

CONWAY PLANNING BOARD

MINUTES

DECEMBER 2, 1999

A meeting of the Conway Planning Board was held on Thursday, December 2, 1999, beginning at 7:04 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chair, Catherine Woodall; Vice Chair, Sheila Duane; Robert deFeyter; Stacy Sand; Arthur Bergmann; John Waterman; Interim Town Planner, Paul King; and Recording Secretary, Holly Meserve.

**REVIEW AND ACCEPTANCE OF MINUTES**

The Minutes of November 4, 1999 should be amended as follows: page 1, paragraph 6, line 8, should read, "...the Board has allowed this in lieu..."; page 2, paragraph 6, line 3, should read, "...nine feet. Mr. deFeyter asked if it could be..."; page 3, paragraph 4, line 4, should read, "...deFeyter asked that if the commercial..."; and page 4, paragraph 7, line 7, should be added, "...Board again. The Board agreed to keep it together." Mr. deFeyter made a motion, seconded by Ms. Sand, to approve the Minutes of November 4, 1999, as amended. Motion unanimously carried.

The Minutes of November 18, 1999 should be amended as follows: page 2, paragraph 9, line 4, should read, "...referred to page 49 of the Conway..."; page 3, paragraph 8, line 4, should read, "...abstaining from voting. After..."; page 4, paragraph 3, line 3, should read, "...before, but the plans were date stamped fourteen (14) days before. Ms. Sand..."; page 4, paragraph 7, line 2, should read, "...plans to the new plans to ensure that there were no changes. Mr. King answered..."; page 5, paragraph 2, line 5, should read, "...have some bearing."; and page 5, paragraph 4, line 4, should read, "...were not allowed to speak because no information...". Ms. Sand made a motion, seconded by Mr. deFeyter, to approve the Minutes of November 18, 1999, as amended. Motion unanimously carried.

**PUBLIC HEARING – SANTA MARIA PROPERTY (MAP 7, PARCEL 63)**

Thomas Dewhurst and Angelo Santa Maria appeared before the board. Mr. Dewhurst stated that they are proposing the extension of the Highway Commercial District in the area of Leavitt's Bakery to the northerly boundary line of the Santa Maria property. Mr. Dewhurst stated that the vote last year was 798 yes and 854 no. Mr. Dewhurst stated that there is no adverse impact. Mr. Dewhurst stated that he would ask for the Board's support and recommendation.

Ms. Woodall asked if there is anything in writing from Mr. King. Mr. King stated that he gave a written report to the Board a couple of weeks ago dated November 2, 1999. Mr. King stated that his recommendation if the Board decides to rezone that area, would be to not to go further north than 1,400 feet. Mr. King stated that he suggested a transition zone, which would allow some commercial activities, but not retail, but the Board did not support that recommendation. Mr. King stated that he sees no problem with the proposal as brought forward.

Mr. Bergmann asked if this is a petitioned article. Mr. Dewhurst answered in the negative and asked the Board to take it to the voters themselves. Ms. Woodall stated that the Board voted to hold a public hearing. Ms. Woodall asked why 1,400 feet. Mr. King stated that the commercial zone extends 1,400 feet north on the east side of the road. Mr. King stated that the west side should be made even with the east side. Mr. King stated that the proposal is for the Santa Maria property only. Ms. Woodall asked what are the benefits to the Town if the property is rezoned. Mr. King stated that it creates a balance in the commercial zone.

Mr. deFeyter stated that previously Mr. King pointed out that Route 16 is all commercial. Mr. deFeyter stated that this is a small island that breaks that up. Mr. deFeyter stated that it returns some rural character and open space. Mr. King stated that he does not think you get that feel until the commercial district on the east side terminates. Mr. Santa Maria stated that the property is too big for residential and too small for agricultural. Mr. Santa Maria stated that the only thing to do would be to break it up into small lots or a mobile home park and you will lose that open space regardless. Mr. Dewhurst stated when zoning was being discussed in the 1980's,

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they wanted to preserve the area north of KFC. Mr. Dewhurst stated that the land is very narrow North of the Santa Maria property and not suitable for commercial development.

