Adopted: May 12, 2022 – As Written

## CONWAY PLANNING BOARD

### **MINUTES**

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#### **CONWAY PLANNING BOARD**

#### **MINUTES**

#### **APRIL 14, 2022**

A meeting of the Conway Planning Board was held on Thursday, April 14, 2022 beginning at 7:00 pm at the Conway Town Office, Conway, NH. Those present were: Chair, Benjamin Colbath; Selectmen's Representative, Steven Porter; Vice Chair, Ailie Byers [via video]; Secretary, Sarah Frechette; Bill Barbin; Eliza Grant; Erik Corbett; Planning Director, Jamel Torres; and Planning Assistant, Holly Whitelaw. Town Engineer, Paul DegliAngeli, was in attendance. Alternates Ted Phillips and Steven Steiner were in attendance.

### REVIEW AND ACCEPTANCE OF MINUTES

Ms. Grant made a motion, seconded by Mr. Porter, to approve the minutes of March 24, 2022 as written. Motion carried unanimously.

# PUBLIC HEARING – PROPOSED AMENDMENTS TO THE SITE PLAN REVIEW REGULATIONS

§110-21.A.(1) – Number of Parking Spaces: The purpose of this amendment is to modify the number of parking spaces required for restaurant seats from one (1) for every three (3) seats to one (1) for every two (2) seats [see attached].

Mr. Colbath asked for Board comment; Mr. Colbath stated this could lead to more asphalt. Ms. Frechette agreed with Mr. Colbath. Mr. Colbath opened public comment at 7:04 pm. Mr. Colbath asked for public comment; Shawn Bergeron of Bergeron Technical Services stated this amendment really concerns him; this would increase the amount of parking for restaurants by 50%. Mr. Bergeron stated he was present during most of the hearings for the Viewpoint project up by the Vista, and during the review of that plan parking specifically related to the restaurant was a real concern. Mr. Bergeron stated beyond that he is not aware that we have had to struggle with that.

Mr. Bergeron stated we have oceans of asphalt, and much of those oceans are not even traveled. Mr. Bergeron stated pavement is disturbed area and disturbed area drives the tree count; every time a parking space is added you are either taking away from green area or making the applicant have a larger site to make up for the green area that you are taking away from that parking space.

Mr. Bergeron stated they looked at Red Fox Restaurant, Muddy Moose, Peaches, Horsefeathers, Hooligans, Delaney's, Moat Mountain Smokehouse and Glen Junction Restaurant. Mr. Bergeron stated those facilities provide parking, their best ratio is 1 per 1.96 and the worst is Peaches, Horsefeathers and Hooligans who don't have any parking [see attachment dated April 13, 2022].

Mr. Bergeron stated he would recommend inventorying and talking to the restaurant owners in Conway to see if this a problem. Mr. Bergeron stated just because you have one bad apple, deal with the bad apple. Mr. Bergeron stated this concerns him greatly, and think this will be a problem. Ms. Byers joined via video at this time.

Mr. Colbath stated having more parking space without the volume of staff to serve those people concerns him. Mr. Colbath stated just because it is busy season doesn't mean every table is full. Mr. Colbath stated there is turn over, and there are times when you can't seat the whole dining room so these people are now waiting somewhere because you have all these spaces for them to park.

Mr. Colbath stated sometimes having more parking spaces and more greenspace means more pedestrians hanging out waiting outside waiting by cars waiting in parking lots which concerns him; part of the Board's purview is to make sure developments are safe. Mr. Colbath stated by requiring more parking spaces it increases the amount of people waiting around. Mr. Bergeron stated what that tells him is that they have adequate parking they just can't facilitate those people indoors.

