

CONWAY PLANNING BOARD

MINUTES

JANUARY 13, 2000

A meeting of the Conway Planning Board was held on Thursday, January 13, 2000, beginning at 7:05 p.m. at the Conway Town Office, Center Conway, NH. Those present were: Chair, Catherine Woodall; Selectmen's Representative, Gary Webster; Vice Chair, Sheila Duane; Robert deFeyer; Stacy Sand; Arthur Bergmann; John Waterman; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

Ms. Sand made a motion, seconded by Ms. Duane, to continue the Minutes of December 16, 1999; and January 6, 2000, until January 18, 2000. Motion unanimously carried.

A public hearing was opened at 7:06 p.m. Ms. Woodall read the proposed ordinance. Ms. Woodall asked for public comment; Steven Pullen asked what is the purpose of reading the ordinance at a public hearing. Ms. Woodall stated that the public would know what it is. Mr. Pullen asked what is the public hearing for. Ms. Woodall answered public input. Mr. Pullen stated that he saw the on the local channel that the meeting [December 16, 1999] continued on this subject after everyone left and asked what changes were made. Ms. Woodall stated that not much changed. Mr. Pullen asked even though almost 100% who attended the last public hearing were against the ordinance there were no changes. Ms. Woodall answered not really.

Dennis Wagner stated that there are no churches or schools so the 1,000 feet won't matter. Mr. Wagner stated that there would never be any schools or churches. Mr. Wagner stated that he saw the private meeting that took place after everyone left. Mr. Wagner stated that a lot of children live on the East Conway Road. Mr. Wagner stated that this is a residential area even though it is zoned industrial. Mr. Wagner stated that if you are going to have an adult entertainment section why not limit the area and not include the entire Industrial-2 district.

Mr. Wagner stated that this is going to be a business that needs 24-hour camera surveillance and 24-hour man surveillance. Mr. Wagner stated that fencing should also be required. Mr. Wagner stated that it shouldn't be made to be impossible, but unprofitable. Mr. Wagner stated that an increase in crime is known for these types of businesses. Mr. Wagner stated that this was never discussed, just where were going to put it. Mr. Wagner suggested south of Agway [on Route 16] or Hobbs Street. Mr. Wagner stated that obviously the Board is going to pass this so why not restrict the area within the Industrial district. Mr. Wagner stated that it should not be all the way to Mason Brook.

Someone asked if at the December 16, 1999 meeting if other locations were reviewed. Ms. Woodall stated that the Board looked at the map of the Highway Commercial District. Ms. Woodall stated that the Highway Commercial District is 400 feet deep. Ms. Woodall stated that the Board reviewed all the districts. Ms. Woodall stated that the least impact is in the industrial area. Mr. Irving stated that it was requested that he look at the Industrial-2 district and look at the activity. Mr. Irving stated that it was not requested that he look at the whole town. Mr. Irving reviewed a map he created of the industrial-2 district. Mr. Irving read his recommendation.

Mr. Irving stated that he thinks it is good to define, but he is not going to take a position in regard to the right or wrong place because he does not know. Ms. Sand stated that she does recall when the Board was reviewing the Industrial-2 district requesting someone look into the Highway Commercial District. Ms. Sand stated that she really cannot support a location. Ms. Woodall stated that the Board did review the Highway Commercial District and it would limit it. Ms. Sand stated that the general discussion didn't look likely for many of these types of businesses, but it was requested that the district be looked at.

**Adopted: As Amended – February 3, 2000**  
**CONWAY PLANNING BOARD – JANUARY 13, 2000**

George Pfender stated that there has been strong input about not hiding these types of businesses, but put them in the village. Mr. Pfender asked what is the objection. Ms. Woodall stated that you cannot limit it to a point that it cannot come in. Ms. Woodall stated that studies have shown that the least impact is in the industrial district. Ms. Woodall stated that these types of businesses would have a negative impact on property values on Route 16. Mr. Pfender asked if this is the opinion of the whole Board. Ms. Woodall stated that the Board voted to keep it as it was written. Ms. Woodall stated that the least impact is the industrial district.

Michael Valladares stated that many people have left because they couldn't get in and some are standing in the hallway. Mr. Valladares stated that this is a sham and it isn't right. Mr. Valladares stated that there has been a lot of public input on both industrial districts and a lot of hours have been used to work on them. Mr. Valladares stated that what is being proposed is not right. Ms. Woodall stated that you can only zone it on secondary effects and the least impact is on the industrial zone. Mr. Valladares stated that people found out a long time ago that we couldn't live here strictly on tourists. Mr. Valladares stated that we needed something else to fall back on for the community.

Ms. Woodall stated that Route 16 is probably the best place, but from a town wide stand point the industrial district has the least impact. Mark Hounsell stated that so many people have come out that cannot get in and unless you get the people behind something it will only be perceived as being driven down their throat. Mr. Hounsell stated that unless there is a pending business you would be evaluating the risk of adopting these. Mr. Hounsell stated that you need to be able not to forget the will of the people. Mr. Hounsell stated that if you don't have it they will not take it likely. Mr. Woodall stated that wherever you put these types of businesses they are not going to be a good idea.

