

CONWAY PLANNING BOARD

MINUTES

NOVEMBER 30, 2000

A meeting of the Conway Planning Board was held on Thursday, November 30, 2000, beginning at 7:00 p.m. at the Center Conway Fire Station in Center Conway, NH. Those present were: Chair, Sheila Duane; Acting Selectmen's Representative, Mark Hounsell; Vice Chair, Stacy Sand; John Waterman; Robert deFeyter; Alternate, Martin Frank; Planning Director; Thomas Irving; and Recording Secretary, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBER

Ms. Duane appointed Mr. Frank as a voting member at this time.

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Sand made a motion, seconded by Mr. Waterman, to approve the joint Minutes of the Board of Selectmen and the Planning Board of October 26, 2000, as written. Mr. DeFeyter asked if the Board of Selectmen had reviewed the Minutes. Ms. Meserve stated that the Board of Selectmen adopted the Minutes of October 26, 2000, as written on November 14, 2000. **Motion unanimously carried.**

Ms. Sand made a motion, seconded by Mr. Waterman, to approve the Minutes of October 26, 2000 [Regular Planning Board meeting] as written. Motion carried with Mr. Hounsell abstaining.

The Minutes of November 9, 2000, should be amended as follows: page 1, under Approval of Minutes, line 3, should read, "...issue of trees, height of the building and the issue of..."; and page 9, under Joy Tarbell, paragraph 1, line 14, should read, "...vegetative buffer or other barrier to keep people...". **Ms. Sand made a motion, seconded by Mr. Waterman, to adopt the Minutes of November 9, 2000 as amended. Motion carried with Mr. Hounsell abstaining from voting.**

PUBLIC INFORMATION MEETING – ARTICLE 147-12.F. – SEXUALLY-ORIENTED BUSINESSES AND ARTICLE 147-6 – DEFINITIONS FOR SEXUALLY-ORIENTED BUSINESSES

Mr. Irving stated that he has taken the concerns from last year and has tried to accommodate them, but we cannot disallow this type of business all together. Mr. Irving stated that last year's proposal targeted the Industrial-2 zone only, but it includes the business district this year. Mr. Irving stated that the do not have any protection from the secondary effects. Mr. Irving stated that we are unprotected from these types of businesses now. Mr. Irving stated that our primary protection is buffer zones. Mr. Irving stated that the proposals requires a 1,000 foot protection buffer around schools, churches, public parks, etc. Mr. Irving stated that it has been clarified that the 1,000-foot buffer is from property line to property line rather than from buildings.

Mr. Irving stated that we are not permitted to out-zone this use all together. Mr. Irving stated that there has to be a reasonable opportunity. Mr. Irving stated that all we can do is regulate the secondary effects. Mr. Irving stated that this nearly provides the blanket protection without removing all chance of it not happening. Ms. Duane asked for public comment; Michael Valladares stated that this is the same proposal that was voted down last year. Mr. Valladares stated that the people on the East Conway Road have worked real hard for the Industrial-2 zone to be in place and this is just a back door approach.

Mr. Irving asked how could we make it better. Mr. Irving asked if the Industrial-2 district should not be included and have it located in the Highway Commercial District only. Mr. Valladares answered in the

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affirmative. Mr. Irving asked if it should be located in the Village Commercial District. Mr. Valladares stated that it should be on the strip or develop a separate district for this type of business.

Jay Hounsell stated that he agrees with Mr. Valladares and stated that the Industrial-2 district was created to be utilized for industry. Mr. J. Hounsell stated that the way the ordinance is written it targets only that area. Mr. J. Hounsell stated that it has made it difficult to come into the Highway Commercial District, but not quite. Mr. J. Hounsell stated if someone has enough money to buy that buffer then they can have this type of business. Mr. J. Hounsell stated that we should clarify that the Industrial-1 and the Industrial-2 zones will be used for industrial use only.

Mr. M. Hounsell asked if these types of businesses could be prohibited from the Industrial-1 and Industrial-2 zones. Mr. Irving stated that you could apply this to any zone. Mr. Irving stated instead of allowing these types of businesses in the business district they can be allowed in the Highway Commercial and Village Commercial districts only. Mr. Irving stated that one of the areas that has been demonstrated to have the least impact to values and crimes is the industrial zone. Mr. Irving stated, however, that there are a lot of residences in that zone.