Mr. DegliAngeli stated Mr. Bergeron indicated that our best ratio was 1.96, round that up to 2 which is what this amendment is proposing. Mr. DegliAngeli stated Delaney's is pretty close to that as well, and this is what the proposal is. Mr. DegliAngeli stated the Muddy Moose ratio is 1 per 2.96 seats, or round up to 3, and we see the Muddy Moose employees parking on Artist Falls Road and at the municipal lot on Depot Street.

Mr. DegliAngeli stated those that have better ratios is the village. Mr. DegliAngeli stated the village has on-street parking, so there is parking there for them. Mr. DegliAngeli stated the difference is we don't receive calls in the village with the on-street parking, we get complaints from the residents on Artist Falls Road. Mr. DegliAngeli stated the Muddy Moose expanded their parking to the limit of their lot.

Mr. DegliAngeli stated this requires more parking, and maybe we are going to require smaller restaurants depending on what the lot will allow. Mr. DegliAngeli stated the numbers come from the Institute of Traffic Engineer (ITE), and way back when before his tenor is when they established the 1 per 3. Mr. DegliAngeli stated the 1 per 3 is go in sit down and eat, standard restaurant Monday through Thursday. Mr. DegliAngeli stated that same restaurant on a Friday, Saturday or Sunday is in the vicinity of .5.

Mr. DegliAngeli stated this is a destination resort area, during the season, during vacation during ski time every night is a weekend for those folks. Mr. DegliAngeli stated if there is something to reconsider maybe it would be what is the location of this restaurant; we have big box parking requirements that are overboard, that needs to be changed also. Mr. DegliAngeli stated we have retail parking that is not overboard, and we have a hotel that has an ocean of parking that is unused.

Mr. DegliAngeli stated the two that we went to look independently of Mr. Bergeron are Delaney's and the Moat; these are very popular, very busy with long wait lines, but they don't have a parking problem. Mr. DegliAngeli stated what is their parking ratio; it is what is being proposed. Mr. DegliAngeli stated when the parking is adjacent to or a part of other development than they can use a shared parking analysis.

Mr. DegliAngeli stated if there is a concern regarding greenspace and the size of the parking lot than that really has to do with the size of the lot, what the capacity of the lot is, and the answer might be smaller hotels, smaller restaurants for that particular lot.

Mr. DegliAngeli stated we have three applications, all fast-food restaurants with drive-throughs, wanting to increase their efficiency of their drive through; double kiosks ordering, merging to one paying collect versus what they have now. Mr. DegliAngeli stated these same establishments are using Route 16 as a queue. Mr. DegliAngeli stated changes are appropriate to our parking whether it big box, fast-food or sit-down.

Mr. Colbath asked what about a requirement for staff. Mr. DegliAngeli stated the 2 to 1 seems to handle the staff. Mr. Colbath asked if the ITE is a standard that can be adopted rather than having our own. Mr. DegliAngeli stated our ordinance states that applicants can suggest substitute standards. Mr. DegliAngeli stated the problem is it is a one-way street; if it is to the developer's advantage, they will use the alternate standard and if it is not, they will use the Town standard. Mr. Colbath asked why don't we just use the ITE standard. Mr. DegliAngeli stated we could take that approach.

Ms. Byers stated we need to have adequate parking so that it is safe and not putting in development that is too big for the space; she wants to see more trees than pavement. Ms. Byers stated if we put in language that we use the ITE with the understanding that we are always a Saturday night set up unless you can demonstrate beyond a reasonable doubt that you are not a Saturday night set up in terms of counts. Ms. Grant stated the underlying question is do we want to be strict and say ask for a waiver, or give the benefit of the doubt and know that things like Viewpoint are going to happen. Ms. Grant stated none of these standards are going to work for everyone. Mr. Colbath stated he would like to see how restrictive we are becoming and the ripple effect.

Mr. Bergeron stated Muddy Moose has caused some issues, and the two being held up as the poster children are the Moat and Delaney's. Mr. Bergeron stated he doesn't believe Delaney's or the Moat have been in for site plan review, but Muddy Moose has. Mr. Bergeron stated business people will often do a better job than those paid to do this. Mr. Bergeron suggested each Board member review the ITE standards before going down that path.

