

**ZONING BOARD OF ADJUSTMENT**

**MINUTES**

**AUGUST 16, 2023**

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, August 16, 2023, at the Conway Town Office, 23 Main Street, in Conway, NH, beginning at 7:00 pm. Those present were: Chair, John Colbath; Vice Chair, Andrew Chalmers; Richard Pierce; Jonathan Hebert; Town Planner, Ryan O’Connor; and Planning Assistant, Holly Whitelaw. Alternates Steven Steiner and Debra Haynes were in attendance. Zoning Officer, Nick DeVito, was in attendance.

Mr. Colbath led the Pledge of Allegiance.

**APPOINTMENT OF ALTERNATE MEMBER**

Mr. Colbath appointed Ms. Haynes as a voting member.

**PUBLIC HEARINGS**

A public hearing was opened at 7:00 pm to consider a **VARIANCE** requested by **MOUNTAIN TOP MUSIC CENTER** [FILE #23-30] in regards to §190, Permitted Use Table of the Conway Zoning Ordinance **to allow a ground-mounted solar energy system within the Floodplain Conservation Overlay District** at 36 Main Street, Conway (PID 265-45). Notice was published in the Conway Daily Sun and certified notices were mailed on Friday, July 7, 2023. This hearing was continued from July 19, 2023.

The applicant has requested to be continued until the September meeting.

**Mr. Hebert made a motion, seconded by Mr. Chalmers, to continue the application for Mountain Top Music Center until September 20, 2023, at 7:00 pm. Motion carried unanimously.**

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A public hearing was opened at 7:05 pm to consider a **SPECIAL EXCEPTION** requested by **MICHAEL HARDT** [FILE #23-37] in regards to §190-16.B.4.(b) of the Conway Zoning Ordinance **to allow an accessory dwelling unit** at 39 Oak Street, North Conway (PID 219-9). Notice was published in the Conway Daily Sun and certified notices were mailed on Thursday, July 27, 2023.

Mr. Colbath read the application and the applicable section of the ordinance.

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Michael Hardt appeared before the Board. He described his request to add an ADU at the rear of his garage to provide affordable long-term housing for local residents. He asked for clarification of the definition of "short-term," which the Board defined as longer than 30 days.

Mr. Colbath asked for Board comment. They clarified the proposed design of the ADU.

Mr. Colbath asked for public comment.

Daymond Steer of the Conway Daily Sun clarified the residency requirements for ADUs. Mr. Colbath read the ordinance regarding ADUs.

John Fiscene (ph) of North Conway spoke in support of this application.

Mr. Colbath closed public comment.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the accessory dwelling unit is no less than 300 square feet and no greater than 800 square feet.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the accessory dwelling unit is architecturally compatible with the neighborhood.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that sufficient parking is located on site.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that both the primary single-family dwelling and the accessory dwelling unit shall be used for long-term residency, and short-term transient occupancy of either dwelling unit is prohibited.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

**Mr. Chalmers made a motion, seconded by Mr. Hebert, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-16.B.(4)(b) of the Town of Conway Zoning Ordinance for an accessory dwelling unit be granted. Motion carried unanimously.**

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A public hearing was opened at 7:15 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT** requested by **1675 WMH, LLC/CONWAY BOARD OF SELECTMEN [FILE #23-38]** in regards to §190-20.F.(3) of the Conway Zoning Ordinance **to allow the existing “Welcome to North Conway” mural on Building M to remain** at 1699 White Mountain Highway, North Conway (PID 235-85). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 4, 2023.

Mr. Colbath read the application and the applicable section of the ordinance.

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Derek Lick of Orr & Reno appeared before the Board. Mr. Lick reviewed the history of this application. An equitable waiver was approved in April 2023. The Board of Selectmen requested a rehearing, as one of the five tests was not agreed upon unanimously regarding the cost of correction outweighing any public benefit to be gained. The property owner believes there is no public benefit to be gained by requiring removal of the mural. Mr. Lick explained the cost to the property owner is that they will have no benefit for the money spent to hire the artists.