Mr. deFeyter asked if the industrial zone is eliminated would there be enough land to meet the requirement. Mr. Irving stated that he did not know. Mr. deFeyter asked if we could increase the buffer area just in the Industrial zone. Mr. Irving stated that he would not be comfortable doing that. Mr. Hounsell asked if there was a specific RSA addressing this issue. Mr. Irving answered in the negative and stated that this type of ordinance has stood up to case law. Mr. J. Hounsell stated that we are not creating an opportunity to not zone these types of businesses, but taking case law and applying it to Conway. Mr. Irving answered in the affirmative.

Mr. J. Hounsell stated that we do not know if corporations will purchase property and then put this type of business on it. Mr. Irving stated that that is correct and that applies to the whole business district. Mr. J. Hounsell stated that the ordinance should specifically state what is allowed in the Industrial-1 and Industrial-2 districts. Mr. M. Hounsell stated that we have followed procedures from other communities. Mr. M. Hounsell stated that the key item is that this offers protection, but it is not guaranteeing anything.

Mr. M. Hounsell stated that the end result is similar to last year, but the amount of work gone into it this year is better than last year. Mr. M. Hounsell stated that you can look at this as if someone wants to take us to court I think we will be all right. Mr. M. Hounsell stated to gain voter support would be to designate the type of activity allowed in the Industrial-1 and Industrial-2 zone. Tom Dewhurst asked if the common way is to follow other communities or is there a zone in major cities that is used. Mr. Irving stated that we cannot disallow these types of businesses, we can only regulate the secondary effects. Mr. Irving stated in most towns the industrial district is used because it doesn't have a residential component, but Conway is unique.

Mr. Dewhurst asked if the legal research has been done. Mr. Irving answered in the negative and stated that the Board reviews the proposal and then it goes to the town attorney. Mr. deFeyter stated that this ordinance is based on Seabrook, NH, which has been challenged and did hold up in court. Ms. Sand stated that we need to find a way to gain town support, but the findings of facts will be difficult if the Industrial zone is eliminated. Ms. Sand suggested making it a separate article. Mr. J. Hounsell stated that the process is to protect the industrial zone, but you cannot do that if you lose land to something else other than industrial. Mr. Irving stated that a table of uses for the industrial zone is something for the Master Plan process.

Mr. M. Hounsell asked how do we go about it as he is not opposed to Ms. Sand's suggestion. Mr. M. Hounsell stated if we cannot do a listing then he would suggest putting some for of language into this to be consistent with what we heard from voters last year regarding the East Conway Road. Mr. deFeyter asked Mr. Irving to review the parcels in the Industrial-2 zone that were available. Mr. Irving stated that they would need to construct a long driveway or road. Mr. Irving stated that one lot is the town landfill and one lot is owned by PSNH. Mr. Valladares stated that the Board should obtain legal advice regarding the elimination of the Industrial district.

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Mr. deFeyter stated that a lot of towns have restricted these types of businesses to the industrial zone exclusively. Mr. deFeyter stated that we should have legal advice on the exclusion of the industrial zone. Ms. Duane asked if the Board wanted to continue this to another public information meeting or to a public hearing. **Mr. M. Hounsell made a motion, seconded by Ms. Sand, to seek legal advice on whether it is legal to permit these types of businesses only in the Highway Commercial and Village Commercial zones.** Mr. Frank stated that the Board needs to think if this will allow reasonable opportunity. **Motion unanimously carried.**

Ms. Duane polled the Board to see if the Board agreed to the inclusion of the wording “permitted only in the Highway Commercial and Village Commercial Districts”. Mr. Waterman answered in the affirmative. Mr. deFeyter stated that he could not answer. Mr. Frank stated that he was uncomfortable answering. Ms. Sand, Mr. Hounsell and Ms. Duane agreed to the wording as long as it did not invalidate the ordinance.