Wanda Snow stated that she would like to know the owner of the parcel where majority of these types of businesses can go and what they think of this ordinance. Bayard Kennett stated that if his company was approached for this type of business we would refuse to sell any land. Mr. Kennett stated that they are not the only landowners there. Someone asked where the 1,000-foot radius comes from. Ms. Woodall stated that the Supreme Court ruled that you could use three city blocks. Ms. Woodall stated that the Boston and Detroit studies were used.

Cynthia Pfender stated that in order to put a good face to the tourists, you are willing to sacrifice the children of the community and add crime. Mr. Woodall answered in the negative and stated that the Highway Commercial District is only 400 feet deep with residents behind it. Ms. Woodall stated that it would be the same problem. Ms. Pfender asked if it would hurt the people there. Ms. Woodall stated that it will wherever it goes. Ms. Pfender stated that the East Conway Road was changed from highway commercial to industrial and now you are allowing commercial activity. Ms. Pfender stated that it is not fair to the people who live there.

Mr. deFeyter stated that without this ordinance these types of businesses could go there. Mr. deFeyter stated that these types of businesses could go in any commercial area. Mr. deFeyter stated that the issue is not trying to encourage these types of businesses, but restrict them. Mr. deFeyter stated that we cannot ban these types of businesses completely. Mr. deFeyter stated that this is not to attract, but control these types of businesses. Susan stated that there are a lot of businesses on the East Conway Road that employ a lot of full-time employees. Susan stated that that is what we are trying to bring to the East Conway Road. Susan stated lets help our children. Susan stated that once you put this in no good business will want to go there. Susan asked if the Board as studied the businesses on the East Conway Road and the impact to them.

Luigi Bartolomeo stated that the zone could only support five of these types of businesses. Mr. Bartolomeo stated that he realizes this is emotional, but this is not as we all fear. Mr. Bartolomeo stated that it is good work here; lets not wait for the threat. Mr. Bartolomeo stated that the reasons for it are justified and the impact is minimal. Someone stated that they have three small children and minimal can become serious. Someone stated that we would not get along with these businesses. Mr. Wagner stated that who is to prevent someone from buying up those houses; it is not limited. Someone stated if the Town wanted to make it difficult they could. Someone stated that instead of zoning it in a low overhead area it should be zoned in a place with the highest overhead. Bonnie Milotte stated that this will have a big impact on

**Adopted: As Amended – February 3, 2000**  
**CONWAY PLANNING BOARD – JANUARY 13, 2000**

families and the neighborhood. Ms. Milotte stated that she does not feel they live in a crime area and this brings in crime. Ms. Milotte stated that this will have a huge impact on us.

Douglas Swett stated if these were located on the strip property values would be effected, but you have working class families on the East Conway Road and they deserve better than this. Someone asked if the Board has considered Hobbs Street and if so, why isn't it located there. Ms. Woodall stated that it is the location of the high school and the Ham Arena. Someone stated that there is such strong opposition doesn't that make the Board want to look at other options. Ms. Woodall stated that this has been looked at for almost a year. Mr. Bergmann stated that if it is accepted to be put on the ballot then these types of businesses can only go on the East Conway Road until the vote. Ms. Woodall stated that the ordinance goes into effect at the time of posting.

Mr. Hounsell asked if the Board can strike everything except the definitions and get input from the Town. Mr. Hounsell stated that the definitions would be a positive. Mr. Hounsell stated that you are not going to have the support of many people until you decided this is the only place in Town. Mr. Valladares stated that that question was asked before. Ms. Woodall stated that they can go any where in the Highway Commercial District without this ordinance. Ms. Woodall stated that it would be limited to 5,000 square feet. Mr. deFeyter stated that any substantial change to the proposal you have to have another public hearing. Mr. Hounsell stated have one. Mr. deFeyter stated that we can't because we don't have enough time. Mr. Hounsell stated that it is more proper to admit that you don't have time.

Mr. Hounsell stated that if it is the desire to make it difficult you can do so with language. Mr. Hounsell stated don't decide what is best for them. Pat Swett asked if this type of business would have to come before this Board. Ms. Woodall answered in the affirmative. Ms. Swett stated that with the record of this Board it may not be in our lifetime. Ms. Swett stated that this is not the right zoning. Ms. Sand stated that retail space does not have to come to this Board if it is already approved for retail. Someone stated that the Board shouldn't look at the calendar schedule, as it is more important to do the right thing.

Jac Cuddy stated that he believes an article can be changed if the intent is not being changed. Mr. Cuddy stated if the location is deleted you don't need another public hearing. Mr. Cuddy stated that you cannot change the intent to prevent an adult business. Mr. Cuddy stated that you can put in definitions for that intent and then you have time to look at the location. Ms. Woodall stated that it was studied. Ms. Duane stated that she did not study it and there was no workshop or discussion of the full Board in regard to a location for these types of businesses.

Mr. Bergeron stated that it was commented earlier that the Board had studied it for 12 months. Ms. Woodall stated that she gathered materials and gave them to the Board, the Police Department and the Board of Selectmen. Mr. Bergeron stated that it is important that it be thoroughly studied by all Board members. Mr. Bergeron stated that he worked at Town Hall until May 21, 1999 and it was never discussed. Ms. Woodall stated that she told Dawn Emerson [former Town Planner] that she was working on this and asked Paul King [Interim Town Planner] to look at it. Ms. Woodall stated that Mr. King did not want anything to do with so she went forward on her own. Ms. Woodall stated that she obtained the information for the Board and the Board voted on it and moved on with it. Ms. Woodall stated that it is not her problem if other Board members didn't study it.

Ms. Sand stated that it was not a majority vote and she commented at that time that the Board did not have enough time to review it. Ms. Sand stated that she read all the information. Ms. Sand stated that Mr. Cuddy has a good point with moving forward with the definitions. Ms. Sand stated that this may be the right location, but she does not know that at this point. Ms. Sand stated that our industrial zones are not the same as other towns and the definitions are the first step in defining this. Ed O'Halleron stated that the town has a new planner and from observations he will do a good job. Mr. O'Halleron stated that we need to work on the Master Plan. Mr. O'Halleron stated that you should keep the definitions. Mr. O'Halleron stated that it makes sense to have the planner be involved in this process before we make these laws.

Ron White asked what about home schooling; they are still going to see these types of businesses. Mr. White stated that we are supposed to be setting an example for our children and he does not want to see

Adopted: As Amended – February 3, 2000

CONWAY PLANNING BOARD – JANUARY 13, 2000

these types of businesses. Someone stated that there is public opposition and disagreement among Board members. Someone stated that the process should be slowed down. Someone stated that there is a lot going on here and he cannot get answers to any of his questions. The public hearing was closed at 8:10 p.m.

**Ms. Sand made a motion, seconded by Ms. Duane, to remove section 147-12.B(2) from this ordinance.** Mr. deFeyter stated that he doesn't think you can do that under State Statute 675:3, III. Mr. deFeyter stated that you cannot make a substantial change and removing a section would be a substantial change. Ms. Sand stated let someone take us to Court on that point. **Motion was defeated with Ms. Woodall, Mr. deFeyter, Mr. Bergmann and Mr. Waterman voting in the negative.**

Mr. deFeyter made a motion, seconded by Ms. Woodall, to the finding of fact for the proposal on the Sexually Oriented Businesses to be set before the voters at the next election. Motion carried with Ms. Duane, Ms. Sand and Mr. Webster voting in the negative. Ms. Woodall stated that this will be put on the ballot and the voters will have the final say.

Mr. Bergmann made a motion, seconded by Mr. Webster, to take the public hearing for item #7 on the agenda [Article 147-12.A(4) & (5)] out-of-order. Motion carried with Ms. Sand abstaining from voting. Ms. Woodall stepped down. A public hearing was opened at 8:16 p.m. Ms. Duane read the petitioned article and a letter from Charles Irish. Mr. Waterman asked why the letter from Mr. Irish was read. Ms. Duane stated that it was asked to be read into the record.

Ed O'Halleron asked for a point of clarification and asked if this is the same as the other article. Mr. Irving stated that when this was posted it went into effect. Mr. Irving stated that if this article is recommended it stays in effect until Town vote. Mr. Irving stated if this article is not recommended an applicant can continue on a project, but it is at the applicant's own risk. Curt Burke asked how you can hold a public hearing when you cannot get in. Mr. Burke stated that it should have been at the school. Mr. Burke stated that it is not legal if you cannot get in to say something.

Ms. Duane asked for public comment; Charlene Browne stated that she submitted the petitioned article. Ms. Browne submitted two drawings of what can be constructed now and one on how the proposed ordinance would allow sites to be constructed. Ms. Browne stated that she is a resident and a business owner. Ms. Browne stated that she is a landscape architect and was on the Planning Board for three (3) years. Ms. Browne stated that she was concerned and saw the need to create stronger guidelines for development. Ms. Browne stated that this ordinance would create guidelines that discourage big box development. Ms. Browne stated that the motto "anywhere and nowhere town" does not reflect the Town of Conway. Ms. Browne stated that this is not a moratorium and this does not stop development. Ms. Browne stated that it does not restrict the size of the business, but the size of the structure.

Ms. Browne stated that this will provide more rural character and have a lower visual impact as it has to have small Town character. Ms. Browne stated that we are going to kill tourism unless we get a hold of how we want to grow. Ms. Browne stated that it is close to becoming a service area. Ms. Browne stated that we need to look forward and do some planning. Ms. Browne stated that she doesn't believe it is too late and she thinks we can manage our growth in a reasonable way. Ms. Browne stated that applicants can seek a variance from the Zoning Board of Adjustment (ZBA).

Ms. Sand asked where Ms. Browne came up with 5,000 square feet. Ms. Browne stated that this is not new as the Town of Conway in the Special Highway Corridor Overlay District approved it. Ms. Browne stated that this would maintain consistency in the other commercial areas. Ms. Browne stated that she is concerned with the future of our Town. Ms. Browne stated that buildings evolve and malls last for approximately 20 years. Ms. Browne stated that we're also in the process of refining and redefining our community. Ms. Browne stated that this may not work for everyone, but we need to do something. Ms. Browne stated that this can be refined next year and brought back to the voters.

Mr. Bergeron referred to the drawings Ms. Browne submitted and asked if the drawings represented 5,000 square feet. Ms. Browne answered not necessarily. Mr. Bergeron asked if you could fit what is drawn on one acre of land. Ms. Browne stated that you can go 35 feet up. Mr. Bergeron stated that you could never meet the green space or the parking requirements. Mr. Bergeron stated that Nike would have to be in three separate buildings under this proposal. Mr. Bergeron stated that what you have to consider is not the square footage of the building, but the occupancy. Mr. Bergeron stated if your trying to prevent big box development then you have to go after the occupancy and not the structure.

Ms. Browne stated that this ordinance will prevent a sea of parking. Ms. Browne stated that the Master Plan needs to be updated and there needs to be some serious planning. Bayard Kennett stated that he is in opposition of this ordinance and he has read and heard a lot on urban sprawl lately. Mr. Kennett stated that this is not a moratorium, but a zoning proposal that would allow seldom change. Mr. Kennett stated that this not going to stop development. Mr. Kennett stated that this will have a negative impact economically because you are increasing the amount of square footage on a site dropping the value of the existing land. Mr. Kennett stated that this will have a major effect on existing facilities. Mr. Kennett stated that you cannot build three buildings economically on one piece of land.

Mr. Cuddy asked for Mr. Irving's comments on this proposed article. Mr. Irving read his recommendation. Ed Poliquin stated that this seems like the average working person in this Town does not have much of a say because of special interests. Mr. Poliquin stated that for three months this is law and the Town has to adhere to it. Mr. Poliquin stated that the Planning Board should be planning. Mr. Poliquin stated that we have a Town Planner and we should let him do his job. Mr. Poliquin stated that he would strongly urge the Board to vote this down. Mr. Poliquin stated that the reaction is to stop growth and this is not in the best interest of the Town.

Peter Pinkham stated that there was a quote in the Conway Daily Sun in regard to the Special Highway Corridor District being studied for a year and a half, which may or may not have been long enough. Mr. Pinkham stated here we have a petition with a more dramatic effect. Mr. Pinkham stated that you will have an immediate effect when you vote on it. Mr. Pinkham stated that he has been in real estate for 30 years and the Conway taxpayer is paying a lot more then surrounding Towns. Mr. Pinkham stated that the proposed nursing home facility proposed behind the former Shaw's building is the type of thing that has given Jackson and Bartlett lower taxes. Mr. Pinkham stated that this would be all taxpayers and no children.

Mr. Pinkham stated that this is one project that would come before this Board this spring and would be a benefit to the Town. Mr. Pinkham stated that your position and how you act today is far different from how they acted a few years ago. Mr. Pinkham stated that the only way people get there information is how the Planning Board votes. Mr. Pinkham stated that the Board's responsibility is greater then what it was in the past. Mr. Burke stated that in 1995 he was doing the Wal-Mart project and there was a vote to see if the Town wanted buildings over 70,000 square feet and it won. Mr. Burke stated that the Town did speak. Mr. Burke stated he doesn't know where you get 5,000 square feet, but that is a start up business.

Mr. Burke stated look who is not sitting on the Board and is sponsoring this amendment. Ms. Browne stated that she is the one who wrote this article and demanded Mr. Burke to take his comment back. Mr. Burke stated that the road that was required for Wal-Mart to Settlers' Green is not even open. Mr. Bergmann stated the Town of Conway and now the acting Town Manager has stated that it did not have to be open because they did not want to plow it. Mr. deFeyter stated we need to cut out the personal attacks and go on with the issue. Ms. Woodall stated that she did not write the ordinance.

David Burdette stated that he agrees with the intent as aesthetics are important, but he is concerned with the vagueness of the article. Mr. Burdette stated that a variance has been suggested, but having sat on the ZBA variances often cause many problems. Mr. Burdette stated that they create a liability. Mr. Burdette stated that he is involved in the former Levi's building and they are going to have to construct on the same footprint. Mr. Burdette stated that they were trying to prevent that, but for it to be the same size as what is there they won't change it. Mr. Burdette asked the Board to vote against this article. Mr. Burdette stated that we have a new town planner that appears very confident. Mr. Burdette stated that the Economic

**Adopted: As Amended – February 3, 2000**  
**CONWAY PLANNING BOARD – JANUARY 13, 2000**

Council has developed a task force to explain this article. Mr. Burdette stated that this is a knee jerk reaction.

Ms. Browne stated that many people feel the footprint is too small and she is somewhat convinced, but the frustration came up when there were so many empty buildings. Ms. Browne stated that we have major problems as it is starting to look like an everywhere and nowhere community. Ms. Browne stated that she challenges you all to look at your community and what you want. Ms. Browne stated that everyone has a special interest. Ms. Browne stated that this not to build huge buildings, but to compliment the surroundings. Ms. Browne stated that this is a knee jerk reaction.

Dot Seybold stated that she was here when the Board voted on the overlay district and it was not well thought out. Ms. Seybold stated that we now have a situation with the hospital and we only have one hospital. Del Gilbert stated that you are going to restrict types of industry in this Town as 5,000 square feet is too small. Someone stated that 5,000 square feet is not nearly enough for a business. Someone stated look at the ice arena for instance, or the grocery stores; this is so limiting. Someone stated that this is not well thought out nor what the Town wants.

Gary Chandler stated that this is a reaction because the master plan is so out-dated. Mr. Chandler stated that he does not believe that is because the North Conway Water Precinct used theirs to plan what we are doing for the next 20 years. Mr. Chandler stated that this amendment will make their Master Plan useless. Mr. Chandler stated that we just invested \$16 Million for a waste facility and by cutting back growth the residents will have to foot the bill. Mr. Chandler stated that we have invested in the Town of Conway with \$150,000 leachate problem. Mr. Chandler stated that North Conway residents will have to bear the burden and users fees if we do not have a growth rate.

Jac Cuddy stated that Ms. Browne has stated that this is a reaction out of frustration and has been persuaded that 5,000 square feet is not accurate to work with. Mr. Cuddy stated that as the author of this petition if she asked the Board to not support and create a task force with the Town Planner on this issue it would put this to bed. Mr. Webster stated that there was a benefit to having a discussion. Mr. Webster stated to give people an idea of what 5,000 square feet is, Applebee's is a good comparison. Ms. Sand stated that this would cause grand fathering situations, which change-of-uses would be required to go before the ZBA.

Ms. Browne stated that she will rescind her article on the basis that she is convinced that 5,000 square feet is too small, but she is not letting this group off the hook because we have to be proactive. Ms. Browne asked what is a good square footage. Mr. Kennett stated that he doesn't think there is a square footage that is appropriate. Mr. Kennett stated that you need to look at the use and the location. Mr. deFeyter stated that Ms. Browne cannot rescind this article as it is going on the ballot. Mr. deFeyter stated that the Board can vote to recommend or not recommend this article. Mr. deFeyter stated that it cannot be changed.

Stephen Hallet stated that he is a part of the North Conway Retirement Village and there is no way to construct that facility in this Town. Gerald Farrington stated that the legal notice stated that this is in the Highway Commercial District when it is actually in the Business District. Luigi Bartolomeo stated that he does not support this article and 5,000 square feet is too small, but the intention is good. Mr. Bartolomeo stated that Wal-Mart would have had to have been 22 small buildings. Mr. Bartolomeo stated that because of the regulations in place the strip looks better than it did 25 years ago. Ms. Browne stated if she had the opportunity she would change it to a different square footage, but she is convinced that 5,000 square feet is too small.

Mr. Poliquin stated we are paying a lot of taxes for the Town Planner and we should let him do his job. Mr. Poliquin stated that there are people who have special interests and we need sensible planning, that is why we have a Planning Board. The public hearing was closed at 9:21 p.m. **Ms. Sand made a motion, seconded by Mr. Webster, to recommend the petitioned amendment to article 147-12.A. (4) and (5).** Mr. Bergmann stated that the author of the petition wants to change the footprint size, therefore, we have to vote it down because of the size. Mr. Bergmann stated that there are a lot of people in the audience that have said let the Town Planner do his job; we have had two good planners. Mr. Webster stated that Board of Selectmen as a group does not support this article. Mr. Webster stated we would like to give the Planner

Adopted: As Amended – February 3, 2000  
CONWAY PLANNING BOARD – JANUARY 13, 2000

the opportunity to work on the Master Plan with public input. Mr. Webster stated that we have to respect the right to petition. Mr. deFeyter stated that he disagrees with the difference between Conway and the surrounding Towns because of second homes. Mr. deFeyter stated that we haven't been careful about planning as we could have been. Mr. deFeyter stated that it is very important for the Town to plan for its future. Mr. deFeyter stated that we haven't done a good job with pulling together what the Town wants to do. **Motion was unanimously defeated.**

Ms. Woodall rejoined the Board at this time. Ms. Duane made a motion, seconded by Mr. Webster, to move Article 147-22.A(3) to the next on the agenda. The public hearing was opened. Motion unanimously carried. Thomas Dewhurst and Angelo Santa Maria appeared before the Board. Mr. Dewhurst stated that this petitioned article has been discussed in workshops and some members have walked the property. Mr. Dewhurst stated that this was voted on last year and lost by only 56 votes. Mr. Dewhurst stated that this property is almost entirely surrounded by commercial property and the floodplain. Mr. Dewhurst asked for the support of the Board.

Ms. Woodall asked for public comment; Jac Cuddy stated that last year this was a petitioned article. Mr. Cuddy stated that he was not in support of it last year because it should have come from the Planning Board itself. Mr. Cuddy stated that the majority of the Board of Selectmen is in support of this zoning change. Mr. Cuddy stated that he thinks it is the right thing to do. Gerald Farrington stated that he would like the Board to support this amendment as it makes good common sense. John Edgerton stated that he is in support of this article.

David Haines stated that he is in support of this article and the property should have been commercial at the beginning. Mr. Irving read his recommendation. Mr. Irving stated that he cannot support something unless he is informed enough that it will not cause a problem. Mr. Dewhurst stated that the Interim Town Planner, Paul King, who was involved did not have the same opinion and he did not see an adverse impact. Mr. Irving stated that he does concur with that from the discussion he had with Mr. King today. Mr. deFeyter stated that he agrees with Mr. Cuddy and he doesn't think the Board should be doing changes to the zoning district through a zoning petition, but part of the planning process.

Ms. Sand stated that this is different from the others as it was considered commercial for a number of years. Ms. Sand stated that the property was taxed commercial and it is contiguous to other commercial properties. Ms. Sand stated that the commercial district does not extend on the western side of Route 16 as far as the eastern side of Route 16. Ms. Sand stated that the perception of the property for many years was that it was commercial. Mr. Bergmann stated that he wanted to remind the Board that the voters, by a slim majority, rejected this same petition last year. Mr. Santa Maria stated that it did not pass last year because the Board did not recommend the article. Mr. Bergmann stated that he is not convinced that seven people have that much power.

Mr. Cuddy stated that he agrees with Mr. Santa Maria. Mr. Cuddy stated that it was not supported last year because of the process did not take place. Mr. Cuddy stated that the process did take place this year. Mr. Cuddy stated that it is not fair to penalize this family and make them wait another year for another Board to make the right decision. Mr. Cuddy stated that when people look at the recommendation they follow that recommendation. Ms. Woodall stated that it is a scary situation that the Board influences so drastically how people think. Ms. Woodall stated that we do not have a Master Plan and until we know where we are going we shouldn't really move along, we should know where we are going.

Mr. Santa Maria stated taking it out of the commercial district is spot zoning. Ms. Woodall stated that the article to take property out of the commercial district between Bald Hill Road and Thorne Hill Road is because they have deed restrictions. Mr. Farrington stated that people look at the recommendations and it is very evident that is how people vote. Mr. Edgerton stated that there was an error in drawing the commercial district in this area and it should have always been commercial. Mr. deFeyter stated that the Town description of the commercial district is very clear and the court agreed. Mr. deFeyter stated that

Adopted: As Amended – February 3, 2000  
CONWAY PLANNING BOARD – JANUARY 13, 2000

there was no confusion in the public record, but in the reevaluation. Mr. Farrington and Mr. Edgerton both stated that the Board can correct that now. The public hearing was closed.

Ms. Sand stated that she is very much in support of working on the Master Plan, but we shouldn't hold everything up for the Master Plan. Ms. Sand stated that we are here to use common sense and planning sense. Ms. Sand stated that this property will not sell residentially or as a farm. Ms. Sand stated that this property is surrounded by commercial activity. Ms. Sand stated that there is not going to be a Wal-Mart in that area, but it could be a bed and breakfast or a hotel. Ms. Sand stated that we shouldn't just wait for the Master Plan and stated lets be a little proactive. Ms. Woodall asked the acreage. Mr. Santa Maria answered about 10 acres can be developed as the rest is in the floodplain. Ms. Sand made a motion, seconded by Ms. Duane, to recommend Article 147-22.A(3). Motion carried with Ms. Woodall, Mr. Bergmann, and Mr. deFeyter voting in the negative.

The public hearing was opened. Ms. Woodall asked for public comment; there was none. Mr. Irving read his recommendation. Mr. Irving stated that the changes do not change the intent it just clarifies it. Mr. deFeyter asked if Town Council has reviewed the changes. Mr. Irving answered in the negative. The public hearing was closed. Ms. Sand made a motion, seconded by Ms. Duane, to recommend Article 147-22.A(1) as amended. Motion unanimously carried.

The public hearing was opened. Thomas Dewhurst appeared before the Board. Mr. Dewhurst stated that he does not know why this property was not included in the Highway Commercial District. Mr. Dewhurst stated that it is commercial in the Town of Albany. Mr. Dewhurst that they are trying to improve the Beep Beep Deli site. Mr. Dewhurst stated that he has worked with the Board of Selectmen to provide sewer and water from the Conway Village Fire District. Mr. Dewhurst stated that the Board of Selectmen have voted to put this to voters to sell this property. Mr. Dewhurst asked for the Board's support and stated that this will help to redesign the site for safety. Ms. Woodall asked for public comment; there was none.

Burr Phillips of H.E.B. Civil Engineers explained the new layout if the property was sold. Ms. Woodall asked how many acres. Mr. Dewhurst answered 0.6 acres. Ms. Sand stated that the Town of Conway sign is located on that site. Mr. Dewhurst stated that they are working on an agreement to have the sign remain. Mr. Waterman stated that Mr. Webster should review the Board of Selectmen's view. Mr. Webster stated that it is a small piece of land that has no value other than to the abutter. Mr. Webster stated that this is a project that needs many approvals and all the pieces have to fit. Mr. Webster stated that the property could be rezoned, but the voters could not agree to sell the property.

Ms. Sand asked if the Board of Selectmen can sell the property without going out to bid. Mr. Webster stated that there has been enough press if anyone had any serious desire. Mr. Webster stated that we were led to believe it did not have to go to bid and it is an opportunity to return it to the tax roll. Mr. Bergmann asked if the purchase and sale agreement is based on commercial. Mr. Webster stated that it was appraised and written to sell commercially. Ms. Woodall stated that she understands the need to straighten it out. Ms. Woodall stated that they wanted it for underground storage tanks. Ms. Woodall stated that she thinks it would be wiser to lease the property and use some of it as a park.

The owner of the Beep Beep Deli stated that he purchased the property in May of 1989 and a month later there was an accident. He stated that he thought it was his fault. He stated that he does not want a park or more obstacles. He stated that he wants people to come and go safely. He stated that there is no value other than for a short cut. Ms. Woodall asked what is in the purchase and sale agreement. Mr. Webster stated that we are interested in the sign. Mr. Webster stated that the State has stated that the sign has to be removed and the purchaser has to make accommodations for the new sign. Mr. Webster stated that the



appraisal came in a \$22,000. Mr. Webster stated that there was no guarantee of anything except to walk through the process. The public hearing was closed.

Mr. Irving read his recommendation. **Ms. Sand made a motion, seconded by Ms. Duane, to recommend Article 147-22.A(2).** Mr. deFeyter asked if Mr. Webster should vote on this since he has taken decision on the issue. Mr. Webster stated that he doesn't know why he shouldn't. Mr. Webster stated that he is the Board of Selectmen's representative and there is no conflict of interest. Mr. deFeyter read the disqualification of a member. Mr. deFeyter stated that Mr. Webster publically approved the purchase and sale agreement. Mr. Bergmann stated that Ms. Woodall was asked to step down. Mr. Bergmann stated that Mr. Webster has already made up his mind. Mr. Irving stated that it was brought to Ms. Woodall's attention and she took the high road by stepping down. The public hearing was closed.

Mr. Waterman made a motion, seconded by Ms. Duane that Mr. Webster is permitted to vote. Motion carried with Ms. Woodall, Mr. Bergmann and Mr. deFeyter voting in the negative. Mr. Bergmann stated that this should have been done at the beginning of the public hearing. **Motion to recommend carried with Ms. Woodall, Mr. Bergmann and Mr. deFeyter voting in the negative.**

The public hearing was opened. Randy Cooper appeared before the Board. Mr. Cooper explained the existing Highway Commercial District and stated that they tried to address residential uses in the commercial district. Ms. Woodall asked for public comment; Del Gilbert, owner of the Racquetball Club, stated that he is a grand fathered use and he sees it going commercial as an asset. Mr. Gilbert stated that he would appreciate the Board straightening out that line and making it commercial. Mr. Waterman stated that this would be correcting an oversight and it should go forward.

Mr. Irving read his recommendation. Mr. deFeyter stated that there is also an error in the date as it should be March, 2000. Mr. deFeyter stated that this is a petitioned article and it cannot be changed. Mr. Cooper stated that he gave this to the Board at a work session, but you did not want it. Mr. deFeyter stated that it is better for us not to recommend. Mr. Cooper stated that the problem is there is no dialogue to work things out. Mr. Cooper stated that the problem has been that we have not been able to discuss this with the Board. Ms. Woodall stated that this is a wonderful piece of property for a park.

Dot Seybold stated that there has been discussion of urban sprawl, but there is no opportunity for commercial uses in a commercial area. Ms. Seybold stated to suggest a public park how does the business community come in for any support when talking about value of property. Ms. Woodall stated that we should look at it and further study. Mr. deFeyter stated we need work on this because as it stands it would cause a dramatic increase. The public hearing was closed. Mr. deFeyter made a motion, seconded by Ms. Sand, to recommend article 147-22.A(3) and Article 147-17.A(2). Motion was defeated with Ms. Woodall, Ms. Sand, Mr. Webster, Mr. Bergmann and Mr. deFeyter voting in the negative and Mr. Waterman abstaining from voting.

The public hearing was opened. Shawn Bergeron of Shawn Bergeron Technical Services and Steve Morrill appeared before the Board. Mr. Bergeron submitted a plan of the land to be rezoned. Ms. Woodall asked for public comment; Gerald Farrington stated as an abutter he would recommend the Board approving this article. Mr. Farrington stated there are good results that can come from this. Ms. Woodall read a letter from Peter Pohl dated December 9, 1999.

Ms. Duane stated that he would continue to tree farm, but sell rights for capital. Ms. Duane stated that it comes down to basic economics. Mr. Morrill stated that inheritance taxes are complicated. Mr. Morrill stated that what they are proposing is not part of the Master Plan, but offering the Town of Conway 400 acres of land with 800 feet of lake frontage at no charge. Mr. Bergmann asked if it says that in the article.

Adopted: As Amended – February 3, 2000  
CONWAY PLANNING BOARD – JANUARY 13, 2000

Mr. Morrill stated that it cannot. Mr. deFeyter stated that the Board cannot go with the intent, but with what the petition states. Mr. Bergeron stated that we are trying to tell you the intent of the family, which cannot be a part of the petition. Ms. Woodall stated when there was a subdivision of this land the people of Stritch Road signed a petition and spoke on your behalf that this would be put into a trust for the Town and that never occurred.

Mr. Morrill stated what he did was make two, 12 acre lots. Mr. Morrill stated that it was a lot line adjustment and he didn't need anything special, except to meet the regulations. Mr. Morrill stated that they discussed selling the development rights to the Legacy Program, but they offered 1/6 of the valuation. Mr. Morrill stated that this was nothing, but a normal subdivision. Mr. Morrill stated that he spoke on the zoning change for Ceramco. Mr. Bergeron stated that we need to speak to the merits of this petition.

Mr. Morrill stated that there will be no cost for 400 acres to the Town of Conway. Mr. Morrill stated that when this passes it will be in a conservation easement. Mr. Bergmann asked if the State has taken this. Mr. Morrill answered in the negative. Mr. Bergmann stated if we rezone this then it will cost the State more money to purchase the land. Mr. Morrill stated that they are destroying land that has been in his family since 1911. Mr. Morrill stated that he is willing to work with the Board on any sale within the commercial portion of this property in a timely period so nothing gets done tomorrow or two years from now. Mr. Morrill stated that the Town will benefit and his family will benefit. Mr. Morrill stated that this will be a green gateway for years to come.

Mr. Bergmann stated that he personally feels insulted. Mr. Bergmann stated if the Board votes for this amendment then you will give the Town of Conway acreage. Mr. Bergmann stated that his vote on this or any other thing is not for sale. Mr. Morrill stated that the family would like to do this in exchange for the article. Mr. deFeyter stated that he is concerned that none of this is clear. Mr. deFeyter stated that Mr. Morrill has made statements about what he wants to do. Mr. deFeyter stated this troubles him. Mr. deFeyter stated that he appreciates the fact that the land has been in the family a long time and the distress with the bypass going through it, but we're trying to keep it a forested corridor and it is being asked to change it to commercial. Ms. Duane stated he is selling the development rights for capital for the logging operation not that he wants to develop the land.

Mr. deFeyter stated that he is asking to take land in current use where the bypass is going and change it to commercial. Ms. Woodall asked if it is only 50 acres. Mr. Morrill stated that it will have a 2,000-foot setback. Ms. Woodall asked if wetlands were checked. Mr. Morrill stated that is why there is probably only 50 acres of good land. Mr. Morrill stated that he is hoping that it will not be developed. Ms. Woodall asked why change the zoning. Mr. Morrill answered to get the best value. Mr. Farrington stated that the intent and purpose to change the zoning is not necessarily to build. Mr. deFeyter stated if it is zoned commercial, then it can be used commercial.

Mr. Morrill stated that 47% of it is in current use. Mr. Morrill stated that it is an active tree farm. Mr. Morrill stated that it is likely he will get \$100,000 from the State. Mr. Irving read his recommendation. Mr. Webster stated that he had the opportunity to tour the property and this is one of the more difficult proposals this evening. The public hearing was closed. Mr. deFeyter made a motion, seconded by Mr. Webster, to recommend Article 147-22.D(1). Motion was defeated with Ms. Woodall, Mr. Bergmann, Mr. deFeyter voting in the negative and Mr. Webster and Ms. Sand abstaining from voting.

The public hearing was opened. Randy Cooper appeared before the Board. Mr. Cooper stated that Paul King asked him to draft the change and this comes from the subdivision regulations. Mr. Cooper stated that the Town has been doing this and now we cannot do it. Mr. Cooper stated that this article brings us back to status quo. Mr. Cooper stated that this is something we need. Mr. Bergmann stated that the first memo we received in regard to this was from the Rock Development. Mr. Cooper asked Mr. Bergmann if he has heard of a word processor and asked if he was challenging his integrity.

**Adopted: As Amended – February 3, 2000**  
**CONWAY PLANNING BOARD – JANUARY 13, 2000**

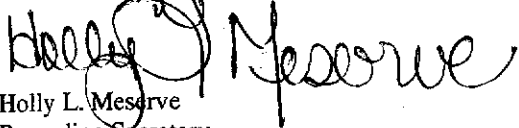
Ms. Woodall asked for public comment; there was none. Mr. Irving gave his recommendation. Mr. Bergmann stated that when he read the proposed amendment the impression was not for affordable housing. Mr. Irving stated when he read it that is what he had in mind. Ms. Duane stated that it is unfair to attack Mr. Cooper and assume he is here for a potential client. Mr. Cooper stated that he addressed both residential and commercial. Mr. Cooper stated that there is not a density bonus in this; it is a purely mechanical method. Mr. Cooper stated that this is nothing different from what we have done before.

Mr. deFeyter stated that he has gone through this and there were changes to the original proposal based on comments. Mr. deFeyter stated that he agrees we need to do something with this. Mr. deFeyter stated that he still has some problems with the petition and it needs clarification. Mr. Cooper stated that you will have 21 lots with one being common land. Mr. deFeyter stated that there is no minimum lot size for common land. Ms. Woodall stated that she is concerned with the setbacks.

Ms. Sand made a motion, seconded by Ms. Duane, to recommend Article 147-17.4. Motion carried with Ms. Woodall, Mr. Bergmann and Mr. deFeyter voting in the negative.

Meeting adjourned at 12:10 a.m.

Respectfully Submitted,

  
Holly L. Meserve  
Recording Secretary