Ms. Woodall asked why this is not spot zoning. Mr. Santa Maria stated that it was residential property that became commercial property with no notification. Ms. Woodall asked for public comment; Ray Leavitt stated that he supports extending the boundary. Mr. Leavitt stated that this is a nice piece of property and there is commercial property to the north and south of this property. Mr. Leavitt stated that it has very little value as agricultural.

Jim Lyons, owner of Banners Restaurant, supports the zoning change. Mr. Lyons stated that it is not suitable for residential because of the traffic and it is not marketable for residential. Mr. Bergmann stated that he would strongly urge the Board to go along with the voters and leave the property the way it is. Mr. Dewhurst stated that the vote was to not recommended by the Board and it should go to the voters with a recommendation from the Board. Mr. deFeyter stated that it has been to the voters and very recently. Mr. deFeyter stated that this should be a Town wide project and not done piece meal.

Mr. Dewhurst stated that this was an oversight. Mr. deFeyter stated that this is part of the Master Plan. Mr. deFeyter stated that we should look at all these issues as he is concerned with dealing with one parcel at a time. Mr. Santa Maria asked what can be done with that property. Mr. deFeyter stated that Mr. Santa Maria suggested a number of uses at the beginning of the meeting. Mr. Leavitt stated that people look to the Planning Board for direction and just because they voted this last time to defeat it, it came very close given the fact that the people putting it forth had very little experience. Mr. Leavitt stated as far as looking at the overall picture he'd rather have piece meal than an umbrella. Mr. Leavitt stated that piece meal you can vote on each piece individually, but under an umbrella if you don't like a certain piece you have to vote on it as a unit.

Ms. Woodall stated that the Board wants to look at the overall picture of the Town. Ms. Woodall stated that when we change zoning it is suppose to be for the benefit of the Town. Ms. Woodall stated that the Town needs to update the Master Plan. Ms. Duane stated that she doesn't think the Santa Maria's should be held up because the Town of Conway does not have an updated Master Plan. Ms. Duane stated that this piece of property has been swallowed up by the commercial all around it. Ms. Duane stated that the property to the North is too small to rezone commercial.

Ms. Sand stated that we do need to review and invest in the Master Plan, but for years this was taxed commercial. Ms. Sand stated that the perception of the town was that it was commercial, but it wasn't. Ms. Sand stated that if it was your perception why not correct it. Ms. Sand stated that it is an exception; it was an oversight. Ms. Sand stated that you don't get out of the commercial feel until after KFC. Ms. Sand stated that we shouldn't be punishing an owner for an oversight.

Ms. Woodall asked when the property began being taxed commercially. Mr. Santa Maria answered after the reevaluation. Ms. Duane stated that you miss the property when you go by it. Ms. Duane stated if the State doesn't have a problem with it then we shouldn't. Mr. deFeyter stated that he has some concerns with that type of attitude and stated that the Town has to look at it from a safety point of view as well. Mr. Dewhurst stated that it is the job of the Planning Board to address the safety and if it is rezoned commercially it will be the Board's duty. Mr. Dewhurst asked the Board to put it to the voters with a recommendation.

Ms. Duane made a motion, seconded by Ms. Sand, to recommend and post the proposed change to the Santa Maria property to the Town Warrant. Motion was defeated with Ms. Woodall, Mr. deFeyter, and Mr. Bergmann voting in the negative. Mr. Dewhurst asked for a clarification on the vote. Mr. Dewhurst stated that he does not think the motion was defeated. Mr. deFeyter stated that the motion did not carry. Ms. Woodall stated that we will need a legal opinion. Mr. Bergmann made a motion, seconded by Ms. Duane, to obtain a legal opinion from Town Counsel, Peter Hastings, in writing on a 3-3 vote. Motion carried with Mr. deFeyter voting in the negative.

