

CONWAY PLANNING BOARD

MINUTES

JANUARY 12, 2006

A meeting of the Conway Planning Board was held on Thursday, January 12, 2006 beginning at 7:03 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chair, Robert Drinkhall; Selectmen's Representative, Larry Martin; Vice Chair, Conrad Briggs; Secretary, Martha Tobin; Sheila Duane; Steven Porter; Russell Henderson; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Martin made a motion, seconded by Ms. Duane, to approve the Minutes of December 9, 2005 as written. Motion carried with Mr. Briggs abstaining from voting.

**JOSEPH AND MAUREEN SORAGHAN – 2-LOT SUBDIVISION (PID 202-35)
FILE #S06-01**

Bob Tafuto of Ammonoosuc Survey Company appeared before the Board. This is an application to subdivide 3.94 acres into 2-lots. **Ms. Duane made a motion, seconded by Mr. Briggs, to accept the application of Joseph and Maureen Soraghan for a subdivision review as complete. Motion unanimously carried.**

Mr. Irving stated that the subject parcel does not have its own driveway and had to request a variance from the Zoning Board of Adjustment for qualified road frontage. Mr. Irving stated that the NHDOT wouldn't issue a driveway permit to this lot due to the grades. Mr. Irving stated that it is an awkward site to work with, therefore, the reason for the meandering lot lines. Mr. Irving stated that staff has concern with the waiver request for the 4K area as it exceeds a 15% slope. Mr. Irving stated in some areas the 4K area is a 25% slope, which is greater than the steepest portion of the Mt. Washington Auto Road. Mr. Irving stated that the Board would see this more and more as the land left in Conway is steep and wet.

Mr. Irving stated that the purpose for controlling the slope is two fold; one is for sanitary/septic systems and access, and second, the most important part, is that the ordinance discourages building on steep slopes. Mr. Irving stated to build on steep slopes more land is required to be cleared, therefore, making it more visible. Mr. Irving stated if this waiver is granted, then the Board can just give up on this section on the ordinance.

Ms. Duane asked if that is the only area for a building. Mr. Tafuto answered in the negative. Mr. Tafuto stated that some of the area may be at a 25% slope, but this is an 8,000 square foot area. Mr. Tafuto stated that you look down at this lot from the road not

**Adopted: January 26, 2006 – As Written
CONWAY PLANNING BOARD – JANUARY 12, 2006**

up at this lot from the road. Mr. Tafuto stated that the applicant wants to build in that steep area, as they want a view towards the moats.

Mr. Tafuto stated that the 4K area is relatively flat and it is the applicant's desire to build on the steep slope. Ms. Duane asked if there is a height restriction. Mr. Irving answered in the affirmative. Mr. Tafuto stated it would not exceed the structure height. Mr. Tafuto submitted a letter from the owners. Mr. Drinkhall read a letter from Joseph and Maureen Soraghan. Mr. Tafuto stated that he does not wish to have this as a precedent setting case, as this situation is unique. Mr. Martin stated if that was the only building area then maybe, but he's having difficulty since there is another area to build. Mr. Henderson stated that granting this waiver would nullify the intent of the ordinance. Mr. Porter, Ms. Tobin, Mr. Briggs, Ms. Duane and Mr. Drinkhall agreed with Mr. Henderson.

Mr. Tafuto stated even if another 8K area was located; the applicant would still build on the steep area. Mr. Irving stated that the driveway would have to go to the 8K area and would expect to see a driveway to the area they intend to construct on the plan. Mr. Irving stated that the 8K area as proposed does not conform to the regulations and if you're going to show a buildable area that is where you would be showing the driveway. Mr. Drinkhall asked Mr. Tafuto if he wanted the Board to act on the waiver or would he like to withdraw the waiver request. Mr. Tafuto stated that he would like the Board to act on the waiver.

