

CONWAY PLANNING BOARD

MINUTES

FEBRUARY 12, 2004

PAGES

1	Review and Acceptance of Minutes
	• January 29, 2004 – Adopted as Written
1	Thornton Investment Properties, Inc. – Full Site Plan Review (PID 265-198) File #FR04-03
	• Continued until February 26, 2004
Continued	5 Public Hearing – Article 147 – Zoning Ordinance
	• Recommended and posted to the Warrant (6-0-0)
7	Public Hearing – Article 147-19.I. (Flags, Banners, Pennants, etc.) – Zoning Ordinance – Continued
	• Recommended and posted to the Warrant (6-0-0)
8	Public Hearing – Petitioned Article – Article 147-26.C.(3)
–	Zoning Ordinance Continued
	• Recommended and posted to the Warrant (6-0-0)
9	Public Hearing – Article 147-19.D.(1)(a) – [147.13.8.6.1.4] – Zoning Ordinance
	• Recommended and posted to the Warrant (6-0-0)
10	Other Business
	• Kennett Company/Proposed High School – Conceptual Review
	• R.G. Mackinnon Holdings – Extension of Conditional approval
	• North Conway Incinerator Service – Extension of Conditional approval

CONWAY PLANNING BOARD

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FEBRUARY 12, 2004

A meeting of the Conway Planning Board was held on Thursday, February 12, 2004 beginning at 7:00 p.m. at the Conway Town Office in Center Conway, NH. Those present were Chair, Sheila Duane; Selectmen's Representative, Dick O'Brien; Vice Chair, Robert Drinkhall; Secretary, Brian Glynn; Conrad Briggs; David Robinson; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Drinkhall made a motion, seconded by Mr. Robinson, to approve the Minutes of January 29, 2004 as written. Motion carried with Mr. O'Brien and Mr. Glynn abstaining from voting.

THORTON INVESTMENT PROPERTY, INC. - FULL SITE PLAN REVIEW
(PID 265-198) FILE #FR04-03

Shawn Bergeron and Robert Thornton appeared before the Board. This application is to construct two, four unit townhouse buildings with associated site improvements. Mr. Bergeron stated that staff has recommended that the Board not accept this application as complete. Mr. Irving read staff report recommendation that the application be accepted even though it is not significantly complete. Mr. Irving stated that he would further recommend the application be continued to a later date. Conrad Briggs joined the Board at this time.

Mr. Irving stated that it is at the discretion of the Board to accept an application as complete. Mr. Irving stated that neither he nor the Town Engineer could recommend that the application be accepted as complete. Ms. Duane stated besides drainage there is nothing to preclude the application from being accepted as complete and continued. Mr. Irving stated that a waiver has been submitted to delay the submission of drainage. **Mr. Glynn made a motion, seconded by Mr. Drinkhall to accept the application of Thornton Investment Property for a Full Site Plan review as complete. Motion unanimously carried.**

Mr. Bergeron reviewed the application and the deficiency list compiled by Ms. Meserve. Mr. Bergeron stated that another issue was to show the trees to be credited on the plan, however, an application a month ago did not show the trees and staff accepted a note on the plan that more than enough trees exist on the site. Mr. Bergeron stated that they have submitted a waiver to show the trees at a later date.

Mr. Bergeron stated that they have submitted a waiver for street trees along River Street. Mr. Bergeron stated that he has addressed the concerns in Ms. Meserve's report. Mr.

**Adopted: February 26, 2004 – As Amended
CONWAY PLANNING BOARD – FEBRUARY 12, 2004**

Bergeron stated that he then received the staff report from Mr. Irving with items that he still wanted addressed. Mr. Bergeron stated that he feels they have met all of the requirements. Mr. Bergeron stated that he and staff do not agree on how to handle drainage.

Mr. Irving asked that note #5 on sheets 1 and 2 be modified to remove parking lot lighting. Mr. Bergeron agreed as there is no parking lot lighting proposed. Mr. Irving stated that the Town Engineer has expressed concerns, and he concurs, in regard to drainage that has not been submitted. Mr. Irving stated that what the applicant is requesting is that no drainage be submitted now, but to address drainage issues at a later time.

Mr. Irving stated that one of the fundamental issues of site plan is that the site is appropriately developed. Mr. Irving stated by not showing trees on the site plan, drainage is difficult to review as all to often trees planted or claimed for credit are in or obstructed by drainage. Mr. Irving stated that staff couldn't tell if the drainage or tree requirement is satisfied.