Steven Johnson, of Valley Originals and Moat Mountain, stated he understands where the Board is going with this and why, but the Board also needs to understand the economic impact that this will create. Mr. Johnson stated he is over \$200,000 a year in payroll costs, there is no help, and there are not enough seats in Town for the number of visitors we have, especially mid-week. Mr. Johnson stated he would urge the Board to consider how hard the industry has been hit and how it could damage the valley's economic future if people stop coming back because they don't have the service.

Mr. Colbath asked if it is fair to ask to provide for employee parking, to house their own employees' cars. Mr. Johnson stated absolutely; we have a lack of public parking lots, in the village especially. Ms. Frechette stated there isn't enough public parking; we don't have a ride share anywhere in town. Mr. Colbath stated he is not comfortable voting on this without having a business perspective.

Mr. Colbath closed public comment at 7:45 pm.

Mr. Porter made a motion, seconded by Mr. Barbin, to table the proposed amendment to §110-21.A.(1) regarding the number of parking spaces. Motion carried unanimously.

§110-29.D.(8) – Street Trees: The purpose of this amendment is to require street trees to be planted no more than 5-feet from the property line along all public and private rights-of-ways [see attached].

Mr. Colbath asked for Board comment; there was none. Mr. Colbath opened public comment at 7:46 pm. Mr. Colbath asked for public comment; there was none. Mr. Colbath closed public comment at 7:47 pm. Mr. Barbin made a motion, seconded by Mr. Porter, to amend the site plan review regulations regarding §110-29.D.(8) as proposed. Motion carried unanimously.

# LESZEK AND EWA GIELATA (FILE #FR22-02) – FULL SITE PLAN REVIEW CONTINUED (PID 252-14)

Wes Smith and Don Bouchard of Horizons Engineering appeared before the Board. Leszek Gielata was in attendance. This is an application to demolish the existing buildings and construct a 40' x 70', two-story, 68-seat restaurant and a 40' x 70' storage barn accessory to the restaurant.

Mr. Smith stated everything has been moved out of the front buffer, added the split-rail fence as requested and addressed items per the Town Engineer. Mr. Colbath asked for Board comment; there was none. Mr. Colbath asked for public comment; there was none.

Mr. Colbath asked Mr. DegliAngeli about the waiver for drainage. Mr. DegliAngeli stated this is an existing site, we have an understanding of the typography and he would support the waiver if they were to place drainage in certain locations. Mr. DegliAngeli stated he is confident that what we proposed would work, but what was submitted wasn't what we discussed. Mr. Colbath asked if he is confident working with Mr. Smith. Mr. DegliAngeli stated he is comfortable with a conditional approval with a condition being Town Engineer approval.

Mr. Smith read waiver requests for §110-20.F/§131-66.C.8.b; §110-20.G; §110-20.I.; §110-22.B.; and §110-29.D.(5) & §110-29.D.(8). Mr. Colbath made a motion, seconded by Mr. Porter, to grant the waiver request for §110-20.F/§131-66.C.8.b; §110-20.G; §110-20.I.; §110-22.B.; and §110-29.D.(5) & §110-29.D.(8). Mr. Colbath asked for Board comment; there was none. Motion carried unanimously.

Mr. Colbath made a motion, seconded by Mr. Porter, to conditionally approve the full site plan for Leszek and Ewa Gielata conditionally upon Town Engineer approval; Redstone Fire Chief approval; Conway Police Chief approval; NHDOT Driveway Permit and indicate permit number on plan; adding plan notes to the site plan (Sheet C2.1) indicating that the proposed ADA parking space design meets §110-36.F. & G.; providing documentation that meets the standards of §110-26.B., C., & E.; indicating window calculations, which comprise no less than 5% of exterior wall surface, for the south and east building elevations for the proposed restaurant; removing overhead electric (OHE) lines along the northern property line on the plans; revising Waivers Granted table as necessary; four copies of revised plan sets; \$200 for Inspection Fees; a performance guarantee for all on-site improvements; a performance guarantee for all off-site improvements [if necessary]; when the conditions have been met the plans can be signed out-of-session; and this conditional approval will expire on April 13, 2023. Motion carried unanimously.

