

CONWAY PLANNING BOARD

MINUTES

JULY 26, 2007

A meeting of the Conway Planning Board was held on Thursday, July 26, 2007 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, Martha Tobin; Secretary, Steven Porter; Sean McFeeley; Theodore Sares; Town Engineer, Paul DegliAngeli; and Planning Assistant, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Sares made a motion, seconded by Ms. Tobin, to approve the Minutes of July 12, 2007 as written. Motion carried with Mr. Martin abstaining from voting.

JACQUELYN GAGNE – BOUNDARY LINE ADJUSTMENT REVIEW (PID 299-125 & 126) FILE #S06-15

Mia Gannon of Thaddeus Thorne Surveys appeared before the Board. This is an application to evenly swap 0.04 of an acre between PID 299-125 & PID 299-126. **Mr. Martin made a motion, seconded by Mr. McFeeley, to accept the application of Jacquelyn Gagne for a Boundary Line Adjustment Review as complete. Motion unanimously carried.** Mr. Drinkhall asked for Board comment; there was none. Mr. Drinkhall asked for public comment; there was none.

Mr. Sares made a motion, seconded by Mr. Martin, to conditionally approve the Boundary Line Adjustment for Jacquelyn Gagne conditionally upon indicating monuments set on plan or submit a performance guarantee for monuments; submitting a copy of recorded driveway easement and indicating book and page on plan; providing a test pit for PID 299-125; providing a percolation test data and date for PID 299-125; submitting four copies of revised plans; submitting a Mylar for recording; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval expires on October 25, 2007. Motion unanimously carried.

CONWAY SCHOOL DISTRICT AND CONWAY SCENIC RAILROAD – BOUNDARY LINE ADJUSTMENT REVIEW (PID 264-56 & 57) FILE #S07-16

Ed Bergeron of H.E. Bergeron Engineers appeared before the Board. Carl Nelson of the Conway School District and Russ Seybold of the Conway Scenic Railroad were in attendance. This is an application to add 0.05 of an acre to the Conway School District lot from the Conway Scenic Railroad lot. **Mr. Porter made a motion, seconded by Mr. McFeeley, to accept the application of Conway School District and Conway Scenic Railroad for a Boundary Line Adjustment Review as complete. Motion carried with Mr. Sares abstaining from voting.**

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Mr. Drinkhall asked for Board comment; Mr. Sares asked why is this being done. Mr. Bergeron stated that the idea was to have all of Olympic Lane in the ownership of the Conway School District. Mr. Sares stated that the Town has plowed the road until the portable was installed and then the Town discontinued plowing it. Mr. Sares asked if it is a Town road. Mr. DegliAngeli stated that it is a private road, but is public as it is a road to the school.

Mr. Sares asked if this was a swap. Mr. Bergeron stated that it is a boundary line adjustment. Mr. Sares asked if it is a gift. Russ Seybold stated that his position, once it became known that this piece of property belonged to the railroad, is that it made more sense to deed it to the school and allow access to the properties adjacent to the railroad. Mr. Sares asked if it is a gift has the School Board accepted it. Dr. Nelson stated that he wanted to see if the Planning Board would approve it. Mr. Sares stated that he is not against the concept, but the procedure since the money hasn't been authorized.

Matt Gagnon of Lee Kennedy Company stated that they asked HEB to survey the property. Mr. Sares asked if they were paid. Mr. Kennedy stated that he doesn't think the project has been billed. Mr. Sares stated procedurally this hasn't gone through a certain procedure. Mr. Sares asked if the trees would be affected. Mr. Bergeron stated that the trees would not need to be removed. Mr. Sares asked if this had been discussed with and approved by the abutter. Mr. Bergeron stated that it has been reviewed with the abutter, but don't know if they were satisfied. Mr. Martin stated from a Selectmen's prospective the abutter has been satisfied with the easements being added to the plan.

