

CONWAY PLANNING BOARD

MINUTES

OCTOBER 7, 1999

A meeting of the Conway Planning Board was held on Thursday, October 7, 1999, beginning at 7:04 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chair, Catherine Woodall; Selectmen's Representative, Gary Webster; Vice Chair, Sheila Duane; Secretary, Arthur Bergmann; Robert deFeyter; Stacy Sand; John Waterman; Interim Town Planner, Paul King; and Recording Secretary, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

The Minutes of September 2, 1999, should be amended as follows: page 2, paragraph 8, line 3, should read, "...would like to have snacks..."; page 2, paragraph 13, line 7, should read, "...areas. Mr. deFeyter asked if the..."; page 3, paragraph 16, line 5, should read, "...in the grassed area..."; page 3, paragraph 20, line 2, should read, "...she sees no..."; page 4, paragraph 21, line 4, should read, "...store, their offering..."; page 5, paragraph 39, line 2, should read, "...left off of the waiver..."; page 7, paragraph 50, line 4, should read, "...Sand made a motion, seconded..."; page 8, paragraph 53, line 6, should read, "...and needed someone..."; page 8, paragraph 56, line 3, should read, "...wetlands then something..."; page 9, paragraph 60, line 2, should read, "...pave it you're going..."; page 9, paragraph 61, line 7, should read, "...but there is no problem..."; page 9, paragraph 63, line 3, should read, "...75 feet from the..."; page 9, paragraph 63, line 7, should be added, "...paving. Ms. Duane called Mr. deFeyter an obstructionist."; page 10, paragraph 70, line 3, should read, "...approximately 2,650 feet east..."; page 11, paragraph 73, line 10, should read, "...[see page 12, paragraph 80, lines 8-11 for clarification..."; page 11, paragraph 74, line 6, should read, "...home used to..."; page 11, paragraph 75, line 1, should read, "...application. Mr. deFeyter stated that the Board should consider a waiver for paving, but without any judgment factors. Ms. Emerson..."; page 12, paragraph 79, line 2, should read, "...wasn't doing their job. Ms. Woodall..."; page 12, paragraph 80, line 5, should read, "...asked what is Mr. Hastings advice on continuing. Mr. deFeyter stated that Zodiac took property that was residential and claimed to have used commercially. Mr. Waterman..."; page 12, paragraph 84, line 2, should read, "...under our code..."; page 13, paragraph 86, line 2, should read, "...problem as the building has been there..."; and page 13, paragraph 87, line 2, should read, "...it up to the Board of Selectmen...".

Ms. Sand made a motion, seconded by Mr. Bergmann, to approve the Minutes of September 2, 1999, as amended. Motion unanimously carried.

The Minutes of September 16, 1999, should be amended as follows: page 1, paragraph 3, line 2, should read, "...dogs than farming and would..."; page 1, paragraph 5, line 3, should read, "...be recorded. Mr. Bergmann..."; page 2, paragraph 12, line 2, should read, "...acres need to be..."; page 4, paragraph 21, line 2, should read, "...limestone then he..."; page 4, paragraph 21, line 4, should read, "...longer. Mr. Bergmann stated that..."; page 4, paragraph 23, line 6, should read, "...are supposed to..."; page 4, paragraph 25, line 7, should read, "...access their three..."; page 4, paragraph 26, line 4, should read, "...four (4) parking spaces."; page 5, paragraph 29, line 2, should read, "...that she can see..."; page 5, paragraph 29, line 8, should read, "...people won't obey..."; page 6, paragraph 36, line 5, should read, "...sewer line and..."; page 7, paragraph 43, line 3, should read, "...until today because..."; page 8, paragraph 46, line 2, should read, "...but in his professional..."; page 8, paragraph 48, line 6, should read, "...deFeyter voting in the..."; page 8, paragraph 50, line 4, should read, "...building it is currently..."; page 9, paragraph 53, line 2, should read, "...same time as the..."; page 9, paragraph 55, line 2, should be added, "...neighbors property. Mr. Woglom stated that they had an easement to access the dumpster. Ms. Duane..."; page 11, paragraph 68, line 5, should read, "...there used to be..."; page 11, paragraph 69, line 7, should read, "...and has no problems..."; page 12, paragraph 74, line 1, should read, "...any improvement is better..."; page 12, paragraph 81, line 4, should read, "...discussed this with Town..."; page 13, paragraph 82, line 2, should read, "...was supposed to be..."; and page 13, paragraph 83, line 8, should read, "...would take the ZBA's ...".

**Adopted: November 4, 1999 – As Amended
CONWAY PLANNING BOARD – OCTOBER 7, 1999**

Mr. deFeyter made a motion, seconded by Ms. Sand, to approve the Minutes of September 16, 1999, as amended. Motion unanimously carried.

The Minutes of September 23, 1999, should be amended as follows: page 1, paragraph 1, line 3, should read, "...Stacy Sand;..."; page 1, paragraph 4, line 5, should read, "...deFeyter asked if the only problem..."; page 2, paragraph 9, line 8, should be added, "...not work. Mr. deFeyter and Mr. King agreed to conduct a review of waivers over the past two (2) years and report back to the Board."; page 3, paragraph 16, line 2, should read, "...and new ones have to meet..."; page 3, paragraph 21, line 4, should be added, "...not required. The Board agreed that a definition for agricultural use is needed."

Mr. deFeyter made a motion, seconded by Ms. Sand, to approve the Minutes of September 23, 1999, as amended. Motion unanimously carried.

WML, LLC–MINOR SITE PLAN REVIEW CONTINUED (MAP 70, PARCEL 11) FILE #MR99-14

Mark Ohlson appeared before the Board. Mr. Ohlson stated that he made changes to the plans as requested by the Board. Mr. Ohlson stated that he noted on the plans that the driveway is one-way; the driveway was increased to 18 feet; the parking was removed along the driveway; a street tree was removed; the water line was removed from under the cherry tree; striping was added to the parking lot; and a waiver request submitted for the granite curbing.