**PUBLIC HEARING – WEST SIDE ROAD SCENIC ROAD TREE CUTTING CONTINUED**

Ms. Sand stated that she went out to the site and stated that there is some visibility obstruction if attempting a left hand turn. Ms. Sand stated that she does question the extent of tree cutting. Ms. Sand stated that the first six

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trees should be removed and then see how the summer growth is to see if the other trees need to be removed. Mr. Waterman stated that he would like to hear from the homeowners.

Ms. Woodall asked for public comment; Jim Hartigan, Cedar Creek Condominium Association President, stated that the Association had their meeting in January and it was requested that he take action to have the trees removed. Mr. Hartigan stated that the Town Engineer has agreed that it is a safety hazard. Mr. Hartigan stated that because of the trees the snow cannot be pushed back. Mr. Hartigan stated that this is definitely a hazard. Mr. Hartigan stated that it is a scenic road, but it should be safe.

Mr. Bergmann asked how long has Cedar Creek been there. Mr. Hartigan answered fifteen years. Mr. Bergmann stated in fifteen years there hasn't been a problem. Mr. Hartigan stated that there are more people now. Mr. Bergmann stated that it is the same visibility for one person as it is for 50 people. Mr. Hartigan stated that he has never seen a place where they allow trees against the road. Ms. Sand asked at the meeting in January how many attended. Mr. Hartigan answered approximately 45%. Mary Ann Hartigan stated that the development has existed for fifteen years, but the trees have grown in fifteen years. Mr. Hartigan stated that you cannot see over the snow.

Ralph Wiggin stated that the trees have been there for approximately 60 years and they haven't moved an inch. Mr. Wiggin that they went to the Police Department years ago for intersection signs and they don't have time. Mr. Wiggin stated that it is 35 M.P.H. on the West Side Road. Mr. Wiggin suggested removing the brush and stated that to remove approximately 10 trees is ridiculous. Paul Buswell stated that he used that road was it was a dirt road and it wasn't a problem. Mr. Buswell stated that the Town accepted the road a year ago, but there is still no stop sign.

Marty Risley, Cedar Creek Single-Family Home Association President, stated that at their meeting, 100% asked that he make the same request. Mr. Risley stated that he has been living there for ten years. Mr. Risley stated that it is a T intersection, which requires you to stop, which he does. Mr. Risley stated that there have been a lot of close calls. Mr. Risley submitted photos of the intersection. Mr. Risley stated that you can see approximately 200 feet, which is not enough site distance. Mr. Risley stated that he would encourage the Board to follow the direction of the Town Engineer as he has correctly assessed the situation.

Mr. Wiggin stated that he would agree with the removal of the first group of trees and wait and see with the remaining trees. Mr. Buswell stated that there does need to be a stop sign and a few trees should be taken down. Aaron Sherry stated that he agrees with some trees being removed. Mr. Sherry stated that they are stopping and not rolling out of there. Mr. Sherry stated that there is a clear view when you are in the bicycle lane. Ms. Sand stated that the snow piles is true at any intersection in Town. Ms. Sand stated that she would support removing the first part and see how that helps.

Mr. King stated that he reviewed the ones shown to be removed. Mr. King stated the Town Engineer and the Highway Foreman both feel they should be removed. Mr. deFeyer stated that it seems to be the consensus to remove the first group and then wait and see. Frank Joseph respectfully asked that the stump be removed as well. Mr. Waterman made a motion, seconded by Ms. Duane, to remove the first 5 groups of trees and remove the stump. Motion carried with Mr. Bergmann voting in the negative. Mr. deFeyer recommended that the Board of Selectmen and the Town Engineer review that intersection for a stop sign.

