

CONWAY PLANNING BOARD

MINUTES

OCTOBER 12, 2006

A meeting of the Conway Planning Board was held on Thursday, October 12, 2006 beginning at 7:00 pm at the Conway Town Office in Center Conway, NH. Those present were Chair, Robert Drinkhall; Selectmen's Representative, Larry Martin; Vice Chair, Russell Henderson; Secretary, Steven Porter; Martha Tobin (late); Hud Kellogg; Sean McFeeley; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Porter made a motion, seconded by Mr. Henderson, to approve the Minutes of September 28, 2006 as written. Motion carried with Mr. Henderson and Mr. Kellogg abstaining from voting.

STEPHEN MORRILL et al – BOUNDARY LINE ADJUSTMENT (PID 260-58 & 274-14) FILE #S06-23

Bob Tafuto of Ammonoosuc Survey Company and Steve Morrill, owner, appeared before the Board. This is an application to add 11.11 acres to PID 274-14 from PID 260-58 resulting in a 12.29-acre lot and a 590.91-acre lot, respectfully. **Mr. Porter made a motion, seconded by Mr. Henderson, to accept the application of Stephen Morrill et al for a Boundary Line Adjustment as substantially complete. Motion unanimously carried.**

Mr. Irving stated that there was an abutter who stopped into Town hall today in regard to the beach rights on this parcel. Mr. Irving stated that he did check with the Tax Assessor and there are six lots that are being taxed for beach rights. George Ellison [the abutter who stopped in] stated that in 1969 there was a subdivision known as Conway Lake Shores. Mr. Ellison stated that this subdivision contained six lots that did not have lake frontage, but had exclusive rights to the beach [on PID 274-14]. Mr. Ellison stated that there is extensive wording in the deeds of these six lots regarding the responsibility of the beach lot. Mr. Ellison stated these six lots had 20-years, 1969 to 1989, to form a non-profit corporation and Brewster Morrill would turn over beach to those six owners along with his heirs having rights to use the beach.

Mr. Ellison asked what sort of written assurance is the applicant going to give these six landowners that this beach would remain the same. Mr. Ellison stated that these six landowners have exclusively maintained this beach lot. Mr. Ellison stated that the biggest problem is the regulation regarding shoreline frontage for shorefront common areas. Mr. Ellison stated that this lot would need fifty-feet of water frontage for each lot having rights to the beach. Mr. Ellison stated with this subdivision it would be approximately 28-feet of lake frontage per household rather than the required 50-feet per household.

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Mr. Ellison stated Brewster Morrill told these landowners that the beach would be turned over to them. Mr. Ellison stated when these owners met with his heirs; they were told it would happen since that is what father would have wanted, Brewster being the father. Mr. Ellison stated that they were then told that since these landowners were not very helpful in helping get the proposed zoning amendments past, it has not been done, so here we are tonight.

Mr. Tafuto stated that it already is a lot and a new lot is not being created. Mr. Tafuto asked who pays the taxes on this lot. Mr. Ellison stated in 1994 he received a letter from the Town that they would now be taxed for the value of the beach rights, so each owner was assessed an additional \$30,000 for their beach rights. Mr. Ellison stated that as far as taxes these six landowners have been paying over 90% of the beach taxes and 100% of the maintenance. Mr. Ellison stated that the property was promised to the six lots, not having beachfronts, in their deeds. Mr. Tafuto stated from 1969 until 1994 the Morrill's have paid the taxes and the non-profit organization was never created.

Mr. Martin asked how much water frontage does this lot have. Mr. Irving answered approximately 200 ±. Mr. Martin asked if the Morrill's have been paying for the beach lot. Mr. Irving stated that he asked the Tax Assessor how many lots were being assessed for beach rights. Mr. Irving stated there is the lot itself and the other six lots. Mr. Martin stated that the Zoning Ordinance does require 50-feet of lake frontage for common areas. Mr. Irving stated that it does require 50 feet of lake frontage for each household that has access to the beach, but this lot was created before this zoning restriction took place as it was adopted in 1991 and amended in 1992.