Ms. Sand stated that at the previous meeting snow storage was discussed. Mr. Ohlson stated that snow storage areas are delineated on the plans. Ms. Sand asked if there was a note in regard to the public restrooms added to the plans. Mr. Ohlson stated that that note would need to be added to the plans. Ms. Sand asked if information on the lighting has been submitted. Mr. Ohlson answered in the affirmative. Mr. deFeyter stated that snow storage is located on the Conway Daily Sun property and asked if there is an easement. Mr. Ohlson answered in the affirmative.

Ms. Woodall asked if Paul DegliAngeli, Public Works Director, has reviewed the drainage. Mr. King stated that the drainage was previously reviewed, but the proposed four (4) parking spaces have been removed. Ms. Woodall asked if there were any other issues. Ms. Sand stated that the granite curbing needs to be addressed. Ms. Woodall read the waiver request for Article 123-21.I. Mr. deFeyter asked if the Board was going to check what was approved on the Conway Daily Sun site in regard to granite curbing. Mr. King stated that there was no specification for granite curbing for the Conway Daily Sun site. Mr. deFeyter asked if a waiver was granted. Mr. King stated that he did not look for a waiver; he only reviewed the plans.

Ms. Duane asked if the curbing was not waived and it is not on the plans do they have to install curbing. Ms. Sand stated that there is no curbing in that neighborhood. Mr. deFeyter stated that he didn't see any either. Mr. Ohlson stated that the ordinance states that the Board "may require" curbing. Ms. Woodall read the requirements to grant a waiver. **Ms. Duane made a motion, seconded by Ms. Sand, to grant the waiver request for Article 123-21.I.** Mr. Bergmann asked if the curbing was just for the radius of the two driveways. Ms. Sand stated that the applicant would need granite curbing everywhere or the Board could consider a partial waiver for curbing. Ms. Sand stated that the sidewalk is street level. Ms. Sand stated that either the Board requires curbing to start here or not require it at all.

Mr. Bergmann asked about what was done at the Conway Daily Sun site. Mr. King stated that the plans are approved and they do not show granite curbing. Mr. deFeyter stated that the Board should be consistent with the neighborhood and the Conway Daily Sun. Mr. Ohlson stated that Seavey Street needs to be redone and at that time granite curbing should be required. **Motion unanimously carried.** Ms. Sand made a motion, seconded by Ms. Duane, to approve the Minor Site Plan for WML, LLC. Motion unanimously carried. The plans were signed.

**FRECHETTE TIRE & REPAIR SERVICE, INC. – MINOR SITE PLAN REVIEW CONTINUED
(MAP 7, PARCEL 21) FILE #MR99-15**

Mr. Webster stepped down at this time. Shawn Bergeron of Shawn Bergeron Technical Services appeared before the Board. Mr. Bergeron stated that there were four items that needed to be addressed from the previous meeting. Mr. Bergeron stated that the pavement has been removed to reduce the curb cut, which is addressed under note #7. Mr. Bergeron stated that “pinned” wheel stops have been added to the plans; seven (7) parking spaces have been moved away from the building; and he has submitted a waiver request for parking within the setback. Ms. Sand stated that there was discussion of placing boulders along the property line at the last meeting. Mr. Bergeron stated that there was some discussion, but it is not a part of the site plan. Mr. Bergeron stated that his client and Russ Seybold of the Conway Scenic Railroad are discussing how they will deal with the delineation of the property line.

Ms. Woodall read a waiver request for Article 123-30.A(3). Ms. Sand made a motion, seconded by Ms. Duane, to approve the waiver request for Article 123-30.A(3). Motion unanimously carried. Ms. Woodall read a waiver request for Article 123-21.C. & F. **Mr. Bergmann made a motion, seconded by Ms. Sand, to approve the waiver request for Article 123-21.C. & F.** Ms. Woodall stated that she doesn't understand why the curb cut has to be so wide. Mr. Bergeron stated that this site was laid out and constructed before design standards. Mr. Bergeron stated that access to the main building would be impossible. Mr. Bergeron stated that the applicant has agreed to remove some pavement. **Motion unanimously carried.**

Mr. Bergmann made a motion, seconded by Ms. Duane, to conditionally approve the Minor Site Plan for Frechette Tire & Repair Service, Inc. conditionally upon a cost estimate for site improvements; a performance guarantee for 50% of all site improvements; this conditional approval will expire on November 4, 1999; and the plans can be signed out of session when the conditions have been met. Motion unanimously carried.

**PIRATES COVE NORTH CONWAY, INC. – FULL SITE PLAN REVIEW AND 3-UNIT
SUBDIVISION (MAP 64, PARCEL 31) FILE #FR99-14 AND #S99-15**

Mr. Webster rejoined the Board at this time. Mark Woglom of Opechee Construction appeared before the Board. Ms. Woodall asked if this is one lot of record. Mr. Woglom stated that this is currently one lot of record. Ms. Woodall asked where are the condominium lines. Mr. Woglom reviewed the plans and stated that back in 1996 the Planning Board approved a condominium subdivision of this site. Mr. Woglom stated that the building was one unit and the two golf courses were another unit. Mr. Woglom stated that a unit needs to be a three-dimensional object. Mr. Woglom stated that the golf courses are limited common areas and are not necessarily a unit. Mr. Woglom stated that the Planning Board approved the condominium subdivision, but it was never recorded.

Ms. Woodall asked if this was after the golf course was built. Mr. Woglom answered in the affirmative. Ms. Woodall asked if the Planning Board approved the condominium subdivision. Mr. Woglom answered in the affirmative. Ms. Woodall stated that this is a change-of-use. Mr. Woglom stated that it is a change-of-use under site plan. Ms. Woodall stated that this is one lot of record. Mr. Woglom stated that the condominium plans were never recorded and technically it is one ownership. Mr. Woglom stated that unit 1 will be the hotel structure and unit 2 will be the existing structure within the golf course. Mr. Woglom stated that the golf course will be assigned to unit 2. Mr. Woglom stated that there would be limited common areas A and B.