Mr. Colbath asked for Board comment.

The Board asked if there is a website listed on the mural. Mr. Lick said there is not and the mural cannot be seen as advertising for Settlers Green. Mr. Colbath clarified that the Town considers this a wall sign and Mr. O'Connor verified this, as there is no language that distinguishes between murals and wall signs.

Mr. Colbath asked for public comment.

Bill Marvel asked what benefit the mural provides Settlers Green and noted if the mural causes attraction, this makes it a sign. He said the benefit to the Town is maintaining the integrity of its sign ordinance. Mr. Lick said Settlers Green is attempting to provide something that benefits the Town. He said it is not fair and equitable to have an attempt to welcome people to North Conway be held against the property owner.

Mary Carey Seavey asked how long the mural had been there. Mr. Lick said more than a year and clarified that it was painted with ignorance of the ordinance that would apply to it. He pointed out that in September 2022, the building inspector stated this mural did not qualify as a sign under the Town's ordinance. She thanked Settlers Green for all they do for the Town, on behalf of her organization.

John Fiscene (ph) of North Conway said this will set a precedent for the hotels under construction to be able to install lit signs of the same size. Mr. Lick clarified the mural is not lit and reiterated the mural was painted with ignorance of the ordinance and signs of this size would not be permitted under the current Town ordinance.

Ellen Leonard of Center Conway said the mural is beautiful and there is no overt advertising. Settlers Green brings a lot of business to Conway and they should be treated fairly. She pointed out the mural at Weston's Farm Stand and said a mural is not a sign.

Luigi Bartolomeo noted a waiver request by Speedo (Steve Cheney), which was granted in spite of the failure to carry all of the criteria. He expressed his concern that this sets a dangerous precedent, if the Board approves applications where the applicant fails to meet all criteria. Mr. Colbath noted the Board was reprimanded by the court and instructed to follow the criteria and vote accordingly, as not doing so is costing the Town dollars spent on legal fees.

Mr. Colbath closed the public hearing.

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Mr. Colbath asked the staff if the building inspector's office told Settlers Green that murals were allowed. He noted murals aren't addressed in the zoning ordinance. The Master Plan committee will be addressing several issues, which include murals. He invited the public to attend the committee's next meeting.

Mr. Hebert clarified this situation is an equitable waiver issue and there are specific criteria that have to be found. It should not have passed, as the Board did not vote unanimously on the five criteria. He asked for a correction of the record, not a rehearing, as this was an error. The Board of Selectmen applied for a rehearing to give the applicant the chance to appear before the Board again, instead of just correcting the record. He does not believe the Board erred under this test to preserve what the equitable waiver is.

Mr. Pierce said he found the applicant's argument for the fifth criteria to be compelling, as this is money wasted. This should be incorporated into the cost of loss. The mural does not rise to the criteria of a sign, but is a public service.

Ms. Haynes agreed the mural is beautiful, but does not follow the recommendations.

Mr. O'Connor noted the Board already decided that the mural is a sign. Wording on a mural creates a sign. The equitable waiver is whether the mural should be allowed to remain.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that item 3 is not applicable.** **Motion carried unanimously.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5. **Mr. Chalmers made a motion, seconded by Mr. Hebert, due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.** Mr. Colbath asked for Board comment; there was none. **Motion carried 3-2, with Mr. Hebert and Mr. Colbath voting in the negative.**

**Mr. Chalmers made a motion, seconded by Mr. Hebert, that, based on the forgoing findings of fact, the equitable waiver from §190-20.F.(3) of the Town of Conway Zoning Ordinance to allow the existing “Welcome to North Conway” mural on Building M to remain be granted. Motion carried, with Ms. Haynes voting in the negative.**

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A public hearing was opened at 7:39 pm to consider a **VARIANCE** requested by **1675 WMH, LLC [FILE #23-39]** in regards to §190-20.D. of the Conway Zoning Ordinance **to allow the placement of a service area with related storage containers within the structure setback** at 1699 White Mountain Highway, North Conway (PID 235-85). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 4, 2023.

