

**CONWAY PLANNING BOARD**

**MINUTES**

**DECEMBER 16, 1999**

A meeting of the Conway Planning Board was held on Thursday, December 16, 1999, beginning at 7:05 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; John Waterman; Interim Town Planner, Paul King; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

**REVIEW AND ACCEPTANCE OF MINUTES**

Ms. Sand made a motion, seconded by Ms. Duane, to continue the Minutes of December 2, 1999, and December 9, 1999, until January 6, 2000. Motion carried with Mr. deFeyter voting in the negative.

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

Jon Howe of Ammonoosuc Survey Company appeared before the Board. Mr. Howe stated that this was a four-lot subdivision, but it has been revised to three lots. Mr. Howe stated that the applicant thought the dredge and fill application would be denied, so they decided to combine two lots. Mr. Howe stated that lot 1 will have its own driveway and lots 2 and 3 will share a driveway. Mr. deFeyter stated that the plans are dated as being received today. Mr. King stated that the plans were delivered this morning. Mr. deFeyter stated that new information needs to be provided 48 hours in advance. Mr. King stated that that regulation is in site plan review, but there is nothing in the subdivision regulations. Mr. deFeyter stated that he has a problem with something that the Board hasn't had a chance to review in advance. Mr. King recommended the Board go forward with the review process.

Ms. Woodall asked for public comments; David Weathers asked if the dredge and fill application is no longer required. Mr. Howe answered in the affirmative. Mr. Weathers stated that the Conway Conservation Commission's recommendation was to have one crossing and not two. Mr. Weathers reviewed the new plan. Mr. Weathers stated if the applicant is not crossing any wetland then the Conway Conservation Commission doesn't have any role in the review. Ms. Woodall asked for other comments; there was none. Ms. Sand made a motion, seconded by Ms. Duane, to approve the 3-Lot subdivision for Harold Whitaker and Thomas Fadden. Motion carried with Mr. deFeyter abstaining from voting. The plans were signed.

**MEMORIAL HOSPITAL – MINOR SITE PLAN REVIEW (MAP 19, PARCEL 71) FILE #MR99-23**

Steve Fitzpatrick and Michael Couture, Architect, appeared before the Board. Mr. King gave a brief overview. Ms. Woodall asked if the addition was already built. Mr. Couture answered in the negative. Mr. Fitzpatrick stated that they are expanding the pharmacy. Ms. Duane made a motion, seconded by Mr. deFeyter, to accept the application of Memorial Hospital for a minor site plan review. Motion unanimously carried.

Ms. Sand stated that the addition is being attached to physical therapy and asked what it will look like inside. Mr. Fitzpatrick stated that two windows in physical therapy will be removed, but they are adding an exterior door for more light. Ms. Sand asked why under snow removal there is a comment about the parking lot being oversized. Mr. King stated that if they pushed the snow to one end of the parking lot and covered some spaces, you would still have enough parking spaces. Ms. Sand stated that the applicant needs to show the snow storage areas on the plans. Ms. Woodall asked if the original plan and the expansion plans show snow storage. Mr. Couture stated that it should be delineated on the original plans. Mr. King stated that the standard plat note that snow will be removed is on a supplemental plan.

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Ms. Woodall asked for public comment; there was none. Ms. Sand asked if the performance surety has been submitted. Mr. Fitzpatrick submitted the performance surety to the Board. Ms. Duane made a motion, seconded by Ms. Sand, to conditionally approve the minor site plan for Memorial Hospital based upon the snow storage areas being delineated on the plans; and once the condition has been met, the plans can be signed out-of-session. Motion unanimously carried.

**PUBLIC HEARING ON ARTICLE 147-14.P. AND 147-17.2.D. - STRUCTURE HEIGHT**

A public hearing was opened at 7:26 p.m. Ms. Woodall read the amendments. Ms. Woodall asked for public comment; Shawn Bergeron asked if it is the Board's desire to keep the height elevation under thirty-five feet. Ms. Woodall answered in the affirmative. Mr. Bergeron stated that the definition refers to the mean highest point, which would be the average and not the greatest. Mr. Irving read the building height definition. Mr. Bergeron stated that the mean height is the distance from the ground and half way up the slope.

