

CONWAY PLANNING BOARD

MINUTES

MAY 20, 1999

A meeting of the Conway Planning Board was held on Thursday, May 20, 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, Gary Webster; Vice Chairman, Sheila Duane; Secretary, Arthur Bergmann; Robert deFeyter; John Waterman; Stacy Sand; Town Planner Dawn Emerson; and Recording Secretary, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Duane made a motion, seconded by Ms. Sand, to table the Minutes of May 20, 1999 until June 3, 1999. Motion unanimously carried.

Mr. Bergmann joined the Board at this time.

HALES HIGHLAND DEVELOPMENT CORP. - PUBLIC HEARING ON NOTICE OF REVOCATION CONTINUED (Map 11, Parcel 17) FILE #88-05

Robert Quint, developer; James Shannon, Attorney for developer; and Peter Hastings, Town Counsel, appeared before the Board. Mr. Hastings stated that the Town has a signed agreement and a check for \$108,000. Mr. Hastings stated that Town Manager, Jim Somerville, is out of town and he will sign the agreement on Monday [May 24, 1999]. Mr. Hastings stated that \$8,000 is for inspections and the inspector will monitor the work. Mr. Hastings stated that the plans have been reviewed and approved by the Town Engineer, Paul DegliAngeli. Mr. Hastings stated that the developer has to work within the phasing order and if the work is not complete, the Town can issue a cease and desist order.

Mr. Hastings stated that the developer has to complete items 1 through 5 in the agreement before any lots can be sold. Mr. Hastings stated that items 3,4, or 5 cannot be started until item 1 or 2 has been completed. Mr. Hastings stated that after item 5 is complete, there is still money in hand and there are no legal matters against the developer to finish the work, then the Town may allow the selling of lots 3 and 22 in phase I. Mr. Hastings stated that it has been agreed to by the developer and the homeowners that the water system be the first priority. Mr. Hastings stated that there can be no commencement of any other work until items 1 or 2 are complete.

Mr. Hastings stated that the developer has to work in sequence, but once a project is started it must be completed. Mr. Hastings stated that once items 1 through 5 are completed, the developer can go on to item 6. Mr. Hastings stated that once all six items are completed the developer has completed the requirements of the Planning Board and he can sell lots. Mr. Hastings stated that any money left over will be returned to the developer a long with interest. Mr. Hastings stated that if the Board does vote not to revoke the subdivision, then the developer is back to where he was before any action by the Board. Mr. Hastings stated that if the developer violates this agreement the Town can issue a cease and desist order and the Planning Board can go forward to revoke the project.

Mr. Bergmann asked what phases does this agreement effect. Mr. Hastings stated that this only effects phase I. Mr. Bergmann asked if the Town can hold the money until all six phases are completed. Mr. Hastings stated that this is only bonding for the first phase. Mr. Hastings stated that the developer needs to come back to the Town to begin phase II. Mr. Shannon stated that the developer only has to come back to the Town for bonding if he wanted to sell. Ms. Woodall asked on vesting of other phases how long does the developer have to complete the other phases. Mr. Hastings answered that the developer has four (4) years to complete phasing. Mr. Hastings stated that anytime during the four (4) years there is a substantial

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change, the developer is protected. Mr. Hastings stated that if the developer has substantially completed a phase then he is vested. Ms. Woodall stated that she thought they were only vested for one (1) year unless they did some work. Mr. Hastings stated that the developer is vested in his development now, but because he phased the project he is not protected. Mr. Hastings stated that if the developer begins a phase then he would be vested for four (4) years.

Mr. deFeyter stated that there is no question about phase I. Mr. Hastings stated that the developer is vested in phase I. Mr. deFeyter asked if on the other phases if the developer is vested for four (4) years. Mr. Hastings answered in the affirmative. Mr. deFeyter asked if there are any changes to the plans will the developer have to come back before the Planning Board. Mr. Hastings answered in the affirmative. Mr. Hastings stated that the Board would have to sign off on every phase through the Town Engineer to the Town's satisfaction or before doing construction he would need a bond.

Mr. deFeyter asked if the developer would have to come back before the Board. Mr. Hastings answered in the affirmative to make sure the conditions have been satisfied. Mr. Quint stated that the only requirement is bonding. Mr. Hastings agreed and stated that the engineer would have to review the plans. Mr. deFeyter stated that the alternative is to construct phase II and then come back to the Planning Board make sure it was constructed according to the plans. Mr. Quint stated that it will be inspected as the project progresses. Mr. Hastings agreed. Mr. deFeyter stated that if there is a problem with the amenities from phase I would the developer have to fix them. Mr. deFeyter asked if part of the road washes out who would be responsible. Mr. Hastings stated that the Town can require the developer to fix.