## PINE HILL HOMEOWNERS CO-OP, INC. (FILE #CC22-01) – CONCEPTUAL CONSULTATION

Jennie Oliver of Institute for Energy and the Environment appeared before the Board. This is a conceptual review for a 50 KW ground mounted solar array to serve the residents and consists of two row panels on a currently vacant lot [see attached]. There was discussion regarding screening/fences.

# KENNETT COMPANY/CONTINUUM AT NORTH CONWAY, LLC (FILE #CC-02) – CONCEPTUAL CONSULTATION

Mr. Colbath stated that applicant has withdrawn this request.

## CADORETTE FAMILY REVOCABLE TRUST (FILE #S22-01) – 3-UNIT SUBDIVISION REVIEW (PID 252-14)

This is an application to create three (3) residential units. Mr. Torres stated the applicant was not able to be in attendance tonight. Mr. Barbin made a motion, seconded by Ms. Frechette, to continue the 3-unit subdivision review for Cadorette Family Revocable Trust until May 12, 2022. Motion carried with Mr. Barbin and Mr. Colbath voting in the negative.

#### **OTHER BUSINESS**

<u>Settlers' R2, Inc. (PID 235-89.003) – File #NA22-03</u>: This is a request to allow a 1,650 square foot addition to existing building H and to modify the front elevation of the building at 39 Common Court. Mark Lucy, consultant for White Mountain Survey, a division of Horizons Engineering, appeared before the Board. Rob Barsamian and Michael Mitchroney of OVP Management, Inc. were in attendance.

Mr. Lucy reviewed the project with the Board. A letter from Roy Tilsley dated April 8, 2022 was emailed to the Town [attached].

Mr. Colbath made a motion, seconded by Mr. Porter, that the Planning Board determined that based on the provisions of §110-4. A.(5), regarding applicability, that the 1,650 square foot addition to existing Building H and modifying the front elevation of the building is not subject to a Full Site Plan Review because it has been demonstrated that the change of use and/or physical changes to the site are insignificant relative to the existing development. Motion carried with Ms. Frechette and Ms. Byers voting in the negative.

**Selectmen's Report**: There was nothing to report.

April 28, 2022 Planning Board meeting: Mr. Porter made a motion, seconded by Ms. Frechette, to cancel the April 28, 2022 Planning Board meeting. Motion carried with Mr. Colbath voting in the negative.

Meeting adjourned at 8:40 pm. Respectfully Submitted, Holly L. Whitelaw, Planning Assistant

### § 110-21 Parking.

Off-street parking spaces shall be provided in accordance with these specifications for any change of use, new use, or expansion. In no case shall on-street parking be credited for any site because its availability is subject to change over time based on the public need to use the right-of-way for other, possibly conflicting, uses.

- A. Number of spaces. Each site shall provide at least the minimum number of parking spaces for the site, determined as follows:
- (1) The following minimum standards shall apply:

Spaces Required
1 per 3 seats
1 per 2 seats
1 per 3 seats 2 seats
1 per 3 beds plus 1 per 3 employees on day shift
1 per 1.2 employees based on maximum shift
1.1 per lodging unit
1 per 4 members
1 per 250 square feet of gross area
1 per 250 square feet of gross area
2 per unit
1 per 200 square feet of gross area
1 per 200 square feet of gross area
1 per 200 square feet of gross area