Ms. Woodall asked if each unit has to be reviewed for green space and landscaping requirements. Mr. Woglom stated that he could assure that these comply. Ms. Woodall stated that you couldn't use the golf course as green space. Ms. Woodall stated that they have to be considered as buildings. Ms. Woodall stated that she has spoken to the Town Attorney and they are a business. Mr. Woglom stated that it is limited common area. Mr. Bergmann stated that it couldn't be counted. Mr. Woglom stated that it is not.

**Adopted: November 4, 1999 – As Amended
CONWAY PLANNING BOARD – OCTOBER 7, 1999**

Ms. Woodall stated that it has to be considered a building. Ms. Woodall stated that the only areas that can be counted as green space or landscaping are areas not being used. Mr. deFeyter stated that this is over our heads and the Board should consult with the Town Attorney. Mr. King stated that he has submitted information to the Town Attorney for his review. Mr. deFeyter stated that the Board should wait to hear from the Town Attorney and we should not speculate. Ms. Duane stated that she would like to hear Mr. King's advice. Mr. King stated that there is more than enough green space no matter how it is counted. Mr. Woglom agreed and stated that these two businesses are under the same management, but owned by two separate corporations. Mr. Woglom stated that he would really like to focus on the site plan issues. Mr. Woglom stated that most important are the site plan issues and not the subdivision.

Ms. Sand stated that the site plan is a continuation and the next item on the agenda is the subdivision application. Ms. Sand asked which the Board is dealing with at the moment. Ms. Woodall stated that we cannot move forward because they are doing a condominium subdivision. Mr. Woglom stated that they could construct the hotel without the subdivision. Ms. Woodall stated that the subdivision application has a zoning issue that the Planning Board cannot deal with. Ms. Woodall stated that condominiums change the way you have to look at green space. Ms. Sand stated that there are two separate items and the site plan application was determined as complete.

Mr. Woglom stated that on the site plan application there is no mention of the condominium subdivision. Mr. Woglom stated that they are two separate issues and the site plan comes first. Mr. Woglom stated that he would like to have the Board review the site plan application. Ms. Woodall asked if the applicant has submitted the easements to the Town Attorney for his review and read a letter from Paul King in regard to that issue. Mr. Woglom stated that he has submitted the easements for the subdivision application. Mr. Woodall stated that now the applicant is asking the Board to review the application. Mr. Woglom stated that it is one site and one owner. Mr. Woglom stated that the applicant is proposing to remove the retail building and replace it with a hotel.

Mr. deFeyter stated that the Board accepted the site plan for review. Ms. Sand agreed. Mr. deFeyter stated that the Board has not accepted the subdivision application for review. Ms. Sand agreed. Mr. deFeyter stated that the Board will need to do something with the subdivision application, but the Board does not need to decide that this evening. Mr. Bergmann stated that the applicant applied for and it was advertised as a three-unit subdivision, and it is now a two-unit subdivision.

Mr. deFeyter stated that the Board has accepted the site plan. Mr. deFeyter stated that the second element here is the subdivision/condominium review. Mr. deFeyter asked if the Board wants to continue the subdivision application until the next meeting and deal with the site plan this evening. Mr. King stated that he would recommend the Board accepting the subdivision application as complete and continue the review to another meeting. Mr. Bergmann asked how the Board could do that. Ms. Duane stated that the Board should be polled to see what the whole Board thinks. Mr. Bergmann stated that a poll wouldn't matter if it were not legal.

Mr. Woglom stated that he would like the Board to deal with the site plan, which is the first item on the agenda. Mr. Woglom stated that the subdivision is the next item on the agenda. Mr. deFeyter asked Mr. Woglom if the subdivision application could be addressed after the Board hears from the Town Attorney. Mr. Woglom stated that he would like to address the issues. Mr. Bergmann stated that he is concerned about continuing with the subdivision application because it was noticed as a three-unit subdivision and it is only a two-unit subdivision. Mr. Woglom stated that the site plan is for no units. **Mr. deFeyter made a motion, seconded by Mr. Bergmann, to continue the subdivision application for Pirates Cove North Conway, Inc.** Mr. Woglom stated that he would like to be heard.

Mr. King stated that his recommendation is to accept the application as complete. Ms. Duane stated that the Board should be polled. **Motion carried with Ms. Duane and Ms. Sand voting in the negative and Mr. Waterman abstaining from voting.** Mr. deFeyter made a motion, seconded by Mr. Bergmann to amend the motion to continue the Subdivision application for Pirate's Cove North Conway, Inc. until October 21, 1999.

**Adopted: November 4, 1999 – As Amended
CONWAY PLANNING BOARD – OCTOBER 7, 1999**

Mr. Woglom stated that a hotel is being constructed on what was a parking lot. Mr. Woglom stated that there currently exists a vehicle access for the northerly property. Mr. Woglom stated in exchange for the easement, the Pirate's Cove property granted the right to use parking, but there was a stipulation. Mr. Woglom stated that the easement was put in place in 1996 when the second golf course was constructed. Mr. Woglom stated that if there is a change-of-use on the Pirate's Cove property the easement would cease to exist. Mr. Woglom stated that the fire department wanted access through the abutting property. Mr. Woglom stated that both parties have agreed to a new easement for emergency vehicle access and utilities. Mr. Woglom stated that the 1996 easement dissolves by an agreement in that easement and a new one will be in place.

Mr. deFeyter stated that the problem as he sees it is the northerly property does not have sufficient parking. Mr. deFeyter stated that the basis for the change-of-use was there was shared parking. Mr. Woglom stated that he has reviewed all the minutes and the files and there was never a requirement for shared parking. Mr. Woglom stated that the deed stated that upon a change-of-use the easement would dissolve. Mr. deFeyter stated that it went through town staff. Ms. Woodall stated that the new easement has not been executed. Mr. Woglom stated that it wouldn't be until after the approval has been granted.