Mr. Shannon stated that if the roads are deeded to the Association as common area then the Association would be responsible. Mr. Hastings agreed. Mr. deFeyter asked if the Board can approve another phase if a phase before it is not up to standard. Mr. Hastings stated that it would depend on who owns the roads. Mr. Hastings stated that if the roads are conveyed to the Association, they would have a common agreement on who would maintain the roads. Mr. Hastings stated that if they wish not to maintain the roads and the roads were built properly and they become damaged and the developer wants to continue with phases something would have to be done. Mr. Hastings stated that the Planning Board is looking out for main roads to be held to a standard.

Ms. Woodall asked for public comment; Tom Murphy, homeowner, asked that the Town attorney review items 1 and 2 again. Mr. Hastings stated that the developer has to complete items 1 or 2 before he can continue with any part other part of the project. Mr. Hastings stated that once items 1 or 2 are complete the developer can complete items 3 through 5 in any order, but once a project is started it must be completed. Mr. Murphy stated that if the developer signs over the roads to the Association and there are other phases to be complete, he will be bringing heavy equipment over the Association's road that could cause damage. Mr. Murphy asked who would be responsible for the damage. Mr. Hastings stated that if he uses a road and he burdens the road then he would be responsible. Mr. Murphy asked if the agreement is public. Mr. Hastings answered in the affirmative as soon as the Town Manager signs the agreement it will become a public document.

Someone from the Association asked if it is possible for the Association not to accept the roads until all roads and phases are completed. Mr. Hastings stated that it would have to be in the restrictions and he is not sure what it says. Mr. Hastings stated that if the restrictions don't say that than the developer has the right to transfer the roads and the Association has to accept them. Mr. Murphy stated that there was mention that you need two accesses with a certain number of lots and he thought someone mentioned 35 lots and they only have 30 lots. Mr. deFeyter stated that if there is only 30 lots then only one access is needed, but more than 30 lots you need two accesses.

Mr. Murphy stated that one access road has a railroad crossing that needs insurance and maintenance that the Association does not provide. Russ Seybold of the Conway Scenic Railroad stated that someone needs to carry insurance on the railroad crossing. Mr. Hastings stated that it is usually the owner of the road. Mr. Seybold stated that under State requirements when the road is conveyed to the Association the

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responsibility is conveyed with it. Mr. Hastings stated that it will be a part of the expense of the road. Ms. Woodall asked if it is a part of the bonding. Mr. Hastings answered in the negative. Mr. Seybold stated that it is the developers responsibility. Mr. Murphy asked if the Association can insist that the crossing be up to standard before the roads are conveyed. Mr. Hastings stated that he thinks it is up to standard. Mr. Seybold stated that the construction is up to standard, but the requirement for maintenance is not up to standard. Ms. Woodall stated that that does not involve the Planning Board. Mr. Hastings agreed and stated that the developer or the Association will have to address that issue.

Ms. Woodall stated that Mr. Somerville has not signed the agreement. Mr. Hastings stated that it is a valid agreement and the Board should make a motion to not revoke the approval. Ms. Woodall asked about the phasing plans and asked if the plans had been labeled with all the common areas. Ms. Emerson stated that the applicant has met all the conditions for the phasing plans and they can be signed at any time. Mr. deFeyter made a motion, seconded by Mr. Bergmann, that the condition of the Planning Board action regarding Hale Estates Development on January 21, 1999 having been satisfied by the developer, the action to revoke the approval of this subdivision is hereby rescinded, said approval to remain valid subject to the escrow agreement with the Town. Motion carried with Mr. Webster abstaining from voting.

HALE HIGHLAND DEVELOPMENT CORP. - CONSTRUCTION OF PHASE LINES - PLAN SIGNING (MAP 11, PARCEL 16 & 17) FILE #S99-03

The Board agreed that the conditions had been met and the plans were signed.