Mr. Irving stated that applications must be sufficiently complete for the Board to make an informed decision. Mr. Irving stated that staff does not have the authority to accept or deny an application as complete. Mr. O'Brien asked what are the risks of not submitting drainage with the application. Mr. Irving asked if Mr. O'Brien remembers the court case with Prompto Lube in regard to drainage. Mr. Irving stated that in this case they are not proposing to not submit drainage, but to submit it at a later date.

Ms. Duane stated that she would like to review the application as she has heard a concern regarding trees on River Street. Ms. Duane stated that the Board should determine if they will discuss the application now or does drainage have to be submitted prior to the Board discussing the application. Mr. Bergeron stated if a consultant is not knowledgeable enough to make the drainage, trees and other site improvements work together then that consultant will not be around long. Mr. Bergeron stated that the applicant is not going to pay him to be an idiot. Mr. Bergeron stated that there is a special characteristic of this property that the Board needs to know and will only know if we can discuss the application.

Mr. Bergeron stated that the AM tower has been on this site since 1955. Mr. Bergeron stated that there are 40,000 copper wires around the old tower, literally like the spokes of a wheel, out to the perimeter of the property. Mr. Bergeron stated that these bands of copper are throughout the property. Mr. Glynn asked if the copper wire is within the confines of the tower. Mr. Bergeron answered in the affirmative.

Mr. Bergeron stated because of the nature of AM radio the ground system must be as free as possible of any obstructions. Mr. Bergeron stated that you could have buildings on top of the wires, but not trees. Mr. Bergeron stated that tree and shrubbery growth is recommended to be removed from the site. Mr. Bergeron stated one of the waivers we

**Adopted: February 26, 2004 – As Amended
CONWAY PLANNING BOARD – FEBRUARY 12, 2004**

have requested is for trees and it is one of the issues that hold this project in balance. Mr. Bergeron stated that he would like to see that waiver on the table.

Mr. Briggs stated that he wants a more definitive answer from Town Engineer, Paul DegliAngeli. Mr. Briggs stated that he would also like to see where the trees are going. Mr. Irving asked if Mr. Bergeron could indicate on the plan where trees are not appropriate and show the trees that are proposed and not conflicting with the wires. Mr. Bergeron stated there are not trees proposed in the existing mowed area. Mr. Irving asked if the building is on top of these wires. Mr. Bergeron answered in the affirmative.

Mr. Irving asked how close to River Street are the copper wires. Mr. Bergeron stated to the property line. Mr. Irving asked if the trees could be planted on the property line. Mr. Thornton stated that there is an agreement between the radio station and him that there be no new trees planted on the site without the radio stations approval. Mr. Thornton stated that the radio station has asked that no trees be planted on the lot at all. Mr. Irving stated that the fundamental concern is to do the very best you can with the site and then request the waivers.

Mr. Bergeron stated that staff is in a position that they do not want to move forward without drainage and we feel we don't need drainage at this time. Mr. Bergeron stated there is quite a bit of public here in regard to this application and in fairness to them the Board should hear from the public.

Ms. Duane asked for public comment; Edward Domina of River Street asked why does there need to be a separate driveway on River Street when there is a driveway cut on Route 302. Mr. Domina asked if driving under the cables were permitted. Mr. Bergeron stated the original proposal had access to all eight townhouses over River Street, however, there were concerns during the conceptual review with both buildings having access from River Street. Mr. Bergeron stated that the cables are in the way so they cannot access all the units from Route 302. Mr. Bergeron stated that he does not believe you can drive under or around the wires.

Mr. Thornton stated that he could have put the access to all the units off River Street and it has cost him a considerable amount of money to have four of the units accessed from Route 302. Mr. Domina asked the height of the cables. Mr. Bergeron answered that the height of the cables are 100-feet. Mr. Domina asked why the applicant needs access from River Street when there is access from Route 302. Mr. Bergeron stated that this is the chosen layout. Mr. Thornton stated that there was an added expense with moving the access of four units to Route 302.

Mr. Domina asked if buildings could be constructed over the copper cables that are in the ground. Mr. Bergeron answered in the affirmative and stated that would be approved by the FCC. Mr. Thornton stated that the copper wire would not go under the buildings, but there would be a ribbon of copper around the building. Mr. Bergeron stated, as it has been explained to him, that if the grounding system does not exist they will not be on the air.