Ms. Haynes stepped down at this time. Mr. Colbath appointed Mr. Steiner as a voting member.

Mr. Colbath read the application and the applicable section of the ordinance.

Roger Williams of OVP Management appeared before the Board. He explained the request is to place a concrete pad in the setback, with three dumpsters and a fence. Mr. O'Connor clarified the dumpsters must be outside the setback and are considered structured use of the area. Mr. Williams explained there was a plan approved in July 2022, but his intent with this current plan is to preserve 600 feet of greenspace and avoid removal of established trees. Mr. O'Connor noted there is currently adequate greenspace.

Mr. Colbath asked for Board comment; there was none.

Mr. Colbath asked for public comment; there was none. Mr. Colbath closed public comment.

Mr. O'Connor said the previously approved proposal didn't require a variance and was an adequate proposal.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; Mr. Pierce noted this will set a precedent, if allowed. **Motion was defeated unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; there was none. **Motion was defeated unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that substantial justice is done.** Mr. Colbath asked for Board comment; there was none. **Motion was defeated unanimously.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the values of surrounding properties are not diminished.** Mr. Colbath asked for Board comment; there was none. **Motion carried 3-2, with Mr. Steiner and Mr. Chalmers voting in the negative.**

Mr. Colbath read item 5.a.i. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** Mr. Colbath asked for Board comment. Mr. Chalmers and Mr. Colbath noted there is an option that does not require the variance. **Motion was defeated unanimously.**

Mr. Colbath read item 5.a.ii. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the proposed use is a reasonable use.** Mr. Colbath asked for Board comment; there was none. **Motion was defeated, with Mr. Hebert voting in the affirmative.**

**Mr. Chalmers made a motion, seconded by Mr. Steiner, that based on i and ii above, literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.** Mr. Colbath asked for Board comment; there was none. **Motion was defeated unanimously.**

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that if the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.** Mr. Colbath asked for Board comment; there was none. **Motion was defeated unanimously.**

**Mr. Chalmers made a motion, seconded by Mr. Hebert, that based on the forgoing findings of fact, the variance from §190-20.D. of the Conway Zoning Ordinance to allow the placement of a service area with related storage containers within the structure setback be granted.** Mr. Colbath asked for Board comment; there was none. **Motion was defeated unanimously.**

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A public hearing was opened at 7:56 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **CONWAY POKER ROOM & CASINO, LLC** [FILE #23-40] in regards to §190, Permitted Use Table and §190-31, Definition of Commercial Amusement Facility of the Conway Zoning Ordinance **to appeal the administrative decision that a zoning permit for a restaurant/sports pub with indoor commercial amusements does not cover use as a casino/gambling facility** at 234 White Mountain Highway, Conway (PID 265-147). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 4, 2023.

Mr. Colbath read the application and the applicable section of the ordinance.

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John Cronin of Cronin Bisson & Zalinsky and Dick Anagnost appeared before the Board. Stefan Huba and Tiffany Eddy were in attendance. Mr. Cronin clarified this hearing is to address whether it was an error for the deputy manager, acting as an agent for the Board of Selectmen, to deny the charitable gaming portion of this use and to determine that charitable gaming is not allowed in the community.

He described the project as a 12,000 square foot space, with 4,000 square feet being dedicated to charitable gaming. He noted the New Hampshire legislature adopted a program that permits charitable gaming, with specific licensing requirements.

Mr. Cronin submitted a packet *Conway Poker Room and Casino Hearing Binder dated August 16, 2023*, to the Board [in file].