Mr. Drinkhall asked for public comment; Randy Davidson stated as a School Board member this was not brought forward to the School Board as a gift. Mr. Davidson stated that this should have been brought to the School Board first. Mr. Davidson stated that the School Board has not agreed to the surveying and assuming the whole thing is a gift.

Patricia Sell stated she is an abutter to the Conway School District and she has a survey showing that the Conway School District crosses over her property and would like anyone who thinks that she is not an abutter to explain to her now why she is not. Ms. Sell referred to a letter from Doug Burnell to Earl Sires. Ms. Sell stated that the abutters' rights were to be made abundantly clear on the plan and the portion of the road that should remain two-ways is not clear on the plan. Ms. Sell asked where does the two-way end and where does the one-way begin.

Ms. Sell stated that she would like to request a note be added to the plan regarding the homeowner's ingress and egress rights as well as ask the utility easements be added to the plan. Mr. Bergeron agreed. Ms. Sell asked if 33-feet would be preserved on either side of the railroad tracks for the Conway Scenic Railroad's right-of-way. Mr. Bergeron answered in the affirmative and showed where it was indicated on the plan.

Dick Klement asked if any taxable property is being lost. Mr. DegliAngeli answered in the negative. Mr. Seybold stated that they do want to make the first 165-feet or so two-way traffic. Mr. Seybold stated that they want to maintain access to their signal box and

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also not have to go around the school to exit. Mr. Bergeron stated that that there are arrows on the plan. Mr. Seybold stated the two-way traffic needs to be clarified on the plan. Ms. Sell asked who would maintain the road and would the entire width of the road be plowed. Dr. Nelson stated that it would be the School District's responsibility.

Mr. Davidson asked if a letter was presented to the School Board and acted on by the School Board. Mr. Seybold stated that he was approached by Dr. Nelson and George Fredette and informed that the land belonged to the railroad and reason for the Boundary Line Adjustment was to clear things up. Mr. Seybold stated that he did not want any liability by having a road to the middle school on his property. Mr. Seybold stated that it was a trade-off and he is not looking any remuneration for it. Mr. Davidson stated not just one board member makes a decision and there are procedures. Mr. Davidson stated that if it is a gift it has to be a part of a procedure. Dr. Nelson stated that it still has to go before the School Board.

Ms. Sell asked if the trees would remain that currently exist on the Conway Scenic Railroad property. Mr. Seybold answered in the affirmative. Mr. Klement stated notes could be added to the plan, but asked what the deeds would say. Mr. DegliAngeli stated that the Sell's deed lists those rights and this drawing would be recorded. Mr. Bergeron stated that this drawing would be recorded at the Registry of Deeds and research of this property would show this plan. Mr. Bergeron stated that the deed for the change of land would also reference the drawing that is recorded.

Ms. Sell asked once this parcel becomes property of the School District would it be exempt from coming to the Planning Board when making modifications to the road. Mr. DegliAngeli stated that they have shown what they intend to build on the plan. Mr. Sares stated Mr. Fredette, Dr. Nelson and Russ Seybold agreed to a gift, but it was never brought to the School Board. Mr. Sares stated that the money to pay for this is taxpayer money and it should be authorized. Mr. Sares stated that the sequence of events was defective, which renders the process defective. Mr. Sares stated that he approves of the concept, but need to follow procedures. Mr. Drinkhall stated that this is internal to the school.

Mr. Gagnon stated that they have an agreement with HEB and have done the survey at their own risk. Mr. Drinkhall stated he understands their concern, but it is not our jurisdiction; however, it could be part of a conditional approval. Mr. Drinkhall stated that it is his understanding that this is a part of the renovation of the middle school and the renovations have been approved. Dr. Nelson stated that they have been approved and there is a letter of intent with the Lee Kennedy Company allowing them to hire subcontractors, which includes HEB. Mr. Drinkhall asked if this is excluded. Dr. Nelson stated that it is part of the process.