Mr. deFeyter stated that it was a good point, but does not effect this amendment. Mr. deFeyter stated that the Board would need to look at the definition for building height. Ms. Sand made a motion, seconded by Ms. Duane, to recommend the amendments to Article 147-14.P. and 147-17.2.D. and post the amendments to the warrant. Motion unanimously carried. The public hearing was closed at 7:38 p.m.

**MEMORIAL HOSPITAL – MINOR SITE PLAN REVIEW (MAP 19, PARCEL 71) FILE #MR99-23 – PLAN SIGNING**

The Board agreed that the conditions for the minor site plan application for Memorial Hospital had been met and the plans were signed.

**PUBLIC HEARING ON ARTICLE 147-6. DEFINITIONS AND ARTICLE 147-27 – SEXUALLY ORIENTED BUSINESS**

A public hearing was opened at 7:39 p.m. Ms. Woodall asked for public comment; Shawn Bergeron stated that he is representing Lot 5 Partnership. Mr. Bergeron stated that it is his understanding and his clients understanding that this particular district would be all of the Industrial-2 district. Ms. Woodall agreed. Mr. Bergeron stated that the intent of the Industrial-2 district was to improve the opportunity for high quality manufacturing in the Town of Conway. Mr. Bergeron stated that the concern of this business owner and property owner to permit this type of business would devalue and certainly not encourage people who you want in that area. Mr. Bergeron stated that his client would like to see this not apply to the Industrial-2 district. Mr. Bergeron asked if a moratorium could be put on this type of business.

Ms. Woodall stated that you cannot ban this type of business from the Town, but it can go in a commercial zone within the Town. Ms. Woodall stated that the question is, does the Town want control before this type of business comes in. Mr. Bergeron stated that it is not a positive aspect for this type of business and it is inappropriate to put it into a district that was created to try and enhance the Town. Ms. Woodall asked where Mr. Bergeron would suggest this type of business be allowed. Mr. Bergeron asked if the Board has spoken to Town Counsel, Peter Hastings, in regard to a moratorium. Ms. Woodall answered in the affirmative and stated that he has said you cannot. Ms. Duane asked if we have Mr. Hastings comment in writing. Ms. Woodall answered in the negative.

Ms. Sand stated that you cannot ban this from the Town. Ms. Sand stated that all you can do is restrict where they can be. Ms. Sand stated that the least impact is the industrial district. Ms. Sand stated that she is not stating that this is the best place, but we have to consider other restrictions that go with it. Ms. Sand stated that the Town can restrict to a certain means, but not totally. Ms. Woodall stated that this particular ordinance was copied from another Town that has gone to the Supreme Court. Mr. Bergeron asked which Town. Ms. Woodall answered Seabrook, New Hampshire. Mr. King stated that he has not been asked by the Board to contact Peter Hastings, nor has there been an approved contact with Peter Hastings in regard to the question on the moratorium.

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Ms. Woodall stated that if the Town wants some control, you have to try to preserve Town wide or take a chance. Ms. Woodall stated that the zone was chosen because it will have the least impact on the Town. Mr. deFeyer stated that Ms. Woodall has provided the Board with information on court cases. Mr. deFeyer stated that we need to realize that as it stands right now, these type of businesses can go into the Industrial-2 district or the commercial district. Ms. Woodall stated that the question is do we try to control these type of business.

Mr. Bergeron stated that the point of the individuals he represent is that these type of businesses should not go out on East Conway Road, but on the strip. Mr. Bergeron stated that they would rather keep that area for what it was zoned, to enhance the Town. Wanda Snow stated that she lives in the Industrial-2 District and asked who on the Board lives in the Industrial-2 district. None of the Board members live in the Industrial-2 District. Ms. Snow asked if they did live in this district, would any one of them want it. Ms. Woodall stated that it is not whether we want it or not, but eventually there will be no houses there. Ms. Snow stated that there are residential restrictions for the Whitelaw Subdivision and it will always have houses.