Ms. Sand stated that legally there is nothing the Board can do about the easement. Ms. Sand stated that the applicant does not have to provide parking any more. Ms. Sand stated that the issue the Board can deal with is the access between the two properties. Ms. Sand stated at this point in time there is no waiver in the file for that issue. Ms. Sand stated that ultimately they could use the parking, but the applicant is only proposing a connecting sidewalk. Ms. Woodall stated that the fire department wanted access. Mr. Woglom stated that that is correct and stated that it was done for the fire department. Mr. Woglom stated that there was compensation with a stipulation upon a change-of-use.

Ms. Woodall stated that the northern property would be the servient tenement and Pirates Cove is the dominant with the servient having more power. Ms. Woodall asked what is the legality of the other person giving away an easement. Mr. Woglom stated that there would be an easement after site plan approval is granted. Ms. Sand asked what guarantees that the new easement will take place. Ms. Sand stated that it is important for the fire department to have access to the back of the property. Mr. Woglom stated that they have agreed to create this changed easement and it should be a part of the conditional approval that the easement be executed.

Ms. Sand asked if it would be the same owners. Mr. Woglom answered in the affirmative and stated that it will be a complimentary use. Ms. Duane asked if Ms. Sand could explain where this existing road connects the two parcels. Mr. Woglom explained the location and stated that it is not a vehicle driveway. Mr. deFeyter stated that the applicant will be reducing parking to the northern property. Ms. Woodall asked if the applicant has the right to eliminate the easement. Ms. Sand answered in the affirmative. Mr. deFeyter stated that the Board needs advice from Town Counsel. Ms. Sand stated that we already have our answer; the easement was after site plan review. Mr. Woglom stated that the applicant has the legal right to end that easement; it is clear.

Mr. deFeyter stated that the Board should direct it to the Town Attorney. Ms. Woodall stated that we usually send easements to the Town Attorney. Mr. King stated that it is a standard easement and there are no problems. Ms. Woodall stated that easements are always submitted to the Town Attorney. Ms. Sand stated that there is a stipulation that allows the easement to be dissolved. Mr. Woglom stated that he concurs with the legalities of dissolving an easement and creating a new easement. Ms. Woodall asked if the applicant counted green space on the golf course. Mr. Woglom answered in the negative.

Mr. Bergmann asked about the Saunders easement. Mr. Woglom showed the easement on the plans. Mr. Woglom stated that the buffer area at the northerly property line would be maintained as green space. Mr. Woglom stated that there are no improvements proposed in that buffer area. Mr. Woglom stated that the second easement along the southerly property line the applicant is removing any improvements, but none of the rights to utilize that access. Mr. Woglom stated that the applicant has added a pedestrian access to the northern property.

**Adopted: November 4, 1999 – As Amended
CONWAY PLANNING BOARD – OCTOBER 7, 1999**

Ms. Sand stated that there was discussion about possibly waiving a couple of street trees for the view. Mr. Woglom stated that he has left the street trees on the plans, but they can be relocated. Ms. Woodall asked if the property slopes at the back. Mr. Woglom answered in the affirmative. Ms. Woodall asked what is the slope. Mr. Woglom answered 3:1. Mr. Woglom stated that it currently exists. Ms. Sand asked for input on the street trees. Ms. Duane stated that the view should be preserved. Mr. deFeyter disagreed and stated that there are trees on the other side of the road. Mr. deFeyter stated that the trees could be adjusted and moved back a bit if the applicant wishes. Ms. Sand stated that she agrees and stated that you cannot see over the other trees now.

Mr. deFeyter stated that it was a good thought, but he doesn't see a problem with moving the trees over a bit. Mr. Woglom stated that the location of the trees would not hinder the business. Mr. Webster, Ms. Woodall, Mr. deFeyter, Mr. Waterman and Mr. Bergmann agreed that the trees should remain where they are located on the plans. Ms. Duane agreed to either way. Mr. deFeyter stated that he had suggested locating a handicap space nearer to the hotel. Mr. Woglom stated that he did review that request, but there is no place to create a space closer to the hotel. Mr. Woglom stated that they are not making it any different from other shopping areas. Mr. deFeyter stated that he appreciated Mr. Woglom reviewing that suggestion.

Ms. Woodall asked if the slope was considered in the green space calculation. Mr. Woglom answered in the affirmative. Mr. Woodall read Article 123-30.B. Ms. Sand stated that it is a drop off and not a slope. Ms. Woodall stated that the Board needs accurate figures. Mr. King asked if the area in question was between the tree line and the parking lot. Mr. Woglom answered in the affirmative. Mr. King stated that it is a small area. Ms. Woodall stated that we do need correct information on the plans. Mr. King stated that it could be a condition of the approval to recalculate the green space. Ms. Woodall stated that conditional approvals can only be non-judgmental issues.

Ms. Woodall stated that there was a letter from the fire chief that insisted on this easement. Mr. Woglom stated that he has spoken to them and they would prefer to see it, but it is not required. Mr. Woglom stated that if you do not have fire access then you have a different set of building codes to comply with. Ms. Sand stated that there currently exists a driveway access behind the hotel. Mr. deFeyter stated that this application needs fire department approval. Ms. Duane asked if we have approval from the fire department. Mr. King read a letter of approval from North Conway Fire Department Fire Chief, Wayne Derouin.

Ms. Woodall read a waiver request for Article 131, Table II. Ms. Sand stated that the waiver request should be for Article 123-21.C. & D. because this is a site plan application and not a subdivision application. Mr. King stated that he thinks Ms. Sand is correct. Ms. Sand stated that it should actually be 123-21. F. as it is referenced in Article 131, Table II. Mr. King stated that that is a good point. Ms. Sand made a motion, seconded by Ms. Duane, to approve the waiver request for Article 123-21.F. Motion unanimously carried.

