

CONWAY PLANNING BOARD

MINUTES

DECEMBER 3, 1998

A meeting of the Conway Planning Board was held on Thursday, December 3, 1998, beginning at 7:07 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chairman, Catherine Woodall; Vice Chairman, Charlene Browne; Robert deFeyter; David Fitch; Sheila Duane; Arthur Bergmann; Town Planner, Dawn Emerson; and Recording Secretary, Holly Meserve.

**REVIEW AND ACCEPTANCE OF MINUTES**

Mr. deFeyter made a motion, seconded by Mr. Fitch, to table the Minutes of November 18, 1998 and November 19, 1998 until December 17, 1998. Motion unanimously carried.

**HYDROKINETIC EFX LTD - FULL SITE PLAN REVIEW CONTINUED (MAP 61, PARCEL 30-1) FILE #FR98-15**

Edgar Allen of Thaddeus Thorne Surveys; and David Couture, applicant, appeared before the Board. Mr. Allen reviewed the changes to the plans. Mr. deFeyter stated that it should just be labeled "customer parking" on the back parking lot and delete the word "overflow". Mr. deFeyter asked if there is lighting on the caboose. Mr. Allen answered in the negative. Mr. deFeyter asked about the access to the caboose. Mr. Couture stated that there will be a set of stairs. Mr. deFeyter stated that the stairs need to be shown on the plans. Mr. deFeyter stated that the applicant also needs to provide a handicap access. Mr. Couture stated that if someone cannot get into the caboose they can go into the car wash building. Mr. deFeyter stated that you will have to certify on the plans that you meet the ADA regulations.

Ms. Woodall asked if there will be no lighting on the caboose at all. Mr. Couture stated that there will be no lighting on the caboose as there is a street light just above the caboose. Mr. Bergmann asked if the stairs into the caboose will effect one of the parking spaces. Mr. Couture stated that they will remove the parking space. Mr. Bergmann stated that the plans do not show the building behind the car wash