Mr. deFeyter made a motion, seconded by Mr. M. Hounsell, to ask the town attorney: 1) if the available space limited to the two small areas was too restrictive; 2) is it possible to further restrict the use of the industrial zone (i.e. larger setbacks); and 3) to review the entire ordinance. Ms. Sand stated that someone would need to buy up the adjacent lots that would expand road area, which then wouldn't limit it to two spaces. Mr. Irving stated that the Board is asking the attorney if this will hold up in court.

Mr. Frank stated if we rule out the industrial zone then we are affording protection to that district that we are not offering the other zones. Mr. Frank stated to be fair to everyone we need to think hard about this. Mr. Frank stated that the formula was the same for every district and it seems a lot of land was more available in the industrial zone. Mr. deFeyter stated that the map is a snap shot in time and doesn't mean it will be the same all the time. Ms. Sand stated that the intent is to have a different type of business consistent to everyone. **Motion unanimously carried.**

Ms. Sand made a motion, seconded by Mr. Hounsell, to put Article 147-12.F. as written to a public hearing on December 14, 2000. Motion unanimously carried. Ms. Sand made a motion, seconded by Mr. Frank, to concurrently put Article 147-6 [definitions for a sexually-oriented business] to a public hearing on December 14, 2000. Motion unanimously carried. Ms. Sand made a motion, seconded by Mr. Frank, to formally adopt the findings of facts (9 items) for this proposed amendment [Article 147-12.F and 147.6]. Motion unanimously carried.

Ms. Sand made a motion, seconded by Mr. M. Hounsell, to change the order of the agenda. Motion unanimously carried.

PUBLIC HEARING - ARTICLE 147-6 – DEFINITION OF A STRUCTURE

Ms. Sand made a motion, seconded by Mr. M. Hounsell, to clarify the amendment to read “parking spaces and parking lots”. Motion unanimously carried. It was brought to the Board's attention that the public hearing has yet to be opened. A public hearing was opened at 8:33 p.m. Ms. Duane asked for public comment; Mr. Valladares asked the purpose of the change. Mr. Irving stated that you can have parking lots and spaces up to the property lines and the idea is to provide protection. Kurt Burke stated that a parking lot is not a structure and this gives the Planning Board more power. Mr. J. Hounsell stated that the Planning Board has the ability to limit what goes in the setback now. Mr. Valladares stated that this will effect residential and up to now residential has been left alone.

Mr. J. Hounsell stated that you have a right to protect under commercial, but it does not need to be in the zoning. Mr. J. Hounsell stated by not putting it in the zoning it will leave residential alone. Mr. J. Hounsell stated that the intent of the original zoning was to allow residential to live the way they want to. Mr. Valladares suggested adding that residential areas are not included. Ms. Sand stated that residential is included in everything else. Mr. Valladares stated that parking lots and parking spaces are not structures. The public hearing was closed at 8:52 p.m.

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Mr. Frank stated that the voters wanted this buffer zone and if we don't include them then we are going against the wishes of the voters. Mr. Frank stated that he is not trying to take rights away nor is this a personal power grab. **Mr. M. Hounsell made a motion to hold a second public hearing on Article 147-6 – Definition of a structure on December 14, 2000.** After a brief discussion, **Mr. M. Hounsell withdrew his motion.**

Mr. M. Hounsell made a motion, seconded by Ms. Sand, and to ratify the vote previously taken to add "parking lots". Motion carried with Mr. Waterman abstaining from voting. Mr. Hounsell made a motion, seconded by Mr. Frank, to hold a second public hearing on Article 147-6 – Definition of Structure as amended on December 14, 2000. Mr. Irving stated that this was not significant change and could be posted to the warrant. Mr. Hounsell stated that this is to show that we will hear further comments. **Motion carried with Ms. Sand and Mr. deFeyter voting in the negative.**

Ms. Sand stated if the Board is not going to support posting this article to the warrant, why should we have another public hearing. After a brief discussion, Ms. Duane polled the Board to see if they support the proposed change to the definition of structure. Mr. Waterman stated that he did not know. Mr. deFeyter and Mr. Frank supported that change. Mr. Hounsell, Ms. Sand and Ms. Duane opposed the change. **Mr. M. Hounsell made a motion, seconded by Ms. Sand, to dismiss the previous motion to send to another public hearing.** After a brief discussion, **Mr. M. Hounsell withdrew his motion and Ms. Sand withdrew her second.**

Mr. Hounsell made a motion, seconded by Ms. Sand, that since he voted on the prevailing side he could move to reconsider sending the amendment to another public hearing. Motion was defeated with Mr. Waterman, Mr. deFeyter and Mr. Frank voting in the negative.