Ms. Sand asked if we have received a bond. Mr. King stated that we have received a cost estimate. Ms. Woodall asked if there would be any roof top units. Mr. Woglom answered in the negative. **Ms. Sand made a motion to conditionally approve the full site plan for Pirates Cove North Conway, Inc. conditionally upon a performance guarantee for 50% of all site improvements; verification from Town Attorney regarding the easements; accurately address the slope issue for green space; this conditional approval will expire November 4, 1999; and when the conditions have been met the plans can be signed out of session.** Ms. Woodall read Article 123-17.B. regarding conditional approvals. Ms. Sand stated that it is a tiny slope. Mr. deFeyter stated that it should read that the green space be recalculated and meet the 25% green space requirement. **Ms. Duane seconded the motion.**

Ms. Woodall asked for public comment; Glen Saunders stated that if a restaurant is developed at some point would the applicant be required a change-of-use hearing. Ms. Sand answered in the affirmative. Mr. Saunders stated that the existing retail building houses the toilet facilities for the golf course. Mr. Saunders asked if the public toilets would be in the hotel. Mr. Woglom answered in the affirmative and stated that there will be public toilets accessible from the exterior of the building and golf patrons will not have to go

**Adopted: November 4, 1999 – As Amended
CONWAY PLANNING BOARD – OCTOBER 7, 1999**

through the hotel. Mr. Woglom stated that there would be public toilets available for the hotel patrons on the interior of the building. Ms. Woodall asked if the bathrooms would be in the common area if the property were subdivided. Mr. Woglom answered in the affirmative.

Mr. Bergmann asked if conditional approval is granted what happens if there is not enough green space for the unit subdivision. Ms. Woodall stated that the subdivision would not be able to be approved. Ms. Woodall stated that the unit subdivision could only be approved if each unit meets the green space requirement. Ms. Woodall stated that green space needs to be calculated for each unit separately. Mr. deFeyter stated that the Board should address that issue under the subdivision review. Ms. Woodall stated the conditional approval should also include that the easements be executed, held by the Town and recorded with the plan. **Ms. Sand made a motion, seconded by Ms. Duane, to amend the motion to include that the easements need to be executed, held by the Town and recorded with the plan. Both motions carried with Ms. Woodall voting in the negative and Mr. Bergmann abstaining from voting.**

SACO WOODS CONDOMINIUM ASSOCIATION – MINOR SITE PLAN REVIEW (MAP 8, PARCEL 28) FILE #MR99-16

Ken Tremblay of Northern Woods Property Management appeared before the Board. Mr. Tremblay stated that the applicant would like to add six carports to existing carports. Ms. Duane made a motion, seconded by Mr. deFeyter, to accept the application for Saco Woods Condominium Association for a minor site plan review as complete. Motion unanimously carried. Mr. Bergmann asked why is the information not all on one plan. Mr. King stated that drainage is on a supplemental plan. Mr. Bergmann stated that it should be in a package. Mr. King stated that we could staple them together; that is a good idea. Mr. Bergmann asked if there is only one set of supplemental plans. Mr. King answered in the affirmative. Ms. Duane asked if this was a minor site plan review. Mr. King answered in the affirmative. Ms. Sand stated that a minor site plan still needs certain information.

Ms. Woodall asked if there were any questions or concerns regarding traffic. Ms. Woodall stated that there would not be any increase in traffic. Ms. Woodall asked if there were any questions or concerns regarding the driveway. Ms. Woodall stated that the driveway was previously approved and asked if there were any proposed changes to the driveway. Mr. Tremblay answered in the negative. Ms. Woodall asked if there were any questions or concerns regarding the parking. Ms. Woodall stated that the parking is on a supplemental plan. Ms. Sand stated that the plans show the cul-de-sac as not paved. Mr. Tremblay stated that it goes to the pump house and it is paved. Ms. Sand stated that note #6 on the plans needs to be removed.

Ms. Woodall asked if there were any questions or concerns regarding the parking lot. Mr. Tremblay stated that the highlighted areas on the supplemental plan indicate the parking spaces. Mr. Bergmann asked why it is not on one plan with everything else. Mr. Tremblay stated that the first plans shows the parking areas, but the parking spaces are not delineated. Ms. Woodall stated that a Board member asked for additional information. Ms. Sand stated that she did and she believes this application is similar to the Frechette [Map 7, Parcel 21] application. Mr. Bergmann stated that the information should be on one plan. Mr. Tremblay stated that it was accepted as a package. Ms. Sand stated that there should be a note stating the number of parking spaces required and the number of parking spaces being provided.

Mr. King asked the number of units. Mr. Tremblay answered 96. Mr. King stated that 192 parking spaces are needed. Mr. King stated that the number of spaces required has not changed since the original approval. Mr. Waterman asked how many car ports there are. Mr. Tremblay answered 37. Ms. Woodall asked how many are being added. Mr. Tremblay answered 6. Ms. Woodall asked if there were any questions or concerns regarding loading; it is not applicable. Ms. Woodall asked if there were any questions or concerns regarding snow storage; snow storage is shown on a supplemental plan. Mr. Bergmann stated that snow storage is located on the side of the roads. Ms. Woodall asked if snow storage was on any landscaped area. Mr. Tremblay stated that the areas delineated as snow storage are just grass and has no plantings.

Ms. Woodall asked if there were any questions or concerns regarding pedestrian access; there was none. Ms. Woodall asked if there were any questions or concerns regarding lighting. Ms. Sand stated that the

**Adopted: November 4, 1999 – As Amended
CONWAY PLANNING BOARD – OCTOBER 7, 1999**

Board needs to know which lights are on the carports and which will be removed. Ms. Sand stated that the plans need to reflect what is there. Ms. Woodall stated that in regard to note #6 is the cul-de-sac paved or not. Mr. Tremblay stated that the cul-de-sac on Hutchins Lane is not paved. Mr. King stated that he thinks it is a dedicated way, which was approved under the original approval. Ms. Sand asked if a waiver for paving needs to be submitted. Mr. King stated that it is a dedicated way and it has to have some sort of turn around access around it. Ms. Sand stated that it should be labeled as a dedicated way.