### Bergeron Technical Services, LLC Parking Analysis Relative to 110-21.A(1) Number of Restaurant Parking Spaces

#### First Analysis - mix of breakfast, lunch and dinner establishments

	Establishment	no. seats	no. parking	ratio	notes
1	Red Fox Restaurant	350	131	1 per 2.67	101 striped on pymnt 30 estimated on gravel
2	Muddy Moose	210	80	1 per 2.63	All striped on pavement
3	Peaches	97	0	N/A	On street parking only
4	Horsefeathers	276	0	N/A	There may be 4 spaces out back near coolers
5	Hooligans	65	0	N/A	There may be 4 east side of building
6	Delaney's	155	80	1 per 1.94	47 striped on pymnt. 33 estimated on gravel
7	Moat Mtn. Smokehouse	174	89	1 per 1.96	All striped on pavement
8	Glen Junction Restaurant	113	68	1 per 1.67	All striped on pavement
	Result	1440	448	3.21	Mix of breakfast, lunch and dinner establishments

### Second Analysis - without breakfast/lunch establishments

	<b>Establishment</b>	no. seats	no. parking	ratio	notes
1	Red Fox Restaurant	350	131	1 per 2.67	101 striped on pymnt 30 estimated on gravel
2	Muddy Moose	210	80	1 per 2.63	All striped on pavement
3	Peaches	0	0	N/A	On street parking only
4	Horsefeathers	276	0	N/A	There may be 4 spaces out back near coolers
5	Hooligans	65	0	N/A	There may be 4 east side of building
6	Delaney's	155	80	1 per 1.94	47 striped on pymnt. 33 estimated on gravel
7	Moat Mtn. Smokehouse	174	89	1 per 1.96	All striped on pavement
8	Glen Junction Restaurant	0	0	1 per 1.67	All striped on pavement
	Result	1230	380	3.24	Dinner establishments but some may serve lunch

#### Third Analysis - breakfast & lunch establishments

	Establishment	no. seats	no. parking	ratio	notes
1	Red Fox Restaurant	0	0	1 per 2.67	101 striped on pvmnt 30 estimated on gravel
2	Muddy Moose	0	0	1 per 2.63	All striped on pavement
3	Peaches	97	0	N/A	On street parking only
4	Horsefeathers	0	0	N/A	There may be 4 spaces out back near coolers
5	Hooligans	0	0	N/A	There may be 4 east side of building
6	Delaney's	0	0	1 per 1.94	47 striped on pymnt. 33 estimated on gravel
7	Moat Mtn. Smokehouse	0	0	1 per 1.96	All striped on pavement
8	Glen Junction Restaurant	113	68	1 per 1.67	All striped on pavement
	Result	210	68	3.09	Breakfast establishments but some may serve lunch

We suggest consideration should be given to taking this study further geographically. Establishments in Gorham may want to be considered. Closer to and within Conway, Yesterday's, Wildcat Inn & Tavern, Shannon Door Pub and May Kelly's Cottage, The 99 Restaurant, Banners, Cafe Noche and Almost There should also be brought in.

#### Some pertinent thoughts:

9' x 18' parking space with 24' wide access aisle =  $378 \, \text{ft}^2$  of pavement or .76 additional site trees 11 x 18' parking space with 24' wide access aisle =  $462 \, \text{ft}^2$  of pavement or .924 additional site trees

Any increase in pavement for parking is an equal reduction in green area.

HBP has been identified as a contributor to climate change and releases toxic materials when heated by the sun.