**WAL-MART REAL ESTATE BUSINESS/BELL ATLANTIC (MAP 61, PARCEL 60-1) FILE #MR99-21– PLAN SIGNING**

John Holbrook appeared before the Board. After a brief discussion, Ms. Sand made a motion, seconded by Ms. Duane, to extend the conditional approval for Wal-Mart/Bell Atlantic until the bond is received and the plans can be signed out-of-session. Motion carried with Mr. deFeyer voting in the negative.

**PIRATES COVE NORTH CONWAY, INC. (MAP 64, PARCEL 31) FILE #FR99-15 AND FILE #S99-18 – PLAN SIGNING**

Ms. Woodall stepped down. David Power and Steve Long appeared before the Board. Ms. Sand made a motion, seconded by Mr. Waterman, that the conditions of approval for Pirates Cove North Conway, File #FR99-15 and

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File #S99-18, have been met and the plans can be signed. Motion carried with Mr. deFeyter abstaining from voting and Mr. Bergmann stepping down.

**PETERSON PETROLEUM OF N.H. (MAP 33, PARCEL 75) – FILE #MR99-13 PLAN SIGNING**

Lloyd Helm appeared before the Board. Mr. Helm stated that he overlooked the expiration date and would like to ask the Board to extend the expiration date so he can submit the bond. **Ms. Sand made a motion, seconded by Ms. Duane, to extend the expiration date for Peterson Petroleum [File #MR99-13] in order to obtain the bond.** Mr. Bergmann asked what is the purpose of an expiration date if we are going to extend it two months later. Ms. Woodall stated that she asked what we can legally do about it and there is nothing we can do. Mr. Helm stated that he did not purposely do it and he is not trying to dupe anything; he just made a mistake.

Ms. Sand stated that the bond will be in place before any work is done. Ms. Sand stated that they are still putting the bond up ahead of time. Ms. Sand stated that the Board has reviewed these plans and it doesn't benefit either of us to review it again. Mr. Bergmann stated that you are leaving yourself open to someone who had a conditional approval last year and wants to meet the conditions now. Mr. Bergmann asked how many projects out there have expired.

Mr. deFeyter stated that he is increasingly concerned about what's going on here. Mr. deFeyter stated that it seems like everything is sliding. Mr. deFeyter stated that applications have been allowed to slide. Mr. deFeyter asked where does it end. **Motion was defeated with Mr. Waterman, Mr. deFeyter and Mr. Bergmann voting in the negative and Ms. Woodall abstaining from voting.** Mr. Helm asked if he has to go through the whole process again. Ms. Duane answered in the affirmative. Mr. Waterman stated that it should go through quickly.

**STRUCTURE HEIGHT – ARTICLE 147-17.2.D AND ARTICLE 147-14.2.P – PROPOSED ZONING CHANGE**

Mr. deFeyter submitted alternative wording. Ms. Duane stated that it is fine the way it is written. Ms. Duane made a motion, seconded by Ms. Sand, to post the proposed changes to Article 147-17.2.D. and Article 147-14.2.P. to a public hearing on December 16, 1999. Motion unanimously carried.

**ADULT ENTERTAINMENT – ARTICLE 147-27 AND ARTICLE 147-6 – PROPOSED ZONING CHANGE**

Ms. Woodall stated that we need to find out if we need a public hearing on the finding of facts. Ms. Duane stated that we should get the word out about what district it will be restricted to. Ms. Duane stated that we owe it to those people that their area is an area where this type of business will be allowed. Mr. deFeyter asked if we sent out similar notices to properties around the Santa Maria property. Mr. deFeyter stated that he doesn't disagree, but he doesn't want to get into a situation. Ms. Woodall stated that this zone is on the East Conway Road, which is industrial to the Mason Brook.