**Adopted: February 26, 2004 – As Amended
CONWAY PLANNING BOARD – FEBRUARY 12, 2004**

Paul Olsen stated that he represents his wife as well as his parents who both own two properties on River Street. Mr. Olsen stated that he opposes access onto River Street. Mr. Olsen stated that they purchased their homes on River Street for the quality of life. Mr. Olsen stated that he does not think because the applicant does not want to spend the extra money to have the access off Route 302 that he should be allowed to lower our property values and quality of living.

Mr. Irving stated that the applicant is entitled to two curb cuts on a residential street. Ms. Duane stated that any project would be allowed two curb cuts and this project is not getting any special treatment. Mr. Olsen stated that he understands that but he doesn't want to see these townhouses turn into low-income housing.

Jane Chintala stated that she lives on River Street and currently abuts a high-density transient apartment building with about five units in it. Ms. Chintala stated that it has been miserable to live next to and this application suggests the use to be high-density transient living. Ms. Chintala stated high-density transient accommodations would reduce the quality of life for those who live on River Street. Ms. Chintala stated that high-density housing usually takes places near an intersection however; this would drag traffic through the whole neighborhood. Ms. Chintala stated that she would prefer access to Route 302 rather than River Street, as the River Street/East Main Street intersection is not a good intersection. Ms. Chintala stated that she was rear ended there approximately eight months ago.

Mr. Bergeron stated that the existing building, with six units, had to be appraised and because of the amazingly high quality of construction, each unit was just appraised at \$150,000 each. Mr. Bergeron stated that this is not low-income housing. Mr. Bergeron stated that the units to be constructed by the River will be the most attractive in this area and will not be low-income housing. Ms. Duane asked if these units are for rent or for sale. Mr. Thornton stated that they would be for sale for approximately \$200,000 each. Mr. Irving stated that this application is not subdividing these units and if the plan is for them to be sold then a subdivision application will need to be submitted.

Cathy Wemyss of 86 River Street stated that she almost was rear ended at the River Street/East Main Street intersection and asked what are the health issues of living around this situation. Ms. Wemyss asked who will be reliable if people develop cancer or if the tower should fall. Ms. Wemyss stated that she also opposes the River Street access. Mr. Bergeron stated that he asked about the health risks and was told that the tower produces 1000 watts of current. Mr. Bergeron stated that he was told that that is like ten, 100-watt light bulbs.

Mr. Bergeron stated in regard to the tower falling, it is being replaced, as it did not meet current standards. Mr. Bergeron stated that the tower now meets all current regulations. Ms. Wemyss asked if it was to fall who would be reliable. Mr. Bergeron stated that he would assume it would be the owner of the tower, but he is not a lawyer. Ms. Wemyss

**Adopted: February 26, 2004 – As Amended
CONWAY PLANNING BOARD – FEBRUARY 12, 2004**

asked the number of bedrooms vs. the number of parking spaces. Ms. Duane stated that the applicant does meet the Town of Conway parking space regulations.

Dale Anderson stated that he has an electronics background and asked if there has been an FCC compliance study done. Mr. Anderson stated that the 100-watt light bulb analogy is not correct. Mr. Bergeron stated Mr. Thornton owns the property and MWV Gramophone owns the tower. Mr. Bergeron stated that he is passing on to you what we have been given for information. Mr. Bergeron stated that it is our understanding that the FCC study has been done along with a certificate. Mr. Thornton stated that they have to meet all the federal regulations.

Ms. Chintala stated that she was under the impression that these were to be rental units, however, the idea that these are going to be second homes goes right into the high-density transient population that will be very deep into an established neighborhood instead of at an intersection. Ms. Chintala stated that they are very concerned with the access of this very high transient population.

Mr. Drinkhall made the motion, seconded by Mr. Glynn, to continue the application for Thornton Investment Properties, Inc. until February 26, 2004. Motion unanimously carried.

PUBLIC HEARING – ARTICLE 147 – ZONING ORDINANCE CONTINUED

Peter Malia joined the Board at this time. The public hearing was opened. Mr. Irving stated at the first public hearing there were some concerns raised. Mr. Irving stated that the Board continued the public hearing to allow the people more time to review the changes. Mr. Irving stated that the concern regarding A-frames has been addressed. Mr. Irving read a correspondence from RKG Associates (attached), the firm that helped with the writing of the newly adopted Master Plan. Mr. Irving stated that what is proposed is not intended to make any significant changes. Mr. Irving stated that what you are allowed to do today you would be allowed to do tomorrow.