### § 110-29 Landscaping.

- D. Trees. All lots regulated by this chapter (except those subject to Subsection C) shall have trees in accordance with Subsection D(1) through (11) below.
- (8) Street trees are required to be planted as part of the landscaping required herein. Salt-tolerant trees as defined in the manuals referenced in Subsection D(10) below, of at least three-inch caliper measured at a point six inches above the root ball, shall be planted within 15 feet of the edge of the pavement of no more than 5-feet from the property line along all public and private rights-of-way, at a rate of at least one tree per 50 feet of right-of-way. Accordingly, trees should be planted 50 feet on center. Trees shall be planted between the road and the sidewalk where practical. A minimum of two street trees shall be required per lot. The Planning Board shall provide guidance as to the planting location of all proposed street trees; [Amended 4-11-2017 ATM by Art. 29]





Town of Conway Planning Board

PO Box 2680/23 Main Street

March 22, 2022

Conway Town Office

Conway, NH 03818 jtorres@conwaynh.org

Professor of Law & Staff Attorney Vermont Law School Energy Clinic PO Box 96, South Royalton, VT 05068

joliver@vermontlaw.edu

Jeannie Oliver

Re: Pine Hill Community Solar Project Preliminary Conceptual Consultation

Dear Mr. Torres and members of the Planning Board:

On behalf of the Pine Hill Homeowners Cooperative, Inc. ("Cooperative"), please accept this request for a preliminary conceptual consultation pursuant to Chapter 10, Article II, §110-7 of the Municipal Code for a 50 kW (AC) / 60 kW (DC) ground mounted community solar project to be located off Benson Road, North Conway.

### Applicant, Owner, and Agents

The applicant is Pine Hill Homeowners Cooperative, Inc. The Cooperative is a resident owned manufactured housing community comprised of 28 lots in North Conway, New Hampshire. The Cooperative will own the community solar project and allocate the solar electricity to the Cooperative's residents through the State of New Hampshire's group net metering program. The Cooperative has selected KW Management to install the community solar project and Vermont Law School's Energy Clinic is assisting the Cooperative with its legal and regulatory needs, including permitting.

#### **General Description of the Project**

The Cooperative seeks to develop, own, and operate a 50 kW (AC) / 60 kW (DC) ground mounted community solar project on a small portion of its 24 acre parcel of land identified as Lot 262-79. The project site is a vacant lot located on Benson Road, as shown on the Google map image below. It is a flat, undeveloped, partially cleared area with access to single-phase electrical distribution lines on Benson Road and three-phase electrical distribution lines on White Mountain Highway. The Project site has trees to the east, south, and west that will require partial clearing to minimize shading and maximize potential solar exposure, including removal of a number of mature white pines on the southern property boundary. The Cooperative has obtained consent from the owners of the adjoining property to remove the white pines. Access to the project site will be via Benson Road; there will be no new roads.

Project Site Circled in Red:





The proposed community solar project's layout is depicted in the enclosed preliminary site plan. It will consist of two rows of panels with each row consisting of 70 modules mounted on a steel racking system driven directly into the ground. Each row of panels will be approximately 122 feet long from east to west and the project will occupy an area of approximately 122 feet by 43 feet. Each row of panels will stand approximately 10 feet high at its tallest point at an approximately 35 degree tilt angle, facing southward away from Benson Road. The project will be set back from Benson Road approximately 15-20 feet. The project will include a new power pole adjacent to Benson Road where the solar array will interconnect with Eversource's distribution grid. We do not anticipate any additional demand on utilities such as water or sewer associated with this project.

We appreciate the opportunity to discuss this proposed community solar project with you and to solicit your feedback at the next Planning Board meeting. We look forward to hearing form you.

Sincerely,

Jeannie Oliver

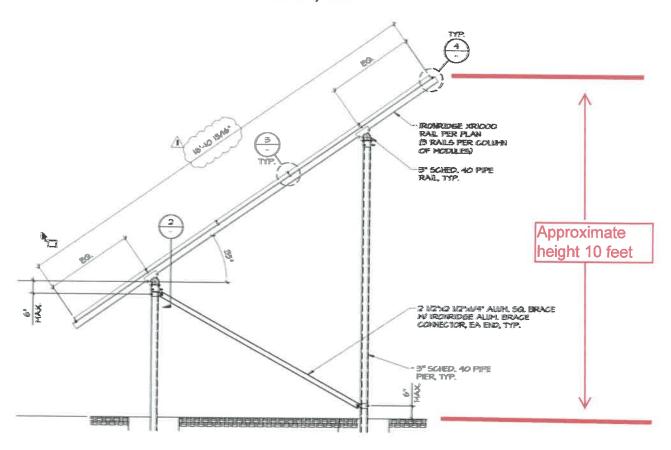
Pine Hill Community Solar – proposed solar array location – February 3, 2022



NOTES: No fence is proposed because the back of the array and all wiring will be covered with a wire mesh so that there is no access to any wiring.