Ms. Snow stated that she disagrees with the selection and the Town should make it difficult to find a place. Ms. Snow stated to find property in the commercial zone would be more difficult. Mr. Snow stated that industrial operates during the day and these type of businesses at night. Ms. Snow stated that these types of businesses are a 24-hour a day operation. Ms. Snow stated that it is unfair to those who reside on in that area and we will lose at the polls.

Carl Harmon stated that the majority of East Conway Road is residential. Ms. Woodall stated that the Industrial-2 district ends at the Mason Brook. Mr. Harmon stated that if it gets to the point where residential property is the biggest loser, percentage wise it will have a greater impact. Mr. Harmon stated that there must be a spot where residential values will suffer less then on the East Conway Road. Mr. Harmon asked if any other alternative locations have been reviewed. Ms. Woodall stated that they have looked and she has spoken to the Police Department. Ms. Woodall stated that the Police Department thought the East Conway Road would be the best location.

Mr. Harmon asked if there was no other location. Ms. Woodall stated that the reason for a public hearing is to obtain input from the public. Ms. Sand stated that her feelings tend toward the highway commercial district. Ms. Sand stated that it is well patrolled at night versus the industrial zone. Ms. Sand stated that there are other forms of adult entertainment in the commercial district. Ms. Sand stated with the other restrictions, it seems that that would be the district to support and to put it in. Diana Stevenson stated that there are 100 children who go down the East Conway Road twice a day.

Ms. Woodall stated that last week she did hear a good argument for this to be on Route 16. Ms. Woodall stated that this would be creating an area that would not be desirable anyway. Ms. Woodall stated that Route 16 is built up already anyway. Dennis Wagner stated that the area is residential even though it is zoned industrial. Mr. Wagner stated that these are 24-hour operations, which will be exposed to children. Mr. Wagner stated that it is a residential area and he cannot imagine the Town wanting to risk the safety of the children.

John Stevens stated that he supports Ms. Snow's statements. Mr. Stevens stated that he would support the district on the strip. Mr. Stevens stated that the strip is always lit up and it wouldn't be noticed much on Route 16. Mr. Stevens stated that there are not many residents on Route 16, but there are a lot on the East Conway Road. George Pfender stated that he is concerned because three years ago the zoning changed in this area. Mr. Pfender stated that the attitude is the East Conway Road is where you stick things. Mr. Pfender stated that he did not agree with the Industrial-2 district. Mr. Pfender stated that he hopes businesses do their proper landscaping and blend in with the community. Mr. Pfender stated that the attitude is that is the dump road and these types of businesses should be up on the strip.

Jay Hounsell stated that he is concerned that once you designate a use to a district the use is attracted to that area. Mr. Hounsell stated that the Town should try to limit the use as well as create an ordinance. Mr. Hounsell stated that you have tried to create limitations and it almost looks like the place to put it is where

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churches and residents are located. Mr. Hounsell stated that putting it out on the East Conway Road is hiding it and you don't want to hide these types of businesses. Mr. Hounsell stated that he would urge the Board to look at another area. Mr. Hounsell stated that he would like to circulate a petition to give to the Board of Selectmen.

Ms. Woodall stated that you cannot zone it to a point that they cannot come in; the court would rule it down. Mr. Hounsell stated that he believes that the Town is not limiting anyone from buying up property to put it on. Mr. Hounsell stated that he would urge us to say that we have seen in history in the past that money talks. Sut Marshall asked if the Board has looked in that corridor for potential sites. Ms. Woodall stated that they can put it in the back, but they have to be able to buy the land. Mr. Marshall asked on the road, how many potential sites are there. Ms. Woodall stated that most have been converted to businesses and there are residents more toward the Whitelaw Subdivision.

Mr. deFeyter stated that Ms. Woodall has spent a lot of time and he is not necessarily happy about putting these types of businesses on the East Conway Road, but it is an area that's limit. Steve Pullen stated that he doesn't think Mr. Marshall's question was answered. Mr. Pullen asked how many of these businesses can move in there. Ms. Woodall stated that you have to have two acres and if it is not industrial, it has a building limit of 5,000 square feet. Mr. Pullen stated that the intent of the code is to not centralize, but by putting it on the strip you would be decentralizing. Mr. Pullen stated that the Industrial-2 district is an open desert and it has the most open space. Ms. Woodall stated that they can go there tomorrow. Mr. Pullen stated that we should do this, but lets do this right.