Ms. Duane asked for public comment; Catherine Woodall asked Mr. Malia if there are any mistakes in this document and it is adopted by the Town is it a legal document. Mr. Malia answered in the affirmative. Ms. Woodall asked if the Board has compared the new document to the original document. Mr. Briggs stated that the Board has reviewed the new document at least four times. Mr. Briggs stated that there probably are mistakes, but nothing significant.

Ms. Duane stated that the rewrite was done in pieces mostly by district. Ms. Duane stated that the Board has been working on this document for the past nine months. Ms. Woodall asked if there are mistakes that need to be corrected and this is the last evening for a public hearing, how would it affect going to the voters this year. Mr. Malia stated changes could be made this evening as long as they are not substantive.

**Adopted: February 26, 2004 – As Amended
CONWAY PLANNING BOARD – FEBRUARY 12, 2004**

Bob deFeyter stated that the purpose of the zoning ordinance has changed significantly. Mr. Irving stated that old RSA numbers have been amended and to include changes that have been made. Mr. deFeyter read the old purpose and then read the new purpose. Mr. deFeyter stated that there is a substantial change and the Board just finished saying that there were no substantial changes.

Ms. Duane stated that that is a descriptive paragraph change and asked if he had seen any changes to the ordinance. Mr. deFeyter stated that there was a change in regard to helicopters. Mr. deFeyter stated a few years ago a triple layer of defense in regard to helicopters was added to the ordinance; however, the new ordinance does not appear to have that three-tier protection.

Mr. Malia stated that he doesn't believe the old ordinance is that bad, but the new ordinance is better. Mr. Malia stated that change in the purpose of the ordinance is significant but is not significant to me, on helicopters, generally in zoning it is frowned upon and usually illegal to restrict something town wide. Mr. Malia stated that the whole helicopter ordinance needs to be addressed, however, it was put into the new ordinance as it was in the old ordinance.

Mr. Irving stated in the current ordinance there is a "Restrictions to all Districts" section and it was copied into the new ordinance under the heading Helicopters. Mr. Irving stated in the current ordinance there are provisions for special exceptions, which have been copied and pasted into each zoning district it was applicable. Mr. Irving stated that the business district is not allowed to have helicopters and, therefore, it was not added to that section of the ordinance.

Ms. Woodall stated that the section that prohibits helicopters is not in each district. Ms. Woodall stated that since it is not listed in each and every district someone could argue that it does not apply. Mr. Irving referenced all sections it is listed.

Bill Marvel stated that the sheer volume of the old ordinance to the new ordinance would take him a couple of days to compare and most citizens do not have the time to do that and would have to go on faith. Mr. Marvel stated that he does not have that faith. Mr. Marvel stated that there was a committee created by the Board that allowed a non-resident attorney on the committee who frequently represents clients in front of this Board. Mr. Marvel stated that he would not be voting for this ordinance, as he does not have the time or the faith to do so.

Ms. Woodall asked where is the helicopter restriction listed in the Center Conway portion of the ordinance. Mr. Irving stated that that is in the general provisions of the ordinance and it is not until Article 147.13 that the ordinance starts to break it down into districts. Mr. deFeyter stated that it is not in the shoreline district. Mr. Irving stated that the current ordinance does not have it in the Shoreline Protection District either. Mr. Irving stated that it allows all uses in the underlying zoning district.

**Adopted: February 26, 2004 – As Amended
CONWAY PLANNING BOARD – FEBRUARY 12, 2004**

Mr. deFeyter stated that on the spreadsheet it says P or permitted for helicopters in the shoreline district. Mr. Irving stated that it would be permitted if permitted in the underlying zoning district. Mr. deFeyter stated that this is a great undertaking and don't think anyone can say that you got everything correct. Mr. deFeyter suggested taking the new ordinance use it for a year with the old ordinance and see if you get the same results. Mr. deFeyter stated that there are 196 pages with charts at the end, which is a lot of material and there are probably hidden items that will create problems.

Mr. deFeyter stated that it is too difficult to compare the two ordinances and he is concerned that there is something in there that will come back to bite us. Ms. Woodall stated that she agrees that the bugs need to be worked out, but it does make it easier. Ms. Woodall stated that the changing of wording in certain districts concerns her. Mr. Briggs stated that he has not seen the Planning Board or the Planning Director spend as much time on a project as they have on this one.