Ms. Sand stated that she would like to see this postponed. Ms. Sand stated that she has some problems with the findings of fact as they are invalid. Ms. Sand stated that we should be able to read it ahead of time before we have a public hearing. Mr. Bergmann made a motion, seconded by Mr. deFeyter to post Article 147-27 to a public hearing on December 16, 1999. Motion carried with Ms. Sand and Ms. Duane voting in the negative. Mr. Bergmann made a motion, seconded by Mr. deFeyter, to post the definitions for Article 147-27 to a public hearing on December 16, 1999. Motion carried with Ms. Sand and Ms. Duane voting in the negative.

**CLUSTER DEVELOPMENT – ARTICLE 147-17.4 – PROPOSED ZONING CHANGE**

Mr. King stated that there were two changes based on the Board's concerns; frontage and setbacks. Mr. deFeyter stated that he has done some research and there are a couple of other things. Mr. deFeyter stated on density the minimum size is for water and sewer. Mr. deFeyter stated that there should be a minimum lot size. Mr. deFeyter stated that as far as density some times there is a benefit to encourage cluster development. Mr. deFeyter asked if we should encourage cluster development by allowing an extra unit. Mr. deFeyter asked what is the point of clustering if you can have the same number of units as a conventional lot.

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Mr. deFeyter stated that over thirty-five units you need two accesses and you will need frontage for both those accesses. Mr. King stated that you could have a second access through a right-of-way and he would not recommend a minimum lot size. Mr. deFeyter suggested that there be 25% green space. Ms. Woodall stated that the Board should take more time to review it. Ms. Sand made a motion, seconded by Ms. Duane, to post Article 147-17.4 to a public hearing on December 16, 1999. Motion was defeated with Ms. Woodall, Mr. deFeyter and Mr. Bergmann voting in the negative and Mr. Waterman abstaining from voting.

**MORATORIUM ON BUILDING**

Mr. deFeyter submitted a memo to the Board and referred to RSA 674:23. Mr. deFeyter stated that he is not looking for a vote this evening, but would like the Board to consider it.

**ARTICLE 147-22.A.(1) – PROPOSED DISTRICT CHANGE**

Mr. Bergmann made a motion, seconded by Ms. Sand, to post Article 147-22.A.(1) to a public hearing on December 16, 1999. Motion unanimously carried.

**LETTER FROM ARTHUR BERGMANN APPEALING DECISION FOR JOE BERRY**

Mr. Bergmann asked why he does not have a right to appeal. Mr. Bergmann read a letter addressed to Joe Berry from Paul King dated November 16, 1999. Mr. Bergmann read his letter to the Town Planner dated November 30, 1999. Mr. Bergmann read a memo to the Planning Board from Paul King dated December 2, 1999. Mr. Bergmann stated that Chapter 88 is more restrictive. Mr. King stated that this Board gave that building a mall designation. Mr. King stated that Mr. Berry's proposal is still a mall. Mr. King stated that a mall to a mall and asked where is the change-of-use.

Ms. Sand stated that it is a mall. Mr. deFeyter stated that the issue is whether Mr. Bergmann can appeal. Mr. King stated that we should be allowed a general discussion first. Ms. Duane stated that the Mountain Valley Mall changed from a Dairy Queen to a nail salon with no review. Mr. Bergmann stated that it is a less intensive use. Mr. King stated that whether the use increases or decreases it is a change-of-use. Mr. King referred to Article 123.4.B(2). Mr. Bergmann stated that a women's clothing store to a pizza place is an increase in use.

Mr. Bergmann stated that whether the use increases or decreases in intensity if you change from one category to another you are subject to site plan review. Mr. Bergmann stated that if the use decreases or remains the same intensity then it has to meet the other five criteria's. Ms. Sand stated that no decision was made, therefore, it is not eligible for appeal under that regulation. Mr. deFeyter made a motion, seconded by Mr. Waterman, to accept Mr. Bergmann's appeal and notice it for a public hearing. Motion carried with Ms. Sand and Ms. Duane voting in the negative.

Meeting adjourned at 11:08 p.m.

Respectfully Submitted,

Holly L. Meserve  
Recording Secretary