Mr. Harmon stated that they could go on the East Conway Road, but this ordinance states that this is where they will go. Mr. Harmon stated that there must be an alternative site. Mr. Wagner stated that these types of businesses have an effect on crime. Ms. Woodall stated that studies show that. Mr. Wagner stated that this is a residential district. Mr. Wagner stated that he understands that it is zoned industrial, but there are far more residents then businesses. Mr. Wagner asked why we don't stand up and fight a little harder. Ms. Woodall stated that under the first and fourteenth amendment you cannot deny these types of businesses. Mr. Wagner stated that these types of businesses should be put in the commercial district.

Richard Check stated that he does not know why the Chairman has the right to lower his property value and designate his area for these types of businesses. Mr. Check stated that he does not think the East Conway Road is the best area for this type of business. Ms. Woodall stated that it was very hard as there are both pros and cons to this area. Chet Lucy thanked the Board for trying to do something. Mr. Stevens stated that if this ordinance is recommended the residents of East Conway Road do not stand a chance. Mr. Stevens stated that we will have to suffer because the Town will vote to put it on the East Conway Road.

Ms. Sand stated that if it is on Route 16, we have architectural standards and there is a window requirement. Ms. Sand stated that that is something we would want to take into consideration if it becomes an alternative choice. Ms. Woodall stated that the window requirement is not mandatory. Ms. Sand stated that you have to have something. Mr. deFeyter stated that the Board can require no windows. Ms. Sand stated that we have standards that would not be conducive. Steve Pullen stated that he thinks the Board is catering to these types of businesses. Mr. Pullen stated that the code should be written strictly.

Mr. Pfender stated that the Board is making a decision on property values, but the strip can absorb it. Mr. Hounsell stated he would urge the Planning Board to look at another zone. Mr. Hounsell stated you should put these types of businesses in the community and not hide them. Paul Morphy stated that to do nothing would be the worst thing, but do it right. Mr. Morphy stated to restrict it from areas that would impact homes. Mr. Morphy stated that this type of business should be allowed where there are the fewest homes. Mr. Morphy stated that there must be a location for them somewhere. Ms. Woodall closed the public hearing.

Ms. Woodall gave the Board a copy of the finding of facts. Ms. Sand asked the Board what they think about the location. Ms. Duane stated that it all districts need to be reviewed. Ms. Woodall read the different districts within the Town of Conway. Mr. King stated that you don't have to limit them to a district, but you could restrict to portions of districts. Mr. deFeyter stated that he spoke to Bob Moore, the

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Building Inspector for the Town of Seabrook. Mr. deFeyter stated that the Town had some of these businesses before the ordinance was in place. Mr. deFeyter stated that this ordinance is not perfect, but there has been a lot of work done on it.

Ms. Sand asked the objection to the Highway Commercial District. Ms. Duane stated that it needs to be looked at. Ms. Sand stated that there is already adult entertainment on the strip and it is highly patrolled. Ms. Sand stated that those are positive aspects of putting these types of businesses in the Highway Commercial District. Ms. Sand stated that Seabrook does not have a downtown area and she doesn't know about their industrial districts.

Loren Billings of the Conway Daily Sun asked what percentage of property values will drop if these types of businesses are restricted to the Highway Commercial District. Ms. Woodall stated that commercial property would be negatively impacted, but to a lesser degree than residential. Jeff Flint of WMWV asked if we have actual statistics. Ms. Woodall stated that there was a survey of realtors. Mr. deFeyter made a motion, seconded by Ms. Sand, to post Article 147-6 and Article 147-12.2.B and the finding of facts to a public hearing on January 13, 2000. Motion unanimously carried. The public hearing was closed at 9:33 p.m.

**PUBLIC HEARING - ARTICLE 147-22.A(1) TO CHANGE THE HIGHWAY COMMERCIAL DISTRICT**

After a brief discussion, Mr. Waterman made a motion, seconded by Ms. Duane, to post Article 147-22.A.(1) as written to a public hearing on January 13, 1999. Motion unanimously carried.