Mr. Briggs made a motion, seconded by Mr. Drinkhall, to recommend and post Article 147 – Zoning Reorganization to the warrant. Ms. Woodall stated that it should be put on hold and wait a year. Bayard Kennett stated that the irony of this discussion is that the people also asked the Board with Ms. Woodall on it to wait another year before adopting the Special Highway Corridor District and the Wetlands Overlay District, however was told by Ms. Woodall that they had worked a long time on it and it was time to move forward with it.

Ms. Woodall stated that we had numerous public hearings when it didn't meet Mr. Kennett's needs he objected. Ms. Duane stated that she was on the Board during that time period and she agreed that the Town should have waited. Ms. Woodall stated that there seems to be changes that will effect the development of the Town. Ms. Woodall referred to w-1 and w-2, which is now in the wetland ordinance, and it was not before. Rick Davidson stated since the wetlands issues was brought up what is the issue that Ms. Woodall as referred to. Mr. Irving stated that the w-1 and w-2 is referenced in both ordinances and read the old ordinance where it is referenced. The public hearing was closed.

Mr. Briggs made a motion, seconded by Mr. Glynn to rescind the motion to recommend and post Article 147 – Zoning Reorganization to the warrant. Motion unanimously carried.

Mr. Briggs made a motion, seconded by Mr. Drinkhall, to recommend and post Article 147 – Zoning Ordinance Reorganization to the warrant. Motion unanimously carried.

**PUBLIC HEARING - 147-19.I. (Flags, Banners, Pennants, etc.) – ZONING
ORDINANCE - CONTINUED**

The public hearing was opened. Mr. Irving stated that the Town asked Bernie Waugh for a legal opinion which he reviewed with the Board. The public hearing was opened. Ms.

**Adopted: February 26, 2004 – As Amended
CONWAY PLANNING BOARD – FEBRUARY 12, 2004**

Duane asked for public comment; there was none. **Mr. Briggs made a motion, seconded by Mr. Glynn, to recommend and post Article 147-19.I. to the warrant. Motion unanimously carried.**

PUBLIC HEARING – PETITIONED ARTICLE - 147-26.C.(3) – ZONING ORDINANCE

The public hearing was opened. Roger Williams appeared before the Board and submitted a copy of a map from the Master Plan. Mr. Irving stated that this would affect the land behind Staples as well as some other land. Mr. Irving stated that there was a public hearing on this and was continued so it could be reviewed by the public further. Mr. Irving stated that he had concerns at that time with signage and building setbacks. Mr. Irving stated that there is a subsequent article by the Board in regard to sign setbacks. Mr. Irving stated that building setbacks could be addressed through the buffer requirement under site plan review regulations.

Mr. Williams stated that he has met with the Village of North Conway and have agreed to a fifty-foot buffer along that property line. Mr. Williams stated that he has met with Randy Cooper to draw up that agreement. Mr. Irving stated that it is up to this Board to protect Town buffering issues.

Ms. Duane asked for public comment; Mr. deFeyter stated that a couple of years ago the Board set up an Ordinance Review Committee and asked if it was ever abolished. Mr. Irving stated that he could not find where or if it was ever disbanded, but neither were a few other committees. Mr. Irving stated that the committee has been inactive, but it would be good housekeeping to disband the committee.

Mr. deFeyter stated that Randy Cooper, Dot Seybold and Tom Steele were on this committee and now some of these same people, with special interest, are bringing forward a petitioned article. Mr. deFeyter stated that he does not think the Board is in a position to recommend. Mr. deFeyter stated there is no record of where or when they met, or if they met. Mr. deFeyter stated that there are no minutes and no indication of when these people met. Mr. deFeyter stated last meeting three members of this committee were here and asked if that constituted a meeting.

Ms. Seybold stated that she only remembers meeting with that Committee twice and they discussed storage trailers. Ms. Seybold stated that there were no secret meetings and there were nine people on the Committee, not just three. Mr. O'Brien stated that he was on that committee as well as Phyllis Sherman and we only met a couple of times.

Kenneth Vance stated that he is very pleased that they were able to come to an agreement with Settler's Green in regard to a buffer. Mr. deFeyter stated that March 15, 2001 were the only minutes he could find in regards to that committee. Mr. deFeyter read the purpose of the committee. Mr. deFeyter stated from an appearance point of view there is a conflict of interest.