Mr. Sares stated that the intent was not to give the Lee Kennedy Company free rein and asked who precipitated this survey. Mr. Gagnon stated that we knew there was an issue with the boundary and they proceeded with the survey at their own risk. Mr. Sares stated he would not approve the application with the way it stands now. Mr. DegliAngeli stated

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that it was believed that this was a Town road and then as we dug into it, it was determined not to be a Town road. Mr. DegliAngeli stated once the research was done, the applicant's proposed a boundary line adjustment, which was reviewed by Ms. Sell.

Mr. Seybold stated that he remembers Dr. Nelson and George Fredette saw him walking toward the office one day and they approached him to do an easement because we had done an easement in the shaded area on the plan because the road infringed onto the Conway Scenic Railroad property. Mr. Seybold stated in this case where it was a whole piece of land that the road crosses; it was thought the whole piece of land should be deeded to the school. Mr. Seybold stated that he would never use it and didn't want the liability.

Mr. Sares asked if Mr. DegliAngeli was answering as the Town Engineer or as the Interim Planning Director. Mr. DegliAngeli answered as the Town Engineer. Mr. Sares stated that he would like to hear from Thomas Irving. Ms. Sell asked if this was to go before the Planning Board in regard to the modifications for the middle school. Mr. DegliAngeli stated this clarifies an ambiguous situation. Mr. Sares asked if that is Mr. DegliAngeli's opinion. Mr. DegliAngeli stated he is paraphrasing Doug Burnell who is the LLS.

Mr. Sares stated it would have been simpler to quick deed the land to the school, take to the School Board and then come before the Planning Board. Mr. Martin stated were getting into the weeds just a little bit here and the question before the Planning Board tonight is a boundary line adjustment and the dispute with the School Board is between them. Mr. Martin stated that he has the same problem as Mr. Sires with the procedure, but knowing there is a condition requiring School Board approval he is comfortable moving forward with the vote.

Randy Davidson stated that he is concerned with cost. Mr. Drinkhall stated that it an internal issue for the School Board. Mr. Seybold stated that you take what you think are the best turns at the time, but you end up with property that belongs to the School District that should belong to them. Mr. Seybold stated that it allows access to the homes that are there and he thinks we are at the right place.

Mr. Sares stated that he agrees with Mr. Seybold, but it is the process for him and trying to make sure that he doesn't work some strange precedent here. Mr. Sares stated if it came back with School Board approval he would agree with the application.

Mr. Porter made a motion, seconded by Mr. Martin, to conditionally approve the Boundary Line Adjustment for Conway School District and Conway Scenic Railroad conditionally upon a NHDOT Driveway Permit and indicate approval number on plan; CVFD Water/Sewer Approval; Conway Village Fire District Fire Chief Approval of final plans "as submitted"; indicating monuments to be set (see attached sheet); an affirmative vote by the Conway School Board accepting the application; clarifying where the two-way traffic ends on the plan; clarifying the access and utility easements on the plan; submitting four copies of revised plans;

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submitting a Mylar for recording; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on October 25, 2007. Motion unanimously carried.

Mr. Sares made a motion, seconded by Mr. Porter, to approve the lot merger of PID 264-56 and PID 265-28. Motion unanimously carried.

**AMETHYST HILL PROPERTIES – FULL SITE PLAN REVIEW CONTINUED
(PID 252-47) FILE #FR07-10**

This is an application to construct a self-service commercial fuel station with a 10'x12' maintenance building, two underground fuel storage tanks and a 24' x 26' canopy. This application was accepted as complete on May 10, 2007. Mr. Drinkhall stated that the applicant has requested a continuance. **Mr. Sares made a motion, seconded by Mr. Porter, to continue the Full Site Plan review for Amethyst Hill Properties until August 9, 2007. Motion unanimously carried.**

OTHER BUSINESS

KGI Mountain Valley Mall, LLC (PID 246-38) – File #FR05-10 – Field Change

Request: Ed Bergeron and Josh McAllister of H.E. Bergeron Engineers appeared before the Board. Mr. Bergeron stated that the applicant would like to place mulch in the traffic control islands. Mr. McAllister stated that the approved plans call for grass islands and the contractor has prepared the islands with irrigation only for trees with mulch in the rest of the islands.