Mr. Cronin reviewed the history of this project. He pointed out that former Town representatives indicated this is a permitted use. The applicant believes the decision made by the deputy manager was wrong as a matter of fact and law. He noted the legislature has given communities the right to vote out keno and sportsbook, but not charitable gaming. The applicant moved forward with this project in good faith, and they believe the Board should reverse the decision of the deputy manager and find that the use is valid. He stated case law to support his claim that state law preempts contrary local ordinances and that this is an estoppel issue.

Mr. Colbath asked for Board comment.

Mr. Hebert asked what the main business will be. Mr. Anagnost said the main business is the sportsbar/restaurant; the charitable gaming is fundraising that the sportsbar/restaurant undertakes to help local charities. He clarified they do not have a gambling license; the charities go through the licensing process. Charitable gaming will only occur at the facility when a charitable organization has signed up for that time period. He listed the differences between a casino and this business, including how the proceeds are distributed.

Mr. Pierce asked for clarification regarding how the funds from the gaming and sportsbar/restaurant will be accounted for separately. Ms. Anagnost explained there will be an escrow account in which the funds from the charitable gaming will be deposited on a nightly basis.

Mr. Colbath noted that while Mr. DegliAngeli is the Town Engineer, his secondary duty is to fill in as the Assistant Town Manager primarily in the absence of the Town Manager. He oversees Planning, Building, and Zoning. At the time the most recent permit was issued, the decision fell to him, as there was not a town planner in place. Mr. DegliAngeli and the Town attorney are out of state and therefore not able to attend this meeting. The meeting date was mandated by the deadlines involved in the request for appeal.

Mr. Pierce asked if there are limits on betting. Mr. Anagnost said there is a maximum \$50 limit in the state of New Hampshire.

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Mr. Steiner asked if there will be bingo but Mr. Anagnost said the space is too small. Mr. Steiner asked if there will be security. Mr. Anagnost said there will be onsite security and they will work with the Conway Police Department. Mr. Steiner asked if there any problems with drug trafficking or prostitution at other locations. Mr. Anagnost said he is not aware of those problems in his locations or across the 14 locations of the Game Operators Association. They are highly regulated by the Lottery Commission.

Mr. Hebert asked if the applicant could meet the Town ordinance for indoor amusements with 10% of the activity falling under it. Mr. Cronin said per the discussion with the Planning Board, it would probably be over 10% if the 4,000 square foot space was taken under consideration as opposed to the 12,000 square foot space, so this is unclear. He noted his understanding that if it is over 10%, Planning Board approval is needed.

Mr. Hebert asked for clarification regarding the three-part test for the municipal estoppel to apply. Mr. Cronin outlined the elements of estoppel. He noted the responsibility of the building official to know the ordinance when issuing a building permit and stated that by issuing a building permit, there is an intent that construction will commence. Over half a million dollars has been invested in this property, which has been sitting idle for a year, which is a serious economic injury. Mr. Hebert asked if a Town employee making a mistake would trigger estoppel. Mr. Cronin said if the error had been admitted before money was spent on the project, it would be a different matter. In this case, he believes the standard of estoppel has been met.

Mr. Anagnost noted they approached the Board of Selectmen in 2021 with a request to put keno and sportsbook on the ballot as ancillary uses to charitable gaming. So, the Town was aware of their intent to operate a charitable gaming facility. Mr. Hebert noted the first permit issued was for a sportsbar and amusement. Mr. Cronin clarified that a Town official explained in an email that charitable gaming was not included on the first permit, as they were not constructing a structure for gaming. He noted it was included on the second permit.

Mr. O'Connor explained that if a use is not listed on the Permitted Use Table, it is not allowed per zoning ordinances. The Town has the right to regulate these uses. He noted the Board should not feel pressured to make any decision to allow a use until the Town has had time to deliberate.

Mr. Cronin replied the state has a comprehensive scheme for charitable gaming. State law is clear that towns must provide a place for legal uses, even ones they may not like. He noted the court says charitable gaming is allowed in every zone.

Mr. Pierce asked Mr. O'Connor to address the state regulations overriding local regulations. Mr. O'Connor said while the state regulations do take precedent, local ordinances can control the use. As charitable gaming is a newer use in the state statutes, the Town has a reasonable timeline to decide how to approach it in their ordinances.

Mr. O'Connor noted the first permit and any associated approvals have expired. The second permit was issued, then revoked, as proper procedure was not followed. A zoning permit is required when Planning Board review does not take place. It was not submitted at the time the building permit was issued. Mr. DegliAngeli reviewed and denied the zoning permit as the acting Town Planner,



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once the error was recognized. He reiterated the issue under discussion is whether charitable gaming falls under the definition of commercial amusement and does the administrative decision permit have grounds to be overturned. Staff stands behind the decision that was made, that the ordinance as written does not allow charitable gaming.

Mr. Colbath asked for public comment.

Elizabeth Irwin asked where the other 55% of the profits will go. She expressed concern about the traffic. She believes it was deceptive to not state that the application was for gaming. Mr. Cronin said the original application did mention charitable gaming. Mr. Anagnost said the operator receives 55% of the profits, but 100% of the expenses and risk are borne by the operator.

Mark Hounsell spoke in support of the decision made by Mr. DegliAngeli. He believes this operation is a casino. He believes this matter is about self-determination: whether a Town in New Hampshire can determine its own future. He noted the charities will only get 35% of the proceeds as opposed to 100% of funds raised by other approved charitable fundraising efforts. He cited statistics regarding the amounts earned by Mr. Anagnost's casinos.

Julie Vannah of Center Conway said this is gambling. She listed the problems gambling causes and asked who will be responsible for keeping the town safe and dealing with these issues.

The Chair called for a five-minute break.

John Fiscene (ph) of North Conway said there are not enough local workers for the casino as there is not affordable housing available. He said people will be bused in, which will put stress on local services.

Janice Crawford, Conway property owner, said as the former Chamber of Commerce director, she saw this business as providing opportunity for the Town. She said people are more willing to participate in a fundraising activity instead of donating to a charity directly. She praised one of Mr. Anagnost's operations in Manchester that she visited. She said misinformation is being spread in Town and that non-profit organizations need innovative ways to raise funds.

Quddus Snyder of Eaton said his business supports multiple charities and a casino is not needed to achieve this. He said the casino will corrode the community over time and the community does not want the casino in the Town. He reminded the Board they have the tools and the courage to defeat this important issue.

Mark Hounsell noted this project is also owned by a company called P2E. He cited the amount of money the charitable gaming organization made on a fundraising activity Ms. Crawford referred to.

Janine Bean of Conway clarified the issue that was before the Board. She said although she doesn't like gambling, the Town needs to fight the casino at a different forum.

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Ryan Shepard of Conway commended the representatives of this project for appearing before the Town. He reiterated that the issue was whether the Board was going to uphold Mr. DegliAngeli's decision. He expressed his support for Mr. DegliAngeli and the quality of the work he does, and urged the Board to uphold Mr. DegliAngeli's decision.

Mary Carey Seavey of Conway said she runs a non-profit where all operating funds come from fundraising. She asked what the cost is for a non-profit to take part in a charitable gaming function. She asked where the non-profits organizations are coming from. She expressed her support for Mr. DegliAngeli.

Tiffany Eddy said she has worked with the applicant for years to help raise the visibility of the non-profits and maximize their fundraising efforts during their 10-day charity run. She listed local organizations that have benefitted from charitable gaming in Mr. Anagnost's facilities. She said Mr. Anagnost and his group have been upfront about their intentions and how the property would be used. She said many non-profits rely on charitable gaming to survive.

Allison Provencher of Conway noted the applicant and his group do not live in North Conway. She said she does not want this business in town and that it belongs in a city.

Bob Nelson of Conway said it is for the Board to decide whether Mr. DegliAngeli's decision should be upheld and urged them to take their time. He said it is difficult to raise money in Conway. He believes this business will be good for the community. If charitable gaming is not permitted in Conway, the Town will have to examine how funds are currently being raised, as this falls under the definition of charitable gaming.

Julie Vannah said the Town should look at where they are spending their money. She says the community has been deceived regarding this project and she does not want it in Conway.

Bob Drinkhall said the discussion this evening should have no bearing on the Board's decision, which should be if this is a permitted use. He believes this is not a permitted use as it is not mentioned in the Town regulations.

Daymond Steer of the Conway Daily Sun asked what kind of gaming will occur. He asked where amusement is defined in the ordinances. He asked for the applicant for their definition of amusement.

Margaret DiPace of Conway asked how much of the proceeds will come to North Conway.

Norman Tregenza of Center Conway asked if the Board overrules Mr. DegliAngeli's decision, what incentive does he have in the future to make good decisions. He said Conway's charter does not permit this use and Mr. DegliAngeli's decision should not be overruled.

Janice Crawford shared facts regarding the number of non-profits in Carroll County. She explained what she believed the cost to the charity is to participate in a charitable gaming event at this facility.

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Joe Kenney, Executive Councilor District One, said a panel has been formed by the legislature to discuss the future of charitable gaming in the state. He said there is an exclusionary ability for someone who is addicted to gambling to become part of a registry so that they cannot gamble. He said very few complaints have come before the state regarding addictive gambling or charitable gaming. He noted the charities that have benefitted from charitable gaming. He said it is the role of the legislature to reach a balance regarding this issue. He cited statistics regarding how the state has benefitted from the New Hampshire Lottery. He doesn't like the animosity surrounding this issue and hopes it can be worked out. He said some aspects of charitable gaming are local, but towns can make recommendations to the commission. He said professionals need to run gaming operations to gain more benefit for the charities.

Mark Hounsell said casinos are more appropriate in the more populated areas of southern New Hampshire. Towns have a right to determine their own future.

Bob Nelson of Conway said that while this type of business will stress the Town infrastructure and the Town will see no financial benefit, other activities are the same, such as tubing on the Saco River and bus trips to Settlers Green. He believes there is a law that says the Town cannot receive payment from this organization; it goes to the state. He urged local residents to check their facts before expressing strong opinions.

Eliza Grant of Conway noted that one of the New Hampshire Lottery rules for charitable gaming facilities is that they have to state that they are complying with local zoning. This indicates that there is local control and the state acknowledges this. She believes this is not permitted based on current zoning and the Permitted Use Table.

Daymond Steer of the Conway Daily Sun asked if the Town staff has taken a position on the municipal estoppel issue. He asked if the facility would be paying property taxes.

Bill Marvel said Mr. DegliAngeli is correct.

Mr. Colbath closed public comment at 9:51 pm

Mr. Anagnost said the cost to the charity is the time spent filling out the license application. He said per the New Hampshire Lottery rules, they have to give first preference to local charities, then can service other New Hampshire charities. He said the 55/35/10 split is mandated by the legislature. The Town does not get a share of the proceeds; 100% goes into the education fund. They will offer table games and HHR machines.

Mr. Cronin said the applicant is not deceitful. There is no factual basis for this claim. It was properly disclosed that the proposed use was for charitable gaming.

Mr. Hebert clarified the role of the Board regarding weighing requests with the Town ordinances. He said there is not enough information to make a decision at this point, as the backup information was not provided until this meeting. He would like to consult with Town counsel and get answers to the questions this material has brought up.

**Mr. Hebert made a motion, seconded by Mr. Steiner, to continue the application for Conway Poker Room & Casino, LLC until September 20, 2023, at 7:05 pm. Motion carried unanimously.**

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Chalmers made a motion, seconded by Mr. Hebert, to approve the minutes of July 19, 2023, as written. Motion carried unanimously.**

Mr. Colbath adjourned the meeting.

Meeting adjourned at 10:00 pm.

Respectfully submitted,

Beth Hanggeli  
Recording Secretary