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

Joe Berry, applicant, appeared before the Board. Ms. Woodall stated that the outstanding issues were an easement and bonding. Ms. Emerson stated that the cost estimate has been approved and elevations have been submitted. Mr. deFeyter asked the material for the building. Mr. Berry answered white clapboard. Mr. deFeyter asked about lighting. Mr. Berry stated that the lighting is all night, friendly lighting. There was a question about lighting a pathway to the parking lot of the Conway Scenic Railroad. Russ Seybold of the Conway Scenic Railroad stated that his only concern is people going across the tracks. Ms. Woodall stated that the lights can be shut off. Mr. Berry agreed.

Mr. Bergmann asked if there is a fill permit for the back parking lot [Eastern Slope Inn]. Mr. Berry answered in the affirmative and stated that it was obtained in 1985. Mr. Bergmann stated that he is concerned that he is filling in the swamp to the pond. Mr. Berry stated that he has delineated what can and cannot be filled and that he is staying away from the floodplain. Ms. Woodall asked if the easement agreement was reviewed by Town Counsel. Ms. Emerson answered in the negative and stated that she has reviewed the agreement and it is fine. Ms. Woodall asked for public comment; there was none.

Ms. Sand asked if a bond has been submitted. Ms. Emerson answered in the negative. Ms. Sand made a motion, seconded by Ms. Duane, to conditionally approve the Full Site Plan for Eastern Slope Inn Associates conditionally upon a performance guarantee for 50% of all site improvements; and once the condition has been met the plans can be signed out of session. Motion carried with Mr. deFeyter and Mr. Bergmann voting in the negative. Mr. deFeyter stated that he would have voted in favor if there was an expiration date. Ms. Sand made a motion, seconded by Mr. deFeyter, to amend her motion to include an expiration date of thirty (30) days. Motion carried with Mr. Waterman voting in the negative. Ms. Woodall stated that Mr. Webster should abstain from voting because of the railroad. Mr. Webster stated that he can make that decision for himself and wanted to go on record that he voted in favor of the application for Eastern Slope Inn Associates.

ED GARLAND/SEARS - FULL SITE PLAN REVIEW CONTINUED (MAP 55, PARCEL 3A) FILE #FR99-04

Ed Garland, applicant; and Gene O'Brien, surveyor, appeared before the Board. Mr. O'Brien stated that the State has approved the driveway permit. Ms. Woodall asked if a cost estimate has been submitted. Ms. Emerson stated that the cost estimate has been submitted, approved and a check has been received. Mr. O'Brien stated that an outdoor display area has been added to the plans; added two (2) statements on the plans regarding waste material and tractor trailer trucks; changed fire approval from conditional to final; moved door on the plans to coincide with elevations; concrete will be painted gray which is the same color as the building; and the applicant has submitted bonding. Ms. Duane stated that concrete is gray. Mr. Bergmann stated that concrete can have a variation in color.

Ms. Duane made a motion, seconded by Ms. Sand, to approve the Full Site Plan for Ed Garland/Sears. Motion unanimously carried. The plans were signed.

PROMTO - CONCEPTUAL REVIEW (MAP 65, PARCEL 2)

Kevin King; Paul and Charlie Capp appeared before the Board. They reviewed a plan for a Promto at the former China Chef restaurant site at 2100 White Mountain Highway.

OTHER BUSINESS

Next Workshop date: The Board had a lengthy discussion on a date for the next workshop. Mr. Webster made a motion, seconded by Mr. Bergmann, that the next workshop will be held on July 8, 1999. Motion carried.

Letter from Fredd Dudley re: Northern Woods Property Management (Map 12, Parcel 62): Ms. Woodall read a letter from Fredd Dudley (attached). Mr. Bergmann made a motion, seconded by Mr. deFeyter, for the Board to send a letter to Mr. Dudley explaining that the Planning Board does not have anything to do with enforcement, the Board has tried to be consistent and that he should contact the Town Manager, Jim Somerville, to discuss enforcement. Motion carried with Ms. Duane voting in the negative.

New procedure for Legal Counsel: Ms. Woodall stated that under the law the Planning Board is allowed to have their own attorney. Ms. Woodall stated that this new policy is a conflict of interest and could violate client confidentiality. Mr. Webster stated that you are digging a hole so deep that you will not be able to climb out. Mr. Webster stated that this policy is not to stifle the use of the Town's attorney, but there is only so much money in the budget and the Planning Board does not have a budget.