Mr. Sares made a motion, seconded by Mr. Martin, to approve the change from grassed traffic islands to mulched islands as an acceptable field change. Mr. Porter asked why wasn't this taken under consideration. Mr. Bergeron stated that the contractor and owner made a change after the plans were approved. Mr. McAllister stated that the tenant requested mulch islands and the owner made the change to make all islands mulch. Mr. McAllister stated that it was not brought to the Board's attention during the review and it should have been. Mr. McAllister stated that Mr. Irving brought it to his attention. Mr. Porter stated he's glad staff caught it and part of his approval was due to the grassed islands.

Mr. Porter stated we are kind of hand cuffed to our decision because are we going to make them tear it up. Mr. McAllister stated that he asked them to stop so we could discuss this issue with the Board. Ms. Tobin stated she is concerned with what this might say to other people, just do it any way, but think the mulch would give the trees a better chance of surviving. Mr. Drinkhall asked what is considered greenspace. Mr. DegliAngeli stated it is moot as the plans indicate grassed islands.

Mr. Porter stated this is the second time that this has happened on this site and the Board needs to look at what we can do for recourse so they would think twice. Mr. McFeeley stated the recourse is to reject this; people are willing to ask for forgiveness than ask for

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permission. Mr. McFeeley stated that he is not sure if that is what happened here, but cannot change what has been approved. Mr. Porter asked how many trees are there on the traffic islands. Mr. McAllister answered approximately 8 to 10 trees. Mr. Porter asked if there was any possibility of adding flowers to the mulch, as we all know that weeds will grow in that area. Mr. McAllister stated that they have added the weed blocker fabric, but would be agreeable to adding flowers.

Mr. Martin asked how much as been mulched and how much has not. Mr. McAllister reviewed that areas, but stated that the irrigation has been installed throughout for trees only. Mr. DegliAngeli asked if the Route 16 Island would be grassed or mulched. Mr. McAllister stated that it should be grassed and there is no irrigation in that area. Mr. DegliAngeli stated that the applicant is planting grass, but not installing irrigation in the Route 16 Island. Mr. McAllister answered in the affirmative.

Mr. Porter made a motion, seconded by Mr. Drinkhall, to not accept as a field change and has to come forward with specific changes. Motion unanimously carried. Mr. Martin stated that the Board beat up the owner of the Beef & Ski Restaurant for an hour and a half over greenspace that is why he has problem with this request. **Mr. Sares withdrew his motion to approve the field change and Mr. Martin withdrew his second.**

Hud Kellogg: Mr. Sares stated someone should contact Mr. Kellogg to make sure he is okay. Mr. Sares stated that he thinks there is a rule if you miss three consecutive meetings without calling then you're done, but he is not sure that is the rule. Mr. Drinkhall stated that he could attempt to get in touch with him. Mr. Porter asked that the ruling be clarified.

Streetscape: Mr. Sares stated that some parking spaces have been lost in the village and would like to know how many parking spaces there were before the construction and how many there are after the construction. Mr. DegliAngeli stated that the existing parking did not meet the RSA. Mr. DegliAngeli stated that annually the town maintains and stripes the parking spaces. Mr. DegliAngeli stated under the new work the State would only put back what was legal and to modify the parking layout, people would have to appeal to the Board of Selectmen. Mr. DegliAngeli stated that he could only apply ~~with~~ the rules. Mr. DegliAngeli stated that this is on the Board of Selectmen agenda for the next meeting.

Meeting adjourned at 8:27 pm

Respectfully Submitted,

Holly L. Meserve
Planning Assistant