Ms. Woodall asked if there were any questions or concerns regarding drainage. Ms. Woodall stated that there are no changes in the pavement. Ms. Woodall asked if there were any questions or concerns regarding utilities. Ms. Woodall stated that the utilities are already underground. Ms. Woodall asked if there were any questions or concerns regarding landscaping. Ms. Sand asked if the landscaping was on the plans. Mr. King answered in the negative and stated that it is on an 8-1/2x11 sheet of paper in the file. Mr. Bergman asked if landscaping was supposed to be on the plans. Mr. King stated that you will always find supplemental plans. Ms. Sand stated that it is in the file. Mr. Bergmann stated that it is suppose to be on the plans that are being recorded. Mr. King stated that this is not being recorded.

Mr. King stated that he would assume back in 1988 the applicant met all the requirements at that time on the plans or on the supplemental plans. Ms. Woodall stated that we need accuracy on the plans. Ms. Woodall asked if there were any questions or concerns regarding architectural design; there was none. Ms. Woodall asked if there were any questions or concerns regarding restrooms; it is not applicable. Ms. Woodall asked if there were any questions for concerns regarding the dumpster. Ms. Woodall stated that the dumpster is shown on a supplemental plan. Ms. Woodall asked if the dumpster is enclosed. Mr. Tremblay answered in the affirmative.

Ms. Woodall asked if there were any questions or concerns regarding historical value; it is not applicable. Ms. Woodall asked if there were any questions or concerns regarding water; the well is located on the plan. Ms. Woodall asked if there were any questions or concerns regarding sewer; the septic systems are located on the plans. Ms. Woodall asked if there were any questions or concerns regarding wheelchair access. Ms. Sand stated that wheelchair access needs to be shown on the plans. Mr. Tremblay stated that the proposed carports do not affect anything that exists on this site. Ms. Sand stated that the Board went through a preliminary review and site plan review for a roof at Frechette's [Map 7, Parcel 21]. Mr. Tremblay stated that the applicant has submitted this as a package. Ms. Woodall stated that Mr. Tremblay has tried to answer the questions.

Ms. Sand stated that handicap access is supposed to be indicated on the plans. Ms. Woodall asked how many spaces are there for each building. Mr. Tremblay stated that there is a minimum of two spaces per a building. Mr. King asked if the applicant could hatch the handicap parking spaces on the plans. Ms. Sand stated that the Board has to follow the regulations and she is not trying to be a stickler. Ms. Woodall asked if there were any questions or concerns regarding flood plain; it is not applicable. Ms. Woodall asked if there were any questions or concerns regarding site construction standards; it is not applicable. Ms. Woodall asked if there were any questions or concerns regarding nuisance; there were none. Ms. Woodall asked if there were any questions or concerns regarding public safety; there were none.

Ms. Woodall asked if there were any questions or concerns regarding temporary outdoor display; it is not applicable. Ms. Woodall stated that the plat notes need to be added to the plans. Ms. Woodall asked if there were any wetlands. Mr. King answered not in the construction area. Mr. King stated that it could be part of a conditional approval to show the wetlands and the setbacks. Ms. Woodall asked for public comment; there was none. The Board determined that the number of parking spaces needed to be indicated on the plans; lighting needs to be shown on the plans; a note regarding Hutchins Lane being a dedicated way needs to be added to the plans; green space calculations need to be added to the plans; the handicap parking spaces need to be indicated on the plans; the wetlands and setbacks need to be added to the plans if applicable; and the plat notes need to be added to the plans. The Board agreed to discuss this application later in the meeting.

SETTLER'S R2, INC. – MINOR SITE PLAN REVIEW (MAP 11, PARCEL 62-7) FILE #MR99-17

Roger Williams, Project Manager; and Mark Lucy of White Mountain Survey appeared before the Board. Mr. Lucy stated that Building I was approved in July, 1997. Mr. Lucy stated that the footprint was different from what was approved on the site plans. Ms. Duane made a motion, seconded by Ms. Sand to accept the application of Settler's R2, Inc. for a minor site plan review. Motion unanimously carried.

Ms. Woodall asked if there were any questions or concerns regarding traffic. Ms. Woodall stated that this building was a part of a 1997 approval. Ms. Woodall asked if there were any questions or concerns regarding parking. Ms. Woodall asked if the calculations have changed and if any additional parking spaces are required. Ms. Woodall stated that building I has increased in size from what was approved in 1997. Mr. Lucy stated that 52,075 square feet was approved within three buildings. Mr. Lucy stated that this is the second of three buildings proposed. Mr. Lucy stated that no additional parking is needed.

Mr. Bergmann asked which lot the parking was on. Mr. deFeyter stated that there is parking on a different lot. Mr. Lucy stated that that is correct and there are spaces located on lot R1. Ms. Woodall asked how were the spaces calculated for two separate lots. Mr. Lucy stated that there are four lots of record with shared parking. Ms. Sand asked the amount of additional retail space. Mr. Lucy stated that there is a deficit of approximately 5,000 square feet. Ms. Sand stated that Building I is larger than originally proposed. Mr. Lucy stated that that is correct. Mr. Williams stated that the first building constructed under this approval was 4,000 square feet less than originally approved. Ms. Sand stated that there is not a parking issue.