Ms. Woodall stated that the fees can be put into a fund for a lawyer. Mr. Webster agreed. Ms. Sand stated that you are formally requesting to use the attorney you don't have to express the details. Ms. Emerson stated that it is similar to using a purchase order number. Ms. Woodall asked what if the request is denied. Mr. Webster stated that he doesn't think the intent is to deny. Mr. Webster stated that everything is in a public forum. Mr. deFeyter asked that when everyone gets a chance they read RSA 676:16. Mr. Webster stated that on technicalities the Board is going to put themselves out of existence.

Ms. Emerson stated that this is for all Town staff, not just the Planning Board and it is similar to using a purchase order. Ms. Sand stated that obviously there has been duplicate efforts and it is a budget issue. Ms. Sand stated that they are not saying we cannot have legal access, but it is a record of money and accountability. Ms. Woodall stated that we should have free access to the Town's Attorney. Ms. Duane stated that Ms. Woodall cannot contact Mr. Hastings directly anymore; she's had her wings clipped and she's bummed out about it.

Mr. Webster stated that the Board needs to make a motion regarding the use of Town Counsel and fill out a form. Mr. Webster stated that most likely the request will be honored and if it is not, he will be the first

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one to ask for a reasonable answer why. Mr. Bergmann stated that the change-of-use issue would not have come up if Mr. Somerville had allowed Mr. Hastings to answer Ms. Woodall's letter. Ms. Woodall stated that Mr. Hastings told her that he spoke to Mr. Somerville and Mr. Somerville denied Mr. Hastings to answer her questions. Ms. Emerson stated that Mr. Hastings had input on those questions because she met with him and when contacting Mr. Hastings, he stated that he had just spent two (2) hours on the phone with Ms. Woodall regarding the same questions. Ms. Emerson stated that the Town was billed twice for the same thing.

Procedure on Plats: Mr. deFeyter stated that he was concerned with the procedure for plats. Mr. deFeyter stated that the State Statute changed last year in August and we have not changed our regulations. Mr. deFeyter stated that Article 123-10 and Article 131-8 need to be revised and brought up to date.

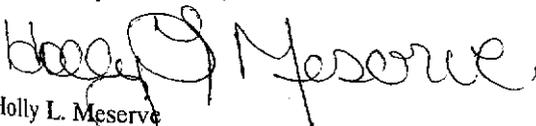
Master Plan: Mr. deFeyter stated that the Master Plan is 20 years old and we need to be doing a couple of chapters a year. Ms. Sand stated that the Greenway Master Plan Committee has met and have another meeting set up. Mr. deFeyter stated that a time frame on when these need to be done should be set up. Ms. Emerson asked that the Future Land Use Committee set up a time to meet. There was discussion on who was on the Committee. It was determined that Ms. Woodall, Mr. Bergmann and Mr. deFeyter were on the Committee, but Mr. deFeyter stated that he had resigned from the Committee. Mr. deFeyter stated that it is Ms. Emerson's job to update the Master Plan. Ms. Duane asked if Mr. deFeyter expected one person to update a 20 year old dinosaur. Mr. deFeyter stated that it is Ms. Emerson's job. Ms. Duane suggested that the Board request at Town Meeting money for a consultant to update the Master Plan. A consensus of the Board agreed.

Conflict of Interest: Mr. Bergmann stated that he has always been asked to step down whenever there was a project that abutted Arliss Hill because they are good friends. Mr. Webster stated that a Board as a whole can ask a member to step down, but an individual cannot. Mr. Webster stated that he is not gaining anything financially by approving the Eastern Slope Inn project. Mr. Webster stated that he took it as a personal attack. Ms. Woodall stated that her intention had nothing to do with Mr. Webster's integrity. Mr. Webster stated that Ms. Woodall does not have the authority to ask him to step down. Ms. Woodall stated that she thought where Mr. Hastings asked Mr. Webster to step down on Hales Highland that he should also step down for Eastern Slope Inn.

Mr. Webster stated that just because he works for the business does not mean he has a conflict of interest. Ms. Woodall stated that it was intended so the public wouldn't question it. Mr. Webster stated that the public should question it. Ms. Sand stated that conflict of interest is based on financial gain or you cannot make an unbiased decision. Ms. Woodall apologized to Mr. Webster and stated that she did not mean for it to personally reflect on his integrity.

Letter from Mark Hounsell: Mr. deFeyter made a motion, seconded by Mr. Webster, to respond to Mark Hounsell's letter (attached). Motion carried.

Meeting adjourned at 10:07 p.m.
Respectfully Submitted,


Holly L. Meserve
Recording Secretary