**MORATORIUM ON BUILDING**

Mr. deFeyter submitted wording to the Board for a building moratorium. **Mr. deFeyter made a motion, seconded by Mr. Waterman, to post the building moratorium to a public hearing on January 13, 2000.** Ms. Sand stated that based on the RSA she doesn't think the Board has a legal right to do this. Ms. Sand stated that the Board did vote to ask for a legal opinion. Mr. deFeyter stated that the Board did not vote for legal opinion.

Ms. Sand stated that we have a new town planner that has the intention of writing the Master Plan. Ms. Sand stated that the Board is jumping the gun. Ms. Sand stated that the Board is not giving the Town Planner time to do his job. Ms. Duane asked why this was being discussed since it was not on the agenda. Mr. King stated that he concurs with Ms. Sand and Ms. Duane. Mr. King stated that at the last meeting the idea was just floated and he has done no research on this topic nor has Town Counsel been asked for his opinion. Mr. King stated that at the beginning of the RSA it states that it is for usual circumstances, such as if you have a sewer plant at capacity. Mr. King stated that this is the eleventh hour and he would not recommend going forward with it.

Ms. Woodall stated that we would be putting it to a public vote. Ms. Duane asked Ms. Woodall what happened at the end of the construction boom. Ms. Woodall stated that it will have an impact on business. Ms. Woodall stated that the Master Plan needs to be rewritten. Ms. Woodall stated that if you don't know where you are going your not going to get there. Ms. Woodall stated that mostly large businesses will be effected. Ms. Duane stated that employees of the large businesses will be the ones who are hurt. Mr. King stated that a lot of people are reacting to Wal-Mart, Shaw's, Route 302 upgrade and the Local North/South Road. Ms. Sand stated that this will not help. Ms. Sand stated that the Board should invest their time in helping the Town Planner with the Master Plan.

Mr. King stated that within the next year Memorial Hospital is looking to do an emergency room expansion, which is desperately needed. Mr. Irving stated that it will take more than a year to update the Master Plan. Mr. Irving stated that there are some housekeeping items that need to be dealt with, but the Master Plan is one of his top three priorities. Mr. Irving stated that the Master Plan will not take a back seat. Mr. Irving stated that he will have an outline available at the January 13, 2000 meeting. Ms. Woodall asked Mr. Irving if he sees himself overburden with work. Mr. Irving answered in the negative. Mr.

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deFeyter asked the Board to post the moratorium. **Motion was defeated with Ms. Woodall, Ms. Sand, and Ms. Duane voting in the negative and Mr. Waterman abstaining from voting.**

**CAPITAL IMPROVEMENT PROGRAM**

Ms. Woodall stated that she still needed worksheet #3. Ms. Woodall polled the Board on the expansion of the Library. The Board unanimously supported the expansion of the Library. Ms. Woodall polled the Board on the expansion of the school. The Board unanimously agreed there be no recommendation as there was not enough information. Ms. Woodall polled the Board on the landfill. The Board unanimously supported the increase on the landfill because of the State mandate.

**STEVE HALLETT – FORMER DRIVE-IN THEATER**

Mr. King stated that Steve Hallett has submitted a letter to the Board requesting a concurrent site plan and subdivision review for the former drive-in theater. Ms. Duane made a motion, seconded by Ms. Sand, to accept the request from Steve Hallett for a concurrent site plan and subdivision review. Motion unanimously carried.

**ARTHUR BERGMANN APPEAL**

The appeal by Arthur Bergmann will be held on January 6, 2000.

**ZODIAC, INC. – DECISION**

Mr. King stated that the court decision regarding the Conway Planning Board vs. Conway Zoning Board of Adjustment (Zodiac, Inc.) is in. Mr. deFeyter made a motion, seconded by Ms. Woodall, to contact Town Counsel, Peter Hastings, and have him appeal the reconsideration. Motion defeated with Ms. Sand, Ms. Duane and Mr. Waterman voting in the negative.

Meeting adjourned at 10:32 p.m.

Respectfully submitted,

Holly L. Meserve  
Recording Secretary