr. Hastings stated that Mr. Lake's requests were matters that should have been addressed at the time of the review. Mr. Hastings stated that Mr. Lake appealed the Planning Board's decision to the Court. Mr. Hastings stated that the Court dismissed the case and Mr. Lake further appealed it to the Supreme Court. Mr. Hastings stated that the Supreme Court also denied the case. Mr. Hastings stated that Mr. Lake is asking the Town to revoke the subdivision. Mr. Hastings stated that he has written to the Town indicating that the issues were part of the process through the Town and should not be revisited. Mr. Hastings stated that Mr. Lake may have a civil matter. Mr. Hastings stated that the Town can only look at that plan and that is what the Board approved. Mr. Hastings stated that Mr. Lake wants the Town to revisit the application again and any standing would be a private complaint.

Mr. Lake stated that he disagrees with Mr. Hastings. Mr. Lake stated that this plan was represented to the Planning Board with serious misrepresentations. Mr. Lake stated that he is bringing these to the Board's attention. Mr. Lake stated that the Superior Court did not hear his case due to matters beyond his control. Mr. Lake stated that he can go to the court and ask for a new hearing which is expensive. Mr. Lake stated that the Board meets twice a month and is less expensive for everyone. Mr. Lake stated that he has not been heard on the merits in either Court. Mr. Lake stated that he still has a right to go back to Court which he will pursue, but to do it here is the economical way out. Ms. Woodall stated that all the Board can do tonight is determine if the Board wishes to proceed. Ms. Duane asked if Mr. Lake lived in this subdivision. Mr. Lake stated that he is an abutter. Mr. Bergmann stated that the advice from Town Counsel is that we can do nothing and we are just wasting our time and asked why is the Board continuing with the discussion. Ms. Woodall stated that she is trying to understand why the Town is not involved.

Mr. Hastings stated that Mr. Lake appealed the Planning Board's decision to the Court. Mr. Hastings stated that the case was dismissed, reappealed and denied. Mr. Hastings stated that the decision of the Planning Board is the final say and Mr. Lake is asking the Board to revisit their decision. Mr. Hastings stated that the Planning Board approved the subdivision and it is not simple to revoke. Mr. Hastings stated that if the Board agrees to revoke it then the other side will be before the Board. Mr. Hastings stated that Mr. Lake may not go to Court, but the Town will go to Court with the other party involved. Mr. Hastings stated that Mr. Lake can revisit this on a complaint basis, but this is not the process to revisit.

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Mr. Lake asked about Hales Highlands Development Corporation. Ms. Emerson stated that it was a matter of surety in regard to Hale Highlands. Ms. Duane stated that the difference between the two is that those people live there. Mr. Hastings stated that in regard to Hale Highland the developer is coming before the Board to reopen. Mr. Hastings stated that Mr. Lake does not have an approval, but Kearsarge Building Company has an approval and they can come back before the Board to revisit the subdivision, but not Mr. Lake. Mr. Lake stated that he has a right as a citizen to ask the Board to revoke this subdivision. Mr. Lake stated that he is asking on the same basis of any other revocation.

Mr. Lake stated that the Hale Highlands Association asked for the revocation. Mr. Lake stated that if a plan is not built to the approved plan then he has a right to ask the Board to revoke the approval. Mr. Lake stated that the Board should grant consideration of revocation. Ms. Emerson stated that Hale Highlands surety was not in place and she is not sure what evidence Mr. Lake has. Mr. deFeyter stated that he is also a part of this as an abutter. Mr. Fitch asked if this has already been developed. Mr. deFeyter answered in the affirmative and stated that it is built out. Mr. deFeyter stated that the developer was only able to construct ten (10) units, but the Town allowed eleven (11) units to be constructed.

Mr. deFeyter stated that the applicant indicated that road was no where close to being constructed to Town Road Standards or was it going to be built to Town standards. Mr. deFeyter stated that the applicant was going to make it a driveway to the building off Blueberry Lane and Old Stone Way was going to be the primary road to the condominiums. Mr. deFeyter stated that as it turns out that when original development was done the road was not put in where it was suppose to be. Mr. deFeyter stated that the road is on someone else's property. Mr. deFeyter asked if the Condominium owners, since it has been subdivided, have a legal access to their property. Mr. deFeyter stated that if they do not have legal access to their property then the Planning Board would not have approved the subdivision.

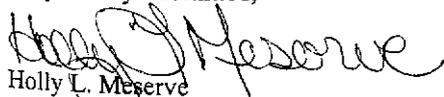
Mr. Cuddy asked if this is litigation between individuals. Mr. Hastings answered in the affirmative and stated that this is a private claim between landowners which does not effect the Town. Ms. Woodall asked Mr. Lake how he is an aggrieved party. Mr. Lake stated that this is an illegal subdivision. Ms. Woodall stated that if the abutters whose land the road is on finds it a problem then they should ask for a revocation. Mr. Lake stated that the land owner in which the road is on could shut off the road and the water. Ms. Woodall stated that at that time there would be a legitimate complaint. Mr. Hastings stated that this Board granted an approval and they are trying to revisit the approval because of private complaints. Mr. Hastings stated that they may be justified, but they are private complaints.

Mr. Fitch stated that the subdivision is built and he does not see why the Board would revoke the approval. Mr. Fitch stated that the process to revoke would be to stop a development with improper infrastructure. Mr. Fitch stated that he agrees that they probably do have a problem, but it is not in this Board's jurisdiction. Mr. deFeyter stated that when this was approved, it was granted with conditions. Mr. deFeyter stated that the road was to be closed off which has not been done. Mr. deFeyter asked where does the enforcement lie. Mr. Hastings answered the Town of Conway Zoning Officer.

Tom & C Realty, LLC - Plan Signing (Map 12, Parcel 33C) File #FR98-16 & #S98-18: The Board agreed that all conditions had been met and the plans were signed.

Meeting adjourned at 9:30 p.m.

Respectfully Submitted,

  
Holly L. Meserve  
Recording Secretary