PUBLIC HEARING - ARTICLE 147-10.1 – TRAILERS

A public hearing was opened at 9:02 p.m. Ms. Duane asked for public comment. Mr. Valladares stated that this all started a few years ago with K-Mart and their storage trailers. Mr. Valladares stated that the areas restricted and the complaints were in the highway commercial zone or "the strip". Mr. Valladares stated that they were using them as a structure. Ms. Duane stated that the feeling of the Board is that these trailers are being used to circumvent going to the Planning Board and building a warehouse structure. Mr. Valladares stated that this affects the whole town when the area of concern is the Highway Commercial District.

Daisy Cabral of the Conway Daily Sun asked if this amendment is just clarifying the ordinance. Mr. Irving stated that currently the ordinance does not permit the use of trailers for warehousing. Mr. Valladares stated there are certain areas of concern. Mr. Valladares stated that he uses trailers two months out of the year and the rest of the time they are empty. Mr. J. Hounsell stated that there are a lot of people who use trailers as tools of the trade. Mr. J. Hounsell stated that he takes his trailer to the job site, uses it and when the job is complete he brings it back until the next job.

Ms. Cabral asked if the change would make this ordinance enforceable. Mr. Irving stated that legal council thinks this amendment is enforceable. Mr. Burke stated that there is a need for these trailers and not just for storing, but also to take to job sites. Mr. Rick Valladares stated that he is concerned with prohibiting these in all zones. Mr. R. Valladares stated that commercial property is so restrictive you cannot use it for commercial any more. Mr. R. Valladares stated that you have to move out of town to park anything commercial. Mr. R. Valladares stated that the Wal-Marts and K-Marts should not be able to take up parking spaces with trailers, but the average person with commercial property should be able to have trailers. Mr. R. Valladares stated that the trailers come and go all the time.

Mr. deFeyter stated that he does not have a problem with the use of trailers, but with where they have gotten and should not be. Ms. Duane stated that this is like a blanket on all properties in the town. Ms. Duane stated that this amendment might need a little more work. Ms. Duane stated that they shouldn't have to come to site plan to say this is where they should go. Ms. Sand stated that they should be able to

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get approved without coming to site plan review. Mr. M. Valladares stated that it would depend on how it is interpreted. The public hearing was closed at 9:33 p.m.

Ms. Sand made a motion, seconded by Mr. Frank, to have a second public hearing on Article 147-10.1. on December 14, 2000 with language to make this work or get it out of zoning entirely. Mr. Hounsell asked if changes could be incorporated at that time. Mr. Irving stated that substantial changes would need another hearing. The Board discussed forming a committee to review this ordinance. **Motion unanimously carried.**

Mr. Hounsell made a motion, seconded by Ms. Duane, to establish a task force on storage trailers to consist of one Planning Board member and two public members. Mr. Frank stated that there should be a member of the Board of Selectmen. **Motion was defeated with Ms. Sand, Mr. Waterman, Mr. deFeyter and Mr. Frank voting in the negative.** **Mr. deFeyter made a motion, seconded by Ms. Sand, to form a task force on storage trailers to consist of two public members, one Planning Board member and one Board of Selectmen member and for the first meeting to be in January, 2001.** After a brief discussion, the motion and the second were withdrawn.

Ms. Sand made a motion, seconded by Mr. Frank, to form a task force on storage trailers to consist of two members of the Planning Board, one member of the Board of Selectmen, two members of the public with the Planning Director being a technical advisor and the first meeting to be in January, 2001. Motion carried with Mr. M. Hounsell and Mr. Waterman voting in the negative. After a brief discussion, Ms. Sand made a motion, seconded by Mr. M. Hounsell, to amend the motion to say one member of the Board of Selectmen or their designee. Motion was defeated with Mr. Waterman, Mr. deFeyter and Mr. Frank voting in the negative. Mr. Hounsell made a motion, seconded by Mr. Frank, to table Article 147-10.1. Motion carried with Mr. deFeyter voting in the negative.