Mr. Bergmann stated there is nothing to stop the applicant from constructing the additional square footage. Mr. Bergmann stated that the applicant would not have to come back to the Planning Board for the extra square footage because it has already been approved. Ms. Sand asked why the building was constructed below the approved square footage. Mr. Lucy answered site constraints and style. Ms. Sand asked if there is any way to construct the remaining approved square footage. Mr. Lucy answered not without encroaching on the utilities and the building setbacks. Mr. deFeyter stated that the applicant is proposing an additional 600 square feet, which is two additional parking spaces where 1,500, are being provided. Mr. Lucy stated that three spaces are required, but it is a moot point. Mr. King read what the Planning Board has approved and what has actually been constructed.

Ms. Woodall asked if there were any questions or concerns regarding the parking lot; there was none. Ms. Woodall asked if there were any questions or concerns regarding loading. Ms. Woodall stated that the back of a building is usually not visible from the street, but this is an unusual situation where there is no real back to the building. Ms. Woodall stated that the loading area should be heavily landscaped along the Town road. Mr. King stated that the landscaping plan shows the loading area buffered. Ms. Woodall asked if there were any questions or concerns regarding snow storage; there was none. Mr. Lucy stated that there was a note on the plan regarding snow storage.

Ms. Woodall asked if there were any questions or concerns regarding pedestrian access. Mr. deFeyter stated that there was a proposal for a sidewalk to the LL Bean complex. Mr. Williams stated that there was discussion on a sidewalk along McMillan Lane. Ms. Woodall asked if there were any questions or concerns regarding lighting; there was none. Ms. Woodall asked if there were any questions or concerns regarding utilities; there was none. Ms. Woodall asked if there were any questions or concerns regarding architectural design. Ms. Woodall asked if roof top mechanicals would be visible from any side of the building. Mr. Williams answered in the negative.

Ms. Woodall asked if there were any questions or concerns regarding the dumpster; there was none. Ms. Woodall asked if there were any questions or concerns regarding restrooms; they are shown on the plans. Ms. Woodall asked if there were any questions or concerns regarding historical value; it is not applicable. Ms. Woodall asked if there were any questions or concerns regarding water or sewer; there was none. Ms. Woodall asked if there were any questions or concerns regarding handicap accessibility; there was none. Ms. Woodall asked if there were any questions or concerns regarding flood plain; there was none. Ms.

**Adopted: November 4, 1999 – As Amended
CONWAY PLANNING BOARD – OCTOBER 7, 1999**

Woodall asked if there were any questions or concerns regarding site construction; there was none. Ms. Woodall asked if there were any questions or concerns regarding nuisance; there was none. Ms. Woodall asked if there were any questions or concerns regarding public safety; there was none. Ms. Woodall asked if there were any questions or concerns regarding temporary outdoor display; there was none. Ms. Woodall asked if there were any questions or concerns regarding the plat notes; there was none. Ms. Woodall asked if there were any other questions; there were none. Ms. Woodall asked for public comment; there was none. Ms. Duane made a motion, seconded by Ms. Sand, to approve the minor site plan for Settler's R2, Inc. Motion unanimously carried. The plans were signed.

SACO WOODS CONDOMINIUM ASSOCIATION – MINOR SITE PLAN REVIEW (MAP 8, PARCEL 28) FILE #MR99-16 (CONTINUED FROM EARLIER IN THE MEETING)

Ken Tremblay appeared before the Board. Mr. Tremblay stated that he has added the green space calculations to the plans; have indicated the delineated way; added the number of parking spaces to the plans; indicated the handicap parking spaces on the plans; delineated the snow storage on the plans; and indicated the lighting on the plans. Ms. Sand made a motion, seconded by Ms. Duane, to approve the minor site plan for Saco Woods Condominium Association. Motion unanimously carried. The plans were signed.

HAROLD WHITAKER AND THOMAS FADDEN – 4-LOT SUBDIVISION (MAP 5, PARCEL 5) FILE #S99-16

Jon Howe of Ammoonosuc Survey Company appeared before the Board. Mr. Howe stated that the applicant is proposing to subdivide approximately 60 acres into four lots. Mr. Howe stated that the applicant has received driveway permits from the State. Mr. Howe stated that there would be a shared driveway between lots three and four. Mr. Howe stated that there are some wetland areas indicated with a 75-foot setback. Mr. Howe stated that the lots are large; between 25 acres and 8 acres. Ms. Woodall asked if there is one acre of build able land for each proposed lot. Mr. Howe answered in the affirmative.

Ms. Sand made a motion, seconded by Ms. Duane, to accept the 4-lot subdivision application for Harold Whitaker and Thomas Fadden for subdivision review as complete. Motion unanimously carried. Ms. Woodall asked if there were any comments from the Board. Mr. deFeyter stated that by the cul-de-sac there is a wetland. Mr. Howe agreed. Mr. deFeyter stated that there is suppose to be a setback. Mr. Howe stated that the dash line indicates the setback. Mr. deFeyter asked if the road could be built. Mr. Howe stated that the applicant is waiting for a wetlands permit. Mr. deFeyter asked if a State Wetland permit could be a part of a conditional approval. Mr. King answered in the affirmative.

Mr. deFeyter asked if the Board grants a conditional approval and the State permit is not approved does the rest of the subdivision still stand. Ms. Woodall answered in the negative. Ms. Woodall stated that there is a waiver request for road design standards to lot 2. Ms. Woodall read a waiver request for Article 131-43.E. Ms. Woodall stated that if this lot were subdivided again the road would be required to be constructed to town standards. Ms. Sand made a motion, seconded by Ms. Duane, to approve the waiver request for Article 131-43.E. Motion carried with Mr. Bergmann voting in the negative.

Ms. Woodall asked for public comment; Dave Weathers, an abutter, stated that there needs to be a high intensity soil survey. Mr. Weathers stated that the property shows it as a seasonal stream, but it is a yearly stream. Mr. Weathers stated that the Conway Conservation Commission (CCC) has not received a dredge and fill application. Mr. Weathers stated that the CCC needs to comment on that application before the State approves it. Mr. Weathers stated that he thought the Town had criteria for a high intensity soil survey. Mr. King referred to Articles 131-24.J. and 131-29.A.

