

CONWAY PLANNING BOARD

MINUTES

FEBRUARY 28, 2013

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CONWAY PLANNING BOARD

MINUTES

FEBRUARY 28, 2013

A meeting of the Conway Planning Board was held on Thursday, February 28, 2013 beginning at 7:05 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chair, Steven Porter; Vice Chair, Martha Tobin; Steven Hartmann; Kevin Flanagan; Eric Porter; Alternate, Ray Shakir; Planning Director, Thomas Irving and Recording Secretary, Karen Hallowell.

APPOINTMENT OF ALTERNATE MEMBERS

Mr. Porter appointed Mr. Shakir as a voting member.

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Tobin made a motion, seconded by Mr. Flanagan, to approve the Minutes of February 14, 2013 as written. Motion carried unanimously.

WALMART REAL ESTATE BUSINESS TRUST (CARROLL COUNTY LEASING AND STATE OF NH) (PID 246-62, 246-61 & 235-55) – FULL SITE PLAN REVIEW (FILE #FR12-06) CONTINUED

John Sokul, Jr of Hinckley, Allen and Snyder, and Steve DeCoursey of Bohler Engineering appeared before the Board. This is an application to construct a 52,994 square foot retail expansion to the existing Wal-Mart. This hearing was continued from June 28, 2012; July 26, 2012; September 13, 2012; and September 27, 2012; November 8, 2012; December 13, 2012; and January 24, 2013.

Mr. Irving advised that with regard to the waiver for §123-28 for utilities along the North South Road, Wal-Mart has addressed this issue and they will no longer be located on the property and will not be in the roadway right of way. As such, it is no longer under the Planning Board's purview. Mr. Sokul stated that they are withdrawing this waiver request.

Mr. DeCoursey stated that issues they have addressed since the prior meetings include that they have provided a new pedestrian access way sidewalk from Hemlock Lane to the site. They are also continuing to work with Town staff to update the pedestrian circulation around the rotary. Mr. DeCoursey further advised that they have also made storm water management basins and, in working with the state, they have made them bio retentionary. Mr. DeCoursey next reviewed that there was previously a discussion about using grass pave and or an equivalent system and this will go on about 146 spaces. Mr. DeCoursey explained this is basically banked spaces around the perimeter of the site and this will give them an area that they can use for snow storage so they don't have to pile snow up in the parking lot.

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Mr. DeCoursey next reviewed that he has been working with the Town Engineer who had concerns about a couple of items as well. One concern was about the location of a sanitary sewer exit and the Town Engineer has suggested moving it out of the way of the access to Wal-Mart. This is not a problem and they are committed to doing this. They will be moving it away from the access area. The second concern of the Town Engineer had to do with relocating utility poles. There are a number of poles on North-South Road that need to be relocated as part of the offsite improvements. They basically ran out of right of way on the east side of North-South Road for poles and so what was happening was that the poles on the east side would end up on the Wal-Mart property with the layout they have right now and this would have resulted in a waiver request for overhead wires. Mr. DeCoursey advised that they have now worked to relocate the rest of the poles to the west side of North-South Road and this will become part of their offsite roadway improvement package.

Mr. DeCoursey next advised that he spoke with the Town Engineer yesterday and the last item to address is about the separation of groundwater from a pond. When they had infiltration systems that were part of the original application the State regulations said they need to be four feet from the bottom to the groundwater. Mr. DegliAngeli and the NHDES caught that they didn't have this when they filed their permit. In working with the DES, it was suggested that they go to a bio retention area. With a bio retention area you basically modify the material in the bottom of the pond and this is what they did. Mr. DeCoursey advised that he has not worked this out with the Town Engineer yet but did send him a note regarding same this morning.

Mr. Sokul stated that they were hoping to come before this Board tonight for conditional approval but in talking with Planning Director, Tom Irving, and Town Engineer, Paul DegliAngeli, on the retention pond issue it may be premature to ask for conditional approval and they will wait until March so that we can come to a resolution on this issue.

Mr. Irving stated that there are several waiver requests the Board may want to entertain this evening. After reviewing these waiver requests, the Board may want to continue this application to a subsequent meeting.

At 7:15 p.m. Mr. Porter asked for public comments or questions pertaining to the site. There were none.

John Sokul read the waiver request for §123-21.A & §123-22.B. Mr. Shakir asked if this is where the grass pave will be located. Mr. DeCoursey next reviewed a map with the Board of the location of the grass pave. Mr. Shakir next asked about parking spaces in this area. Mr. DeCoursey stated they will not have lines as they can't stripe the spaces. Mr. Shakir asked if they could put some type of signage regarding parking on the light poles. Mr. DeCoursey suggested they put head-in parking signs. Mr. Shakir agreed. Mr. Irving pointed out that sometimes these types of areas are used for employee parking. Also, once you get one car parked correctly, the next will follow.

Ms. Tobin, made a motion, seconded by Eric Porter, to grant the waiver for §123-21.A & §123-22.B. Mr. Porter asked for Board comment. There were no further comments by the Board. **Motion carried unanimously.**

John Sokul read the waiver request for §123-22.D. **Mr. Hartman, made a motion, seconded by Ms. Tobin, to grant the waiver for §123-22.D.** Mr. Porter asked for Board comment. There were no Board comments. **Motion carried unanimously.**

John Sokul read the waiver request for §123-29, 29.D.2 & 29.D.8. Mr. Hartman asked, if they are requesting a reduction of calipers. Mr. Sokul advised it is for 312 trees. Mr. Hartman asked if this is a 48% reduction and Mr. Sokul responded in the affirmative. There was next further brief discussion regarding the quantity of trees. Mr. Irving advised Wal-Mart is seeking relief of the caliper. Mr. Porter asked the point of going with a smaller caliper and didn't they think that the trees are more likely to survive if they are three inches or better. Mr. DeCoursey stated they feel they would have a better chance of growing strong from the smaller size.

There was further discussion regarding the size and number of trees. Mr. Flanagan stated that he has concerns with smaller trees as they may have to compete with older trees. Mr. DeCoursey stated the landscape architect took all of this into account and tried to balance this with where to put all the trees. He feels there is a good variety of trees proposed and that they are intended to survive and thrive.

Mr. Shakir made a motion, seconded by Eric Porter, to grant the waiver for §123-29, 29.D.2 & 29.D.8. Mr. Porter asked for Board comment. There were no further comments from the Board. **Motion carried 5-1-0 with Mr. Hartman voting in the negative.**

John Sokul read the waiver request for §123-30. Mr. Sokul advised that additional landscaping has been incorporated into the plan for the side of the building. Mr. Hartman asked for pictures of what this will look like. Mr. Sokul distributed copies to the Board for review. Mr. Flanagan stated that, if looking at the building from Rt 302, there will be a flat roof line and questioned if there will be trees along this area to break this up. Mr. DeCoursey stated whatever mature vegetation is there now will be left to get the screen you are looking for.

Mr. Shakir made a motion, seconded by Eric Porter, to grant the waiver for §123-30. Mr. Porter asked for Board comment. There were no further comments from the Board. **Motion carried 3-2-0 with Messrs. Porter, Hartman and Porter voting in the affirmative and Mr. Flanagan and Ms. Tobin voting in the negative.**

John Sokul read the waiver request for §123-42.B & 24. Mr. Irving gave a brief review of the waiver request. Ms. Tobin stated that in looking at the parking lot now, it seems as though no one is paying attention to where they are putting snow. She is not seeing snow being removed from the property this year. Mr. Sokul questioned if there is approved snow storage area on the existing plans. Mr. Irving advised he would be looking into this matter and would advise. Mr. Sokul next stated that he would be happy to take the comments on this subject back to Wal-Mart.

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Steve Porter stated this is a site line and public safety issue as far as traffic is concerned. He is concerned with this waiver and he does not want to see the same issues with snow happen further. He would rather see the snow removed as it accumulates instead of Wal-Mart making snow mountains in the parking lot. Mr. DeCoursey advised they will bring these concerns back to Wal-Mart and, also, with the grass paves that will be put in this will be a good space to put snow.

Mr. Irving next reviewed snow storage areas on the plans with the Board. Eric Porter questioned if there is a height requirement on snow storage. Mr. Irving pointed out that the snow can only get so high and physics and gravity would take over. There was further brief discussion. **Mr. Hartman made a motion, seconded by Mr. Shakir, to grant the waiver for §123-42.D & 24.** Mr. Porter asked for Board comment. There were no further comments by the Board at this time. **Motion failed 2-4-0 with Ray Shakir and Eric Porter in favor and Kevin Flanagan, Steve Hartman, Martha Tobin and Steve Porter voting in the negative.**

There was next further discussion of the snow in the parking lot. Mr. Porter stated that he does not want to see the mountains of snow –he would rather see the building. Mr. Porter further added that he understands the last thing on the list may be removing snow but that we need to lay the groundwork for this now. Ms. Tobin stated her concerns are on the Hemlock Lane side and if you are using this section of the road this is a site line issue for her.

Mr. Sokul next requested that this review be continued to March and they will work on the snow storage issues and, also, they will work with the Town Engineer with regard to the detention areas.

Ms. Tobin made a motion, seconded by Mr. Flanagan, to continue the Full Site Plan Review for Wal-Mart Real Estate Business Trust until March 28, 2013 with new information to be submitted by end of business March 12, 2013. Motion carried unanimously.

**TOWN OF CONWAY/NORTH CONWAY COMMUNITY CENTER (PID 218-28 & 30) –
BOUNDARY LINE ADJUSTMENT (FILE #S13-02)**

Ron Briggs of Civil Solutions appeared before the Board. Also present was Kurt Detzer, Treasurer, of the North Conway Community Center. This is an application to add 5,815 square feet of land to PID 218-28 from PID 218-30.

Mr. Briggs reviewed a map with the Board and advised that lots 218-28 and 218-30 are owned 50% by town and 50% by the North Conway Community Center. The North Conway Community Center's proposal is that Parcel A be owned by the Town of Conway and Parcel B, which is 5815 feet, be made the sole prop of North Conway Community Center.

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Mr. Briggs next advised that a Deed to the property was recently found from the year 1872 with some deed restrictions. Mr. Briggs next reviewed the deed restrictions and the chain of title to present day. Mr. Briggs stated they received an opinion from an attorney there may be some rights that may still be applicable but that they would have been in the chain of title. Should the town construct bathrooms in the future, they (the North Conway Community Center) wouldn't enforce the restrictions from any previous deeds on themselves or on the Town of Conway. Mr. Briggs stated they are of the opinion that any enforcement opportunities would apply to the North Conway Community Center through the chain of title and they would put a note to this affect on the plan.

Ms. Tobin made a motion, seconded by Mr. Flanagan, to accept the application for the Town of Conway and North Conway Community Center for a boundary line adjustment as complete. Mr. Irving asked for further clarification on the North Conway Community Center's position that they would have sole enforcement on themselves. Mr. Briggs stated this is through the chain of title on both parcels and that it ultimately would come to the North Conway Community Center. When Thompson sold to the Railroad he had enforcement on the restrictions. Mr. Irving next questioned if then the restriction on this property is on the conveyance and how this restriction was resolved and does it not run with the land. Mr. Briggs stated they are proposing to put a note on the plan that it is dissolved and that it does not run with the land.

Mr. Irving next further asked about the recorded restrictions –don't they run in perpetuity. Mr. Briggs advised they would unless they are released. Mr. Briggs next reviewed the history of the conveyances again for the Board. Mr. Irving questioned if it is their understanding that there is no longer a restriction on the portion of land the town would deed to the North Conway Community Center or is it just on the parcel the North Conway Community Center is deeding to the town. Mr. Briggs stated they would need to ask an attorney. Mr. Briggs stated that his understanding is that where this would come into play is that the North Conway Community Center wouldn't have to release the enforcement capabilities as they wouldn't have to enforce on themselves –but there is the issue of the Town of Conway and possible future bathrooms and this right to enforcement would be relinquished by the North Conway Community Center.

Mr. Irving next questioned if the Town of Conway is aware that they would be doing the same thing for the North Conway Community Center when we convey Lot B to the North Conway Community Center –that they are going to waive any enforcement for the North Conway Community Center to build on this property as well. Mr. Briggs stated that the Town of Conway, as he understands, doesn't have the enforcement capability on the other lot. Mr. Irving questioned if this is because the Town didn't have the restrictions on their half of the property. Mr. Briggs responded in the affirmative.

The Board next questioned if a lawyer is going to draw this up. Mr. Briggs advised their lawyer at Cooper, Cargill and Chant is drawing this up. Mr. Porter stated that he is okay with this so long as an attorney is going to draw this up and that it will benefit everyone down the road –but this needs to be stated on the deed and this is his biggest concern. Mr. Briggs next reviewed a

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draft deed from the Town of Conway to the North Conway Community Center with a reservation for an easement for the Town of Conway to install restrooms on the Parcel B until 2/31/32. After 2032, the easement would expire. Mr. Briggs next stated that the final copy will have language that will release any enforcement authority of the North Conway Community Center. This matter is being addressed and will be on the plan.

Mr. Hartman asked if this is a recommendation from the Town to do this. Mr. Irving advised it is not on recommendation of the town but that we would want them to clarify the restrictions issue. Mr. Hartman stated it still seems muddled to him with regard to the release. He does not see any language that the Town of Conway is released from the restrictions. Mr. Irving stated this would be conveyed in the deed when the property is conveyed to the North Conway Community Center. Mr. Irving next stated that he would request, as a condition of approval, that the town's attorney review the deed before it is recorded. Before they can take ownership the restrictions have to be addressed. All agreed. **The motion carried unanimously.**

Mr. Steve Porter asked for Board comment. There were no further comments.

Mr. Steve Porter asked for public comment. There were no further comments.

Mr. Irving next suggested that if the Board is going to make a motion for conditional approval that they include that the North Conway Community Center would have to clarify any existing conditions and have them reviewed by the Town of Conway's attorney. Mr. Briggs and Mr. Dezter acknowledged that this is acceptable to them as well; however, they would need additional time and requested to have until September 2013 to accomplish same.

Eric Porter made a motion, seconded by Mr. Hartman., to conditionally approve the Boundary Line Adjustment for the Town of Conway and the North Conway Community Center conditionally upon clarifying any existing covenants and/or restriction that encumber the subject parcels and have them reviewed by the Town Attorney; indicate book and page of all easements and licenses on plan; North Conway Fire Chief approval; submitting a Mylar; when the conditions have been met, the plans can be signed out-of-session; and expire on September 26, 2013. Motion carried 5-1-0 with Ms. Tobin voting in the negative.

OTHER BUSINESS

Offers of Gifts of Land/Tax Map Lot 251-109 and 251-136: Mr. Irving reviewed a memo dated February 28, 2013 from the Town Manager regarding offers of gifts of land. Mr. Irving reviewed the properties are located in Transvale acres and were damaged during Tropical Storm Irene. These offers are not unlike previous lots discussed wherein the landowners are offering to turn the properties over to the town. Mr. Hartman questioned if there are structures on the properties. Mr. Irving advised that the structure on Map/Lot 251-136 has been removed by the owner. With regard to the property located at 251-109, he is not sure if any structures are on the property. Mr. Irving next recommended that this Board recommend that the Town accept

the two properties. **Mr. Hartman moved, seconded by Mr. Flanagan, that that this Board recommends that the Town accept the properties located at Tax Map/Lot 251-109 and 251-136. The motion carried unanimously.**

March 14, 2013 Planning Board Meeting: Mr. Irving stated that there were no applications for March 14, 2013. **Ms. Tobin made a motion, seconded by Mr. Hartman, to cancel the meeting of March 14, 2013. Motion carried unanimously.**

Committee Reports: There was none.

ADJOURN

At 8:30 p.m. **Ms. Tobin moved, seconded by Mr. Hartman, to adjourn the meeting. The motion carried unanimously.**

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karen Hallowell", with a long horizontal line extending to the right.

Karen Hallowell
Recording Secretary

ATTACH TO
02/28/13 MINUTES



MEMO

TO: Planning Board
Conservation Commission

FROM: Earl Sires, Town Manager

DATE: February 28, 2013

RE: Transvale Acres, Map/Lot 251-109 and 136

A handwritten signature in black ink, appearing to be 'ES', located to the right of the memo header.

The owners of the above-referenced parcels have offered to gift land to the Town of Conway. Because this involves the acquisition/disposition of an interest in real property, state law requires the Board of Selectmen to ask for a recommendation from the Planning Board and Conservation Commission. The Board asks that this be considered at your next meeting.

Map/Lot 251-136 is a bank owned property to be given free and clear to the town.

Map/Lot 251-109 is being offered by a private owner willing to give the land to the town so long as the town pays the back taxes. Back taxes due will be approximately \$50.

The advantage to the town of taking the property for life safety and environmental reasons, it is in the public's interest to ensure that both properties remain in their natural state.

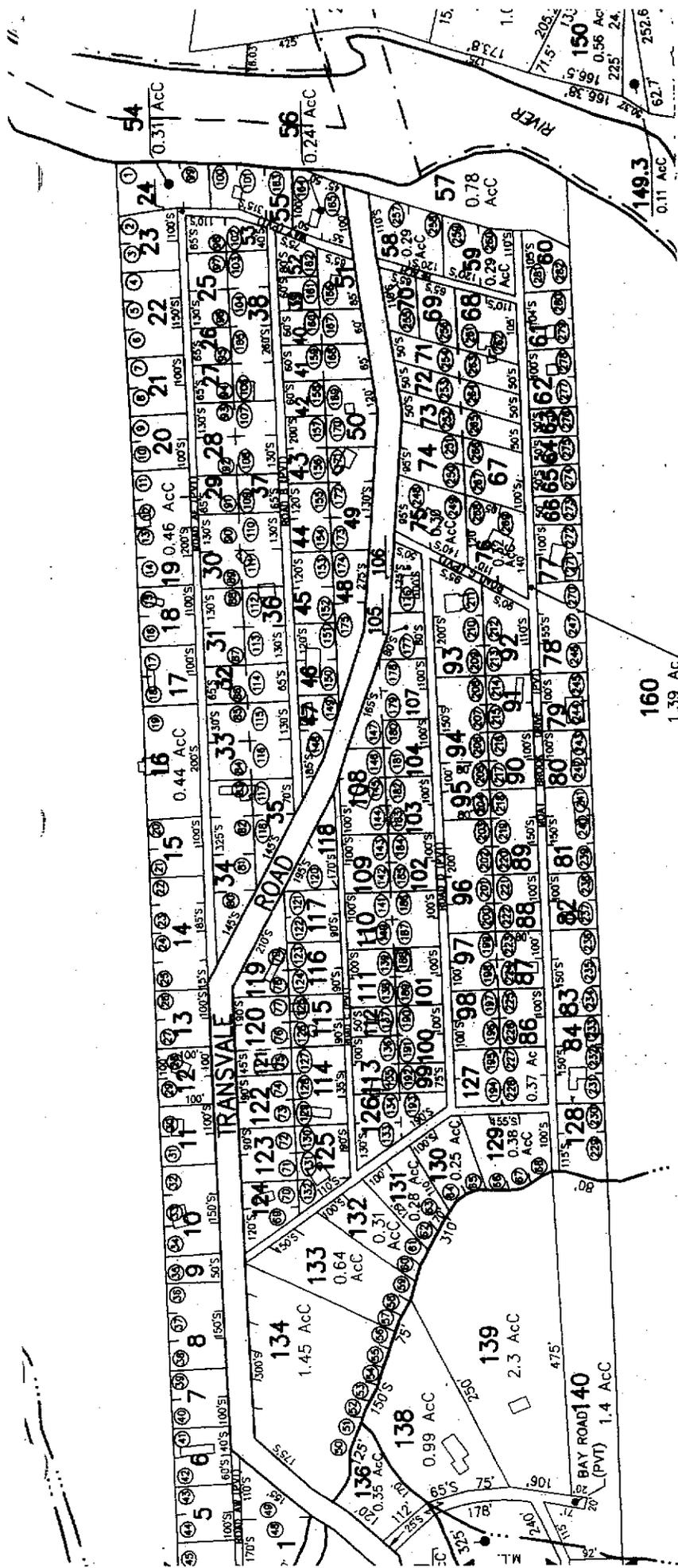
I have attached a copy of the tax maps relevant to the above lots.

Kindly review and provide a written recommendation as to whether the Town should accept the parcels.

Thank you for your courtesy and consideration.

enc.

cc: Board of Selectmen
Tom Irving/Planning Director



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