## Pine Hill Solar – Elevation and example photos

### March 21, 2022







Bernstein, Shur, Sawyer & Nelson, P.A. Jefferson Mill Building 670 North Commercial Street Suite 108 PO Box 1120 Manchester, NH 03105-1120

T (603) 623 - 8700 F (603) 623 - 7775

Roy W. Tilsley, Jr. 603-665-8823 direct rtilsley@bernsteinshur.com

April 8, 2022

Benjamin Colbath, Chair Town of Conway Planning Board 23 Main Street Conway, NH 03818

Re: File Number NA 22-03 - Settlers' R2, Inc. -

Dear Chair Colbath:

As you are aware, this office represents interests of Bellevue Properties, Inc. which operates the North Conway Grand Hotel at 72 Common Court, in Conway, PID 235-98. I am writing regarding the above referenced file number which is on the Board's Agenda for its upcoming April 14, 2022 meeting. In this Agenda item, Settlers' R2, Inc. is asking for a determination from the Board that a 1650 square foot addition to its existing Building H constitutes a small undertaking as defined in the Site Plan Review Regulations, and as such does not require full site plan review by your Board.

As an initial matter, I would note that we take no position on the Applicant's request and will leave it to the Board's discretion to determine whether the proposed addition qualifies as a small undertaking under your Regulations. However, two aspects of the February 10, 2022 requests by Settlers' R2 raise concerns which I wanted to bring to the Board's attention.

The main concern which my client has with the current request is the Applicant's proposal that the Board consider its request in relation to the entire Settlers' Shopping Center as a whole. According to the Applicant, the Shopping Center, for purposes of its request, consist of three Lots: 235 - 85, 89, and 92, each owned by a separate entity. While the Applicant is asking the Board to consider these three properties as a whole, the Applicant has chosen to have each property owned by a separate, but related, entity, as opposed to merging the properties. We would urge the Board not to ignore the different properties and consider this proposal in the context of the Lot, and ownership, on which it is located. There is no guarantee that all of these properties will be owned by Settlers' related entities in the future. Furthermore, given the

complexity of relationships between the users of this area, including my client, it could establish dangerous precedent for this Board to ignore the separate property ownerships for purposes of considering this request. If the Applicant wishes the Board to consider this proposal from the perspective of the Shopping Center as a whole, it should merge the parcels into common ownership so that the Shopping Center is in fact one lot. If the Applicant sees benefits in having the property owned by three different entities, the current request should only be considered in the context of the Lot on which it is located.

Additionally, Building H, which is the subject of the request, is an existing retail building. To the extent that the Applicant is asking for a determination for an addition to this building as a small undertaking, the addition should be limited to the existing retail use of the building. If the new area is being added in order to change the use of some or all the building, such as by adding a restaurant or similar non-retail use, that change should in fact be considered by the Board under its normal Site Plan Regulations.

Again, our intent here is not to contest the request issued by Settlers' R2. We are perfectly content to accept whatever decision the Board makes on this. However, we do believe it is important to point out that that decision should be made in the context of the Lot owned by Settlers' R2, Inc. and not in the context of other lots owned by related entities.

We thank you for your attention and consideration in this matter.

Sincerely yours,

/s/ Roy W. Tilsley, Jr.

Roy W. Tilsley, Jr.

RWT/pjm