Mr. Weathers stated that he has walked the property and the plans do not show the drainage problem in that area. Mr. Howe stated that we have a soil scientist doing a dredge and fill application. Mr. Weathers stated that the application hasn't been submitted. Ms. Woodall stated that the submission of all permits is necessary for a complete application. Ms. Woodall stated that if the application has not been submitted than this is not a complete application.

Adopted: November 4, 1999 – As Amended
CONWAY PLANNING BOARD – OCTOBER 7, 1999

Mr. Weathers asked what is the horizontal distance that the applicant is crossing. Mr. Howe answered 20 feet. Mr. Weathers asked if that was in a hydric area. Mr. Howe answered in the affirmative and stated that they are crossing on the upstream side of the cul-de-sac. Mr. King stated that it falls under the 75-foot setback requirement. Mr. King stated that there are some isolated wetlands and if they are not connected to the year round stream then a 75-foot setback does not need to be shown. Mr. Weathers stated that if it drains into the year round stream then it would be considered connected.

Ms. Woodall stated that she would like to see the more intense study done. Ms. Woodall stated that you couldn't count a wetland as part of the acreage. Mr. King stated that he doesn't think the Board has the authority to require one test over another. Mr. King stated that the ordinance states either/or. Mr. deFeyter stated that the setbacks need to be shown. Mr. Howe agreed. The Board determined that the applicant must apply for a dredge and fill permit; revise the setbacks on the plans; add a note regarding the road waiver; and indicate the corner bounds that exist. Ms. Sand made a motion, seconded by Ms. Duane, to continue the subdivision application for Harold Whitaker and Thomas Fadden until November 4, 1999. Motion unanimously carried.

**DELPHIS GILBERT/NORTH CONWAY ATHLETIC CLUB – MINOR SITE PLAN REVIEW
(MAP 15, PARCEL 23-2) FILE #MR99-18**

Del Gilbert and Cheryl Turgeon appeared before the Board. Ms. Turgeon stated that they would like to add a full-time day care center at the club. Mr. Bergmann asked if the application was complete. Mr. King stated that a board member requested additional information that the applicant has provided. Mr. King stated that the application is complete. Ms. Duane made a motion, seconded by Mr. Waterman, to accept the minor site plan review for Delphis Gilbert/North Conway Athletic Club as complete. Motion unanimously carried.

Ms. Woodall asked the size of the area proposed to be used for the day care. Ms. Turgeon answered approximately 1,200 square feet. Ms. Woodall asked how many children would be allowed. Ms. Turgeon answered 12. Ms. Woodall asked if the State has approved this facility. Ms. Turgeon stated that she is waiting for the Planning Board approval before she submits her application to the State. Mr. deFeyter asked if the State regulations would be met. Ms. Turgeon answered in the affirmative. Ms. Woodall asked if there would be an outdoor facility. Ms. Turgeon stated that there is a grassy area that will be fenced in.

There was discussion that there was an existing nursery. Mr. King asked if the proposed areas have always been set aside for a nursery. Ms. Turgeon answered in the affirmative. Mr. King stated that this might not need site plan review. The Board determined that this was a pre-existing use. Ms. Duane made a motion, seconded by Mr. Waterman, to withdraw the application for Delphis Gilbert/North Conway Athletic Club for a minor site plan review. Motion unanimously carried.

OTHER BUSINESS

Master Plan: Mr. deFeyter submitted the attached Proposals for Master Plan to the Board. After a brief discussion, it was the consensus of the Board to recommend proposal D.

Mt. Valley Mall/Chick Lumber Sign: Ms. Woodall stated that the history of the Chick's Lumber sign is that Arliss Hill sold the lot to Chick Lumber and they put up a sign with her sign. Ms. Woodall stated that the Town disagreed with that sign and Chick's rented space in the mall so they could have the sign and then closed down after a few years. Ms. Woodall stated that the Chick Lumber's sign is now an off-premise sign. Ms. Woodall stated that she does not agree with the interpretation of the sign ordinance by Dawn Emerson.

Ms. Woodall stated that the signs that are in the State or Town right-of-way are not grandfathered. Ms. Woodall stated that the State is paying to move signs that are on the owners lot of record, but the question is does the sign have to become conforming. Ms. Woodall asked if the signs do have to come into conformity then who compensates the owners for that. Ms. Woodall stated that she thought the State would

Adopted: November 4, 1999 – As Amended
CONWAY PLANNING BOARD – OCTOBER 7, 1999

because they are requiring them to move their signs. Ms. Woodall stated that the State should be compensating for those with a grand fathered status. Ms. Woodall stated that the Chick's Lumber sign is clear.

Ms. Sand stated that the Board could request staff to remove the Chicks name. Mr. deFeyter stated that he spoke informally to the Town Attorney and he indicated that if the State were taking the land there would be compensation if they had to reduce the size of their sign to a conforming size. Mr. deFeyter stated that clearly the State would pay for a new sign if the sign were currently legal. Mr. deFeyter stated that he does not know if there is much the Board can do about appeals. Mr. deFeyter suggested writing to Arliss Hill telling her that it is in the best interest of the Town when the sign is moved to take advantage of the State money and bring the sign into conformance. Mr. deFeyter stated that the State would pay for a new sign.

Ms. Woodall stated that the State would pay for the value of the sign. Mr. deFeyter stated that Peter Hastings thought the State would. Ms. Woodall stated that she is in favor of sending a letter to Arliss Hill. Ms. Sand stated that grandfathering is a big issue in this Town. Ms. Sand stated that there is a lot of support for grand fathered rights. Ms. Sand stated that to encourage people to do things is the best approach because we don't have a leg to stand on. Ms. Duane stated that she has had the sign for years. Mr. Waterman stated that it should come into compliance.

Meeting adjourned at 12:45 p.m.

Respectfully Submitted,

Holly L. Meserve
Recording Secretary