PUBLIC HEARING – ARTICLE 123-24 – LOADING FACILITIES

Ms. Sand made a motion, seconded by Mr. Frank, to postpone the public hearing on Article 123-24. Motion unanimously carried.

ARTICLE 147-6 - DISCUSSION ON DEFINITION OF CARETAKERS RESIDENCE AND ARTICLE 147-12.2. - ADD CARETAKERS RESIDENCE TO PERMITTED USES

Tom Dewhurst and Kurt Burke appeared before the Board. Mr. Dewhurst stated that this amendment would allow caretaker residences in the Industrial-2 zone for security reasons. Mr. Irving stated that the proponent is asking that the Board support this amendment so they do not have to go through the petition process. Mr. M. Hounsell asked if there is an RSA that gives a legal definition of family. Mr. Irving stated that he has not found one under an RSA. Mr. Irving stated with the absence of a formal definition we would use the plain and customary definition of no more than three persons that were not related.

Ms. Sand asked if there would be any effect on how many buildings per lot. Mr. Irving stated that it would still be considered a unit and would need a unit subdivision. Mr. Irving stated that the lot would have to be of sufficient size to accommodate two units. Mr. deFeyter stated that in reading the minutes when the industrial-2 district was added the idea was to have an industrial zone and gradually, over time, to be used for industrial uses only and not have it compatible for residential uses. Mr. deFeyter stated if you allow residences in the industrial zone you will need to provide services, such as school busses. Ms. Duane stated school busses have to go through the industrial zone to get to the residential area beyond it. Ms. Duane stated that they are already going there.

Mr. Dewhurst stated that he doesn't see this having a big impact. Mr. M. Hounsell stated that he cannot imagine any trouble, but doesn't mean we cannot further restrict it to just storage facilities. Mr. Waterman stated that any business has a security risk and this should be an option for them. Mr. deFeyter stated that the whole nature of zoning is to find different zones for different uses. Mr. Dewhurst referred to RSA 451:C. **Mr. deFeyter made a motion, seconded by Mr. Frank, to amend the proposed wording to Article 147-12.2. to state "...in size. One Caretakers residence shall be permitted as an accessory use**

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to a self-service storage facility as defined in RSA 451:C. Residential...”. Motion carried with Ms. Duane voting in the negative.

Mr. M. Hounsell made a motion, seconded by Ms. Sand, to post Article 147-12.2. as amended to a public hearing on December 14, 2000. Motion unanimously carried. Mr. Hounsell made a motion, seconded by Ms. Sand, to post Article 147-6, definition of a caretakers residence, as written to a public hearing on December 14, 2000. Motion unanimously carried.

PUBLIC HEARING – ARTICLE 147-19.D.(1)(b) – WALL SIGNS

There was no public in attendance. Mr. Frank made a motion, by Mr. M. Hounsell, to amend Article 147-19.D.(1)(b) to read, :...100 square feet. A business with a floor area greater than 50,000 square feet may be permitted one...”. Motion carried with Ms. Duane and Ms. Sand voting in the negative.

Mr. Frank made a motion, seconded by Mr. M. Hounsell, to post Article 147-19.D.(1)(b) as amended to the warrant. Motion carried with Ms. Duane and Ms. Sand voting in the negative.

PUBLIC HEARING – ARTICLE 123-4 – APPLICABILITY FOR SITE PLAN REVIEW

There was no public in attendance. Ms. Sand made a motion, seconded by Mr. M. Hounsell, to adopt Article 123-4 as written. Mr. deFeyter asked what is the policy going to be regarding appeals. Mr. Irving stated that appeals of staff decisions would go to the Planning Board. Mr. deFeyter stated that the Town Attorney says otherwise. Mr. Irving stated that he has other opinions from the New Hampshire Municipal Association and the Office of State Planning that contradict the Town Attorney. Mr. Irving stated that the interpretation of zoning would go to the ZBA.