Mr. Drinkhall read the requirements to grant a waiver. Mr. Drinkhall read a waiver request for Article 131-24.K. **Mr. Martin made a motion, seconded by Ms. Duane, to grant the waiver for Article 131-24.K.** Mr. Drinkhall asked for public comment; Mr. Tafuto stated that this is not nullifying the intent of the law and this is not crossing the line as this is uniquely designed. Mr. Porter stated that it doesn't fall into conformity. Mr. Henderson stated that the lines could be drawn in a way where there were more suitable areas to build on. **Motion defeated with Ms. Tobin abstaining from voting.**

Mr. Martin made a motion, seconded by Ms. Duane, to approve the 2-lot subdivision for Joseph and Maureen Soraghan. Motion defeated with Ms. Tobin abstaining from voting.

**MT. CRANMORE SKI RESORT, INC./RCC ATLANTIC DBA UNICEL – FULL
SITE PLAN REVIEW (PID 214-84) FILE #FR06-01**

Peter DeMarco of SAI Communications and Dan Ham of Hudson Design appeared before the Board. This is an application to construct a 55-foot wireless communication facility with a 10'x12' equipment building. **Ms. Duane made a motion, seconded by Mr. Henderson, to accept the application of Mt. Cranmore Ski Resort, Inc./RCC Atlantic dba Unicel for a full site plan review as complete. Motion unanimously carried.**

Mr. Drinkhall read the waiver requests for Articles 123-6.A.; 123-20.; 123-21. & 22; 123-26; 123-27; 123-28; 123-29; & 123-32. **Mr. Briggs made a motion, seconded by Ms.**

Adopted: January 26, 2006 – As Written
CONWAY PLANNING BOARD – JANUARY 12, 2006

Duane, to grant the waiver requests for Articles 123-6.A.; 123-20.; 123-21. & 22; 123-26; 123-27; 123-28; 123-29; & 123-32. Mr. Drinkhall asked for Board comment; there was none. Motion unanimously carried.

Mr. Drinkhall asked for public comment; there was none. Ms. Duane asked what is this tower would look like. Mr. Irving stated that it would be a flagpole that is 60-feet lower than the monopine tower.

Mr. Martin made a motion, seconded by Mr. Porter, to conditionally approve the full site plan for Mt. Cranmore Ski Resort, Inc./RCC Atlantic dba Unicef conditionally upon North Conway Fire Chief approval; add granted waivers to sheet 4 of 5; submit four copies of revised sheet 4 of 5; submit a Mylar; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on April 13, 2006. Motion unanimously carried.

THE KENNETT COMPANY – 3-LOT SUBDIVISION (PID 262-71) FILE #S06-02

Bayard Kennett, owner, Stephen Sawyer of Sebago Technics and Bill Altenburg appeared before the Board. This is an application to subdivide 684.82 acres into three-lots with one lot containing 30.23 acres, the second lot containing 85.48 acres and the third lot containing 569.11 acres. **Ms. Duane made a motion, seconded by Mr. Henderson, to accept the application of The Kennett Company for a subdivision review as complete. Motion carried with Ms. Tobin abstaining from voting.**

Mr. Irving stated that PSNH submitted a letter stating that there are standards to follow around the easements. Mr. Irving stated that Clare Daly, an abutter, submitted a letter of concern. Mr. Drinkhall read the letter from Clare Daly. Mr. Drinkhall stated that the abutter has not done an actual survey and the applicant has and that survey upholds the current boundaries. Ms. Duane asked what is the amount of land she is concerned with. Mr. Kennett referred to sheet 3. Mr. Kennett stated that Mrs. Daly is claiming that in fact their ownership extends out across the old Mineral Spring Road to a point that lines up with her easterly property.

Mr. Kennett stated that Sebago Technics has surveyed the lot and checked the abutting records. Mr. Kennett stated that the clearest evidence of our plans being correct is a 1963 deed from the Kennett's to the Daly's. Mr. Kennett read the boundary description in the 1963 deed. Mr. Kennett stated that the deed clearly follows the meets and bounds indicated on the plan and he thinks it is a mistake on Mrs. Daly's part, an honest one, and she has not submitted anything in writing.