**Adopted: February 26, 2004 – As Amended
CONWAY PLANNING BOARD – FEBRUARY 12, 2004**

Mr. Malia stated that he has reviewed the situation and State Law allows the Planning Board to enact Bylaws and those Bylaws allows to creation of subcommittees. Mr. Malia stated in regards to whether or not the Board should make a recommendation or not, the Board should make a recommendation unless a Board member feels they have they have a conflict of interest. Mr. Malia referred to RSA 675:4 and RSA 675:3. Mr. Malia stated that the Board has an obligation to approve or disapprove unless they have a conflict of interest.

Mr. Williams stated that the Master Plan recommends that that area be rezoned to commercial property and that is why he is here today. Ms. Seybold stated that the committee never discussed this and she is not a stranger to getting involved in her community. Mr. O'Brien stated that when he was on the committee he became an expert on storage trailers. Mr. Malia stated that the Board members should vote to recommend or not recommend unless they feel they have a conflict of interest.

Mr. deFeyter stated that if you read through the Master Plan it gives you a different impression then just looking at the map. Mr. deFeyter stated that it talks about using the existing commercial space before creating more. Mr. deFeyter stated that the Master Plan is a long-term plan and not necessarily to be done instantly. The public hearing was closed. Mr. O'Brien stated that that same area was commercial once before.

Mr. Drinkhall made a motion, seconded by Mr. Glynn, to recommend and post Article 147-26.C.(3) to the warrant. Motion unanimously carried.

PUBLIC HEARING – ARTICLE 147-19.D.(1)(a) – [147.13.8.6.1.4]

The public hearing was opened. Mr. Irving stated that this would address the concern regarding signage along the North South Road. Ms. Duane asked for public comment; Ms. Woodall asked if there was a 500-foot buffer within the Special Highway Corridor Overlay District. Mr. Irving stated that the buffer is from the bypass right-of-way, which would allow some signs to be visible from the North-South Road. Mr. Irving stated that the 500-foot buffer was to protect the view from the bypass.

Mr. Irving stated that there was a misconception that the Special Highway Corridor Overlay District would protect the North-South Road, but it didn't go over far enough. Mr. deFeyter stated that he was on the Board at the time and the intent was to cover the North-South Road. The public hearing was closed.

Mr. Glynn made a motion, seconded by Mr. O'Brien, to recommend and post Article 147-19.D.(1)(a) [1417.13.8.6.1.4] to the warrant. Motion unanimously carried. Mr. Malia left at this time.

OTHER BUSINESS

Kennett High School Conceptual review: Burr Philips of H.E. Bergeron Civil Engineers appeared before the Board and reviewed the proposed two-lot subdivision and access road for the new high school. This application is scheduled for February 26, 2004.

R.G. Mackinnon Holdings, LLC (PID 244-4) File #FR03-18 – Extension of Conditional Approval: Mr. Briggs made a motion, seconded by Mr. Glynn, to extend the conditional approval for R.G. Mackinnon Holdings, LLC until June 24, 2004. Motion unanimously carried.

North Conway Incinerator Service, Inc. (PID 253-28 & 29) File #FR03-13 – Extension of Conditional Approval: Mr. Briggs made a motion, seconded by Mr. Glynn, to extend the conditional approval for North Conway Incinerator Service, Inc. until April 22, 2004. Motion unanimously carried.

Meeting adjourned at

Respectfully Submitted,

Holly L. Meserve
Recording Secretary

Tom Irving

From: "Jim Hicks" <jeh@rkg1.com>
To: "Thomas B. Irving" <tirving@conwaynh.org>
Sent: Thursday, February 12, 2004 11:55 AM
Subject: Revised Zoning

Dear Tom:

I just reviewed the revised zoning ordinance that is being considered for Conway. What a dramatic improvement when compared to the existing ordinance. I was especially impressed by the inclusion of a Permitted Use Table as well as separate sections for the different zoning districts, especially the various Villages. As you know zoning ordinances are by nature somewhat complex. Conway's existing zoning ordinance however is more like an old jigsaw puzzle with missing pieces. This revision should, if approved by town voters, significantly improve the planning process in Conway, as well as provide a better understanding of the types of development activities permitted in different locations within the community. Congratulations to you and the members of the Planning Board for a great first step.

Jim Hicks
RKG Associates, Inc
277 Mast Road
Durham, NH 03824
email: jeh@rkg1.com
Web : www.rkg1.com
Phone (603) 868-5513
Fax (603) 868-6463