Mr. deFeyter stated that you are taking it out of the purview of the Planning Board and it then becomes a building permit issue. Mr. deFeyter stated under RSA 673:1 we are supposed to have a Building Code Board of Appeals. Mr. Irving stated we do. Mr. deFeyter stated that we should review RSA 673:1 and determine where the appeal is suppose to go. Motion unanimously carried.

PUBLIC HEARING – ARTICLE 123-10 - SUBMISSION OF APPLICATION MATERIALS

There was no public in attendance. Ms. Sand made a motion, seconded by Mr. Waterman, to adopt Article 123-10 as written. Mr. deFeyter stated that he is concerned with the RSA and can see a potential problem. Mr. Irving stated that anything can be a potential problem and the regional impact requires 21-days. Mr. deFeyter suggested changing it to 21-days, but if the submission is going to take it out of compliance they can submit the application after the 21-days. Ms. Meserve stated that people would always submit it after the 21-days. Motion carried with Mr. deFeyter abstaining from voting.

PUBLIC HEARING – WARRANT ARTICLE

There was no public in attendance. Ms. Sand made a motion, seconded by Mr. deFeyter, to withdraw the warrant article based on the passed applicability. Mr. Hounsell stated that he thinks this is a housekeeping item that should be done. Motion carried with Mr. Hounsell and Mr. Waterman voting in the negative.

OTHER BUSINESS

Stephen Hallett – Senior Housing Unit Proposal: Mr. Irving gave Mr. Hallet’s letter to the Board. After a brief discussion, Mr. Hounsell made a motion, seconded by Ms. Sand, to not take this up as boards warrant, but the applicant can go forward with a petitioned article. Motion unanimously carried.

Martin Frank – Letter Regarding Alternates: Ms. Sand made a motion, seconded by Mr. Hounsell, to invite alternates to the discussion portion of the meetings. Motion carried with Mr. Frank abstaining from voting. Mr. Irving stated that alternates could participate from the public side. Mr. Irving stated that

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they can attend the meetings, but they should not be taking a position or arguing for or against an application when not sitting as a voting member.

Arthur Bergmann – Planning Board member attendance: Mr. Hounsell stated that he would like to propose sending a letter to Arthur Bergmann asking him to please resign so that we may have an available election seat in March. Mr. Hounsell stated that Mr. Bergmann is doing the best he can, but he is not attending the meetings. Mr. Hounsell suggested writing him a letter thanking him for his service, but ask him to resign at this time.

Mr. deFeyter stated that the voters have elected Mr. Bergmann and it is not our role to take a position. Mr. deFeyter stated that we can express our personal feelings, but we should not have the Board take a position as the voters elected him. Mr. Hounsell stated that this issue needs to be addressed. Mr. Hounsell stated that this is not targeted to an individual, but targeted to the philosophy of self-government. Mr. Hounsell stated that self-government needs to police itself.

Mr. Waterman stated that there should be a requirement for attendance. Ms. Duane stated that we need to have it so the voters are properly represented. Ms. Duane stated, unfortunately, it seems the only time Mr. Bergmann is able to attend is when he has a problem. Ms. Duane stated that we need someone who is going to do the job that they were elected to do. Mr. Hounsell stated if you cannot make it that is okay, but if you hang in there just to hang in there, than that is not right.

Ms. Sand stated that it is against the law to put in an attendance requirement. Ms. Sand stated that she would concur that a formal request be made. Ms. Sand stated that this has nothing to do with agreeing or disagreeing, but for someone not to make an attempt to do this job. Ms. Sand stated that it is not fair to people in this town.

Ms. Sand made a motion, seconded by Mr. Hounsell, to request that the Planning Board Secretary write a letter to Arthur Bergmann appreciating his job, but to resign by March for the election in order to have full representation on the Board. Motion carried with Mr. deFeyter voting in the negative and Mr. Frank abstaining from voting.

Mr. Hounsell made a motion, seconded by Ms. Sand, to amend the motion to have the Chair write and sign the letter. Motion carried with Mr. deFeyter voting in the negative and Mr. Frank abstaining from voting.

Meeting adjourned at 12:01 a.m.

Respectfully Submitted,

Holly L. Meserve
Recording Secretary