Mr. Irving stated that Mrs. Daly faxed that deed to Town Hall this afternoon and gave copies of it to the Board. Mr. Briggs stated that the applicant has brought in a stamp by a surveyor and Mrs. Daly has provided nothing; it is a moot issue. Mr. Martin stated that the plan shows the southerly boundary as 320', but the deed says 360'. Mr. Martin asked if the boundary is shy of 40'. Mr. Kennett stated that it is questionable as to exactly where it ties into Cold Brook as over the years the brook has changed. Mr. Kennett

Adopted: January 26, 2006 – As Written
CONWAY PLANNING BOARD – JANUARY 12, 2006

stated that it could be a change due to the change in course of the brook. Mr. Sawyer stated that they would like to look at that again. Mr. Martin asked if that would put her back to where she thought she was. Mr. Kennett stated that the deed states that it is 220' back. Mr. Kennett stated that that is a correction that can be made.

Mr. Kennett stated that he would like to address the squatter issue and would like Mr. Altenburg to address the trail easement. Mr. Kennett stated that the squatter is not an issue for the Planning Board under subdivision review. Mr. Kennett stated that it is not a residence it is an occupant of an old converted school bus. Mr. Kennett stated that there is no septic and no water. Mr. Kennett stated that he doesn't feel he is responsible at the time of subdivision to have the squatter removed. Mr. Kennett stated if it is a health and safety issue it can be dealt with that way. Mr. Irving stated there is an ongoing zoning violation. Mr. Irving read §147.13.1.10.2.

Mr. Irving stated there someone is living on the property, so there is a zoning violation. Mr. Kennett stated the guest on the property is not in an RV or a travel trailer. Mr. Kennett stated that the regulation was so motor homes, travel trailers and pickup trucks with trailers in the back couldn't be used for living space. Mr. Kennett stated what we have is a chopped in half school bus. Mr. Kennett stated that one family member moved out back and pushed it beyond their ownership. Mr. Kennett stated we have not ignored it nor have we pushed to have it removed.

Mr. Kennett stated that it does not constitute what that ordinance covers and more of a health and safety issue. Mr. Irving stated that this a zoning issue and he would have to look at enforcement action. Mr. Irving stated that the proposed lots meet the standards and this particular board would not hear an appeal of that decision. Mr. Porter stated that it has to be dealt with as it is someone on your land that needs to be removed. Mr. Kennett stated we had wanted to do this and will soon after this meeting, but asking for time as we don't want to remove him in the middle of winter. Mr. Kennett stated that it would be difficult to remove the so-called structure in the winter.

Mr. Martin asked if the Board could grant the subdivision with a condition that the squatter is removed by a certain date. Mr. Irving stated that a subsequent condition could be a part of the conditional approval, but that does not give the applicant any relief from zoning. Mr. Kennett stated he is trying to find away that is also not creating a legal situation. Mr. Henderson asked if this is a zoning violation. Mr. Irving stated that the lots conform to the subdivision regulations.

Mr. Briggs stated that he hopes the press will show the same compassion that both sides have shown. Mr. Henderson stated that what this Board agrees to might not solve what will take place outside of this office. Mr. Henderson stated in regard to the lot line shared with Mrs. Daly, he would suggest checking the 54-degree angle as it may not be accurate.

Mr. Kennett stated that the trail became a trail when the Town asked that the road be used as a town designated recreational trail. Mr. Kennett stated that they had no objections, but they had questions regarding signage, usage, etc. Mr. Kennett stated that stated they

Adopted: January 26, 2006 – As Written
CONWAY PLANNING BOARD – JANUARY 12, 2006

did not want to recognize the trail as non-motorized but there has been a more definitive use of the trail.

Mr. Kennett stated when we discussed the mineral spring trail and the relocation due to the construction of the high school we got into discussions with the school for a way to get to route 302. Mr. Kennett stated we agreed to the trail, but now there is some questions with the location of the trails. Mr. Altenburg stated that the original function was a logging road. Mr. Altenburg discussed the location and function of the trail. Mr. Drinkhall asked for public comment; there was none.

Mr. Drinkhall read the waiver requests for Articles 131-24.B; 131-24.N; 131-24.O; and 131-26.A. **Mr. Martin made a motion, seconded by Mr. Porter, to grant the waiver requests for Articles 131-24.B; 131-24.N; 131-24.O; and 131-26.A.** Mr. Drinkhall asked for Board comment; there was none. Mr. Drinkhall asked for public comment; there was none. **Motion carried with Ms. Tobin abstaining from voting.**

Mr. Irving stated that the outstanding issues are the squatter; location of trails and Mrs. Daly's boundary line. **Mr. Briggs made a motion, seconded by Ms. Duane, to continue the 3-lot subdivision review for The Kennett Company until January 26, 2006. Motion carried with Ms. Tobin abstaining from voting.**

FRAM REAL ESTATE INVESTMENT COMPANY, LLC – MINOR SITE PLAN REVIEW CONTINUED (PID 235-33) FILE #MR05-02

Edgar Allen of Thaddeus Thorne Surveys appeared before the Board. Mr. Henderson stepped down at this time. This is an application to construct a 914 square foot mezzanine inside a retail building and was accepted as complete on October 27, 2005.

Mr. Briggs stated there is a trailer backed up to the loading ramp that has just been sitting there for years. Mr. Briggs stated that it has not moved since snow and it does not have a valid license. Mr. Briggs stated that there is a trailer in the front that is for advertising purposes only, it is legal but it is unethical. Mr. Irving stated if you have a vehicle and you want to put a sign on that vehicle, the Town of Conway does not have any regulations to regulate or enforce it. Mr. Irving stated that he would notify the compliance officer of the violations. Ms. Duane stated what he is doing is unfortunate and unfair.

Ms. Duane asked if the landscaping would be planted. Mr. Allen answered in the affirmative. Mr. Irving stated that there would be bonding and the Board could put a stipulation on when the landscaping is planted. Mr. Martin stated that based on the past history and concerns that have reoccurring and dragging on since 2002, the Board should put a date of no later than June 1, 2006.

Mr. Drinkhall asked for public comment; Kim Perkins stated that the company has done a good job and looks better to Echo Acres people. Mr. Perkins stated that there was a safety issue with the northern part of the property to be used as the entrance to the tracks

**Adopted: January 26, 2006 – As Written
CONWAY PLANNING BOARD – JANUARY 12, 2006**

and not Echo Acres Road and it should be looked at again and required to have a fence. Mr. Allen stated that there is a fence proposed along Echo Acres road and along the railroad. Mr. Perkins was satisfied.

Mr. Drinkhall read the waiver request for Article 123-6; 123-20.C; 123-20.F. & 131-67.C.8.A/123-27; 123-22.D; 123-29.A.2; 123-29.D; 123-29.D.7; 123-29.D.8; 123-30.A.3; and Article 131, Section 10, Table 2. **Mr. Briggs made a motion, seconded by Ms. Duane, to grant the waiver request for Article 123-6; 123-20.C; 123-20.F. & 131-67.C.8.A/123-27; 123-22.D; 123-29.A.2; 123-29.D; 123-29.D.7; 123-29.D.8; 123-30.A.3; and Article 131, Section 10, Table 2.** Mr. Drinkhall asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Tobin made a motion, seconded by Mr. Porter, to conditionally approve the Minor Site Plan for Fram Real Estate Investment Company, LLC conditionally upon adding a note to the plan that the landscaping depicted on the plan shall be planted no later than June 1, 2006; NHDOT approval; a performance guarantee for all site improvements; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on April 13, 2006. Motion unanimously carried.

**DYER REVOCABLE TRUST OF 1997 – FULL SITE PLAN REVIEW
CONTINUED (PID 252-8) FILE #FR05-20**

Mr. Henderson rejoined the Board at this time. This is an application to convert existing residential unit and residential garage to retail and construct an 864 square foot garage to be used for retail storage. This application was accepted as complete on December 8, 2005. Mr. Irving stated that the applicant has requested a continuance. **Ms. Duane made a motion, seconded by Mr. Henderson, to continue the full site plan review for Dyer Revocable Trust of 1997 until January 26, 2006. Motion unanimously carried.**

**JEANNE AND ANTHONY FRANCHI/PHILIP MCDONNELL/PATRICIA
FRANCHI – MEADOW GREEN REALTY TRUST II – 30-UNIT SUBDIVISION
CONTINUED (PID 219-303) FILE #S05-11**

This is an application for a 30-unit subdivision. This application was accepted as substantially complete on April 28, 2005. Mr. Irving stated that the applicant has requested a continuance. **Ms. Duane made a motion, seconded by Ms. Tobin, to continue the subdivision review for Jeanne and Anthony Franchi/Philip McDonnell/Patricia Franchi – Meadow Green Realty Trust II until January 26, 2006. Motion unanimously carried.**

**KGI MOUNTAIN VALLEY MALL, LLC – FULL SITE PLAN REVIEW
CONTINUED (PID 246-38) FILE #FR05-10**

This is an application for the redevelopment of the Mountain Valley Mall property resulting in five buildings on the site for a total of 272,000 square feet of commercial

**Adopted: January 26, 2006 – As Written
CONWAY PLANNING BOARD – JANUARY 12, 2006**

floor area at 32 Mountain Valley Boulevard and was accepted as sufficiently complete on May 12, 2005. Mr. Irving stated that the applicant has requested a continuance. **Ms. Duane made a motion, seconded by Mr. Porter, to continue the Full Site Plan review for KGI Mountain Valley Mall, LLC until January 26, 2006. Motion unanimously carried.**

OTHER BUSINESS

Eastern Slope Inn Associates/Center Chimney Inn (PID 218-53) – Conceptual Review: Burr Phillips of Civil Solutions, LLC and Joe Berry, owner, appeared before the Board. Ms. Duane stepped down at this time. Mr. Phillips reviewed a proposed project for the Center Chimney in site.

Lamplighter Mobile Home Park (PID 262-83) – Conceptual Review: Ms. Duane rejoined the Board at this time. Burr Phillips of Civil Solutions, LLC appeared before the Board. Mr. Phillips reviewed a proposed expansion of Lamplighters Mobile Home Park.

Rock Development, LLC (PID 235-78) – Reconsideration of Conditional Approval (File #FR05-11): Robert Barsamian and Roger Williams appeared before the Board. Mr. Barsamian stated that they are here for a clarification. Mr. Barsamian stated they are being required to widen Barnes Road and take some property from Staples and our development. Mr. Barsamian stated that we already have in our conditional approval the authority to deal with the Town Engineer and give the Town Engineer off-site improvements.

Mr. Barsamian stated that they continue to look at the whole picture and how to deal with the mitigation of Common Court, Macmillan Way and the North-South Road as they were just built and they are failing.

Mr. Barsamian stated that we could have mitigated traffic issues for home depot with a whole host of options prior to conditional approval. Mr. Barsamian stated that after our conditional approval we have improvements on the North-South Road, Macmillan Way, Common Court and now we are at the final stage at Barnes Road. Mr. Barsamian stated that part of the off-site mitigation is to take a portion of land from the Staples site. Mr. Barsamian stated that they need clarification from the Board even though we feel we have the approval already and can mitigate what we have.

Mr. Barsamian stated on May 2, 2005 the Board granted the use of grass pavers at the Staple's site due to being insignificant to the rest of the project. Mr. Barsamian stated that we are increasing some pavement in the buffer by approximately 0.0028%. Mr. Barsamian stated when we did the staples approval we were granted a waiver for pavement in the buffer because we couldn't move the Merlino's parking.

Mr. Irving stated the applicant is being required to widen Barnes Road to the north to include a bike lane and add the sidewalk in the buffer, which would require in a waiver and can only be granted in a public hearing. Mr. Irving stated that he and the applicant

Adopted: January 26, 2006 – As Written
CONWAY PLANNING BOARD – JANUARY 12, 2006

disagree. Mr. Irving stated that these are not off-site improvements as they are taking place on the site. Mr. Irving stated when the Board grants non-applicable, the Board looks to see if a waiver would be required. Mr. Irving stated in this instance a waiver is required.

Mr. Irving stated there might be two ways to deal with this situation. Mr. Irving stated the first, and his recommendation, would be to apply for a new application because §123-16.B indicates that a condition cannot require a discretionary decision. Mr. Irving stated that a waiver for the buffer would be required. Mr. Irving read §123-16.B. Mr. Irving stated that this would require a discretionary decision on the Board's part.

Mr. Irving stated the Board could apply a standard that is not included in your ordinance, but is included in the RSA. Mr. Irving read RSA 676:4.I(i) (see attached). Mr. Irving stated that the second option is to reconsider the conditional approval pursuant to RSA 676:4.I(i), but it would still require a public hearing. Mr. Irving stated that he couldn't recommend approving this as a minor change.

Mr. Martin stated that he does not agree with Mr. Irving. Mr. Martin stated that the applicant pursued conditions of the conditional approval, they did what we told them to do, and along the way they have run into a design change on Barnes Road. Mr. Irving stated that it is not the off-site improvements, but the on-site changes that causes a problem.

Mr. Barsamian stated that we have an approval and we don't believe we need to be back before this Board again. Mr. Barsamian stated that this is an off-site improvement that is affecting our site. Mr. Briggs asked if these changes are okay with Paul DegliAngeli. Mr. Irving stated that he is going to require them. Mr. Briggs stated that he agrees with Mr. Martin. Ms. Duane stated if the proposed project weren't in the equation this would not be an issue.

Mr. Henderson stated that this change does impact the buffer, which would require a waiver from this Board and he doesn't think this a non-applicable. **Mr. Briggs made a motion, seconded by Mr. Porter, that the proposed modifications to Barnes Road are deemed an acceptable field change. Motion carried with Mr. Henderson and Mr. Drinkhall voting in the negative.**

Jay Patel/Wingate Inn & Suites (PID 230-1) – Extension of Conditional Approval (File #FR04-06): Ms. Duane made a motion, seconded by Ms. Tobin, to extend the conditional approval for Jay Patel/Wingate Inn & Suites until February 9, 2006. **Motion unanimously carried.**

Donarumo Realty Trust f/k/a R.G. MacKinnon (PID 244-4) – Extension of Conditional Approval (File #FR03-18): Ms. Duane made a motion, seconded by Ms. Tobin, to extend the conditional approval for Donarumo Realty Trust f/k/a R.G. MacKinnon until December 14, 2006. **Motion unanimously carried.**

**Adopted: January 26, 2006 – As Written
CONWAY PLANNING BOARD – JANUARY 12, 2006**

Agnes Birch/Green Granite Limited Partnership (PID 246-35) – Conditional Approval Expired (File #FR03-06): Mr. Irving stated that this conditional approval expired on December 8, 2005. Mr. Irving stated that staff sent reminder letters via certified mail to the applicant and the owner, which both were signed for, and there has been no response from either. **Ms. Duane made a motion, seconded by Mr. Porter, to deny the application without prejudice for failure to meet the conditions of approval. Motion unanimously carried.**

Evergreen on the Saco – As Built Plans for units 33 and 50 (PID 265-161.333 & 265-161.350): Ms. Duane made a motion, seconded by Mr. Martin, to sign the As-Built plans for units 33 and 50 at Evergreens on the Saco. **Motion unanimously carried.**

Petitioned Article – Zoning Amendment – Schedule Public Hearing: Ms. Duane made a motion, seconded by Ms. Tobin, to hold a public hearing for the proposed petitioned article on January 26, 2006. **Motion unanimously carried.**

Capital Improvements Plan (CIP): Mr. Irving stated there is a money article and read the suggested warrant article. **Ms. Duane made a motion, seconded by Mr. Porter, to request that the Board of Selectmen put the proposed warrant on the ballot as written. Motion unanimously carried.**

Meeting adjourned at 10:02 p.m.

Respectfully Submitted,

Holly L. Meserve
Recording Secretary