Mr. Irving stated with there are seven entities that were granted use privileges of this beach lot, which pre-dated zoning and as long as there is no increase in the number of entities using it, there would not be an increase in non-conformity. Mr. Irving asked Mr. Morrill and Mr. Ellison if they both agreed that there were six lots and the Morrill's who have access to this beach. Mr. Morrill agreed. Mr. Ellison stated that this deed states that there are restrictions on the use and development of that lot and when he bought his home the beach was there. Mr. Ellison stated the people involved in the beach are not keen on this application.

Mr. Drinkhall asked if the six lot owners were paying the taxes on the beach lot or was \$30,000 worth of assessment added to each property that had beach rights. Mr. Ellison stated that they are not paying taxes on the beach, but there is an increased value because we have access to the beach. Mr. Ellison stated that the deed states that this parcel cannot be constructed upon without consent of the other parties involved.

Mr. Irving asked Mr. Morrill and Mr. Ellison if they both agreed that there are seven entities that have beach access privileges. Mr. Morrill and Mr. Ellison agreed. Mr. Irving asked Mr. Ellison if he had something in his deed regarding beach easement holders having to agree before anything could be done with that lot. Mr. Ellison answered in the affirmative, read a portion of his deed, and gave copies to the Board. Mr. Ellison stated that they have met with Ken Cargill of Cooper, Deans & Cargill in regard to forming the non-profit. Mr. Tafuto stated under item #9 of the deed, they had 20-years to create the non-profit organization, but it has expired. Mr. Ellison stated that the deed states "until formation of non-profit".

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Mr. Irving asked Mr. Ellison if he could get a copy of the entire document. Mr. Ellison agreed. Mr. Irving stated the Board should obtain legal opinion before approving anything. Mr. Irving stated that the Board can request such a study and the review is to be paid by the applicant. Mr. Tafuto stated that there might be the need for legal review. Mr. Tafuto stated that the six owners should have bought the lot. Mr. Ellison stated when the subdivision was done he was seven years old. Mr. Ellison stated that they have obtained the opinions of three different lawyers and all three came to the same conclusion. Mr. Ellison stated if the beach lot is enlarged is it still the beach lot. Mr. Irving asked if he would be willing to forward the legal letters to the Town. Mr. Ellison had copies available and gave them to the Board.

Mr. Henderson asked if the six owners could only access the beach area itself or are the woods included. Mr. Tafuto stated that there is no exclusion that they cannot go into the woods; don't believe that was ever the intention. Mr. Irving stated that the Board might want to continue this public hearing to review the documents and have Town Counsel review the application. Mr. Ellison stated that the two-acre lot would be the woods area and the beach area as zoning requires two-acres and 50-feet of frontage for a common beach areas.

Mr. Martin asked if the beach area rights are limited to the beach area or the whole parcel. Mr. Tafuto stated that was all done before zoning and is a grandfathered situation as it is a pre-existing condition. Mr. Ellison disagreed and stated that he sees it definitely. Mr. Porter stated that if grandfathered and the lot is reconfigured does the beach rights apply to the whole lot. Mr. Morrill stated they are not trying to add any more use to the lot, as his family is willing to relinquish their rights to that beach. Mr. Morrill stated that they would not construct anything on the beach, that's the reason for the additional land. Mr. Morrill stated that his family could construct a house on this property and use the beach. Mr. Ellison stated in 1994 he thought there were going to be no more subdivisions. Mr. Ellison stated that the traffic on this road has increased tremendously over the years.

Mr. Drinkhall asked for other public comment; there was none. Mr. Irving read §131-13.F. of the Subdivision Review Regulations in regard to any fees incurred by the Town for legal review would be passed onto the applicant.

Mr. Henderson made a motion, seconded by Mr. Porter, to continue the Boundary Line Adjustment for Stephen Morrill et al until November 16, 2006. Motion unanimously carried.

**SETTLERS R2, INC. – CONCURRENT FULL SITE PLAN AND SUBDIVISION
REVIEW (PID 235-89) FILE #FR06-09 & S06-24**

Mark Lucy of White Mountain Survey Company and Roger Williams of OVP Management, Inc. appeared before the Board. This is an application to construct a 2,502 sf addition to Building G and adjust the unit boundary line accordingly. **Mr. Porter made a motion, seconded by Mr. Kellogg, to accept the application of Settlers R2, Inc. for a Concurrent Site Plan and Subdivision Review as substantially complete. Motion unanimously carried.**

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Mr. Irving stated that the Board has received written testimony from Richard Uchida of Hebert and Uchida. Mr. Irving read the letter from Richard Uchida. Mr. Drinkhall asked if the applicant would like to respond. Mr. Lucy stated that the Urban Institute of Parking Analysis has revised its shared parking criteria and has been used since 1996. Mr. Lucy stated that the newer version was used in 2005 for the Newport Properties [North Conway Grand Hotel]. Mr. Lucy stated that he contacted the Town and discussed the new version with the Town Planner. Mr. Lucy stated that the 2005 version is far more accurate and he has used it for the last 8 months. Mr. Lucy stated that they can use the 1990 version, but it will show that they have far more parking than necessary.

Mr. Lucy stated that Lot R2 has a parking easement on Lot R1, and Lot R1 has a parking easement on the hotel property. Mr. Lucy stated when he was before the Board for the hotel it was a matter of continuity and this is the best for all three parties involved. It was suggested that the application be continued. Mr. Williams stated that he doesn't think the application should be continued, as this is not the forum for this. Mr. Williams stated that this is not an issue for this Board as this Board has approved these calculations before and the Hotel has used the same calculations for their addition.

Mr. Henderson stated he would like to see them settle this before the Board makes a decision. Mr. Porter stated that the applicant should take a couple of weeks and work it out. Mr. Martin stated that this situation is not for the Board; it is similar to Mountain Valley Mall and the Cinemas, and this is not the forum and would have to agree with Mr. Williams. Mr. Drinkhall polled the Board about continuing the application. Mr. Kellogg, Mr. McFeeley, Mr. Henderson and Mr. Porter were in favor of continuing the application and Mr. Martin and Mr. Drinkhall were not in favor of continuing the application.

Mr. Irving stated that the more recent study is more appropriate and that it is a civil question. Mr. Irving asked if there are any limits in the parking easements. Mr. Lucy stated to his knowledge there is no limit. **Ms. Tobin joined the Board at this time.**

Mr. Irving asked if there were anyone in attendance for the Hotel. Susan Lautenschlager was in attendance. Mr. Kellogg stated that he is in favor of a continuance. Mr. Irving asked Ms. Lautenschlager if this could be resolved in the next two weeks. Ms. Lautenschlager answered in the affirmative. Mr. Henderson asked about landscaping on the back of the property behind Building G. Mr. Lucy reviewed the landscaping. Mr. Henderson asked that the applicant review the landscaping and try to provide more of a buffer. Mr. Lucy agreed to review the landscaping.

Mr. Martin made a motion, seconded by Mr. Porter, to continue the Concurrent Site Plan and Subdivision application for Settlers R2, Inc. until October 26, 2006. Motion carried with Mr. Martin voting in the negative.

THE KENNETT COMPANY – SUBDIVISION REVIEW CONTINUED (PID 279-2 & 291-30 & 34) – FILE #S06-13

Doug Burnell of H.E. Bergeron appeared before the Board. This is an application to subdivide 735 ± acres into 22 single family lots with associated right-of-way and common open space, one

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PUD lot with seven units and the remainder being phase II undeveloped land for a total of 24 lots on Dollof Hill Road, Modock Hill Road and Allard Hill Road. This application was accepted as complete on May 11, 2006.

Mr. Burnell stated that the applicant has requested a continuance. **Ms. Tobin made a motion, seconded by Mr. Porter, to continue the Subdivision Review for the Kennett Company until October 26, 2006. Motion unanimously carried.**

OTHER BUSINESS

Jay Patel/Wingate Inn & Suites (PID 230-1) – Extension of Conditional Approval (File #FR04-06): Mr. Porter made a motion, seconded by Mr. Henderson, to extend the conditional approval for Jay Patel/Wingate Inn & Suites until December 13, 2007 with this being the final extension. Motion carried with Ms. Tobin voting in the negative.

Meeting adjourned at 8:15 pm.

Respectfully Submitted,

Holly L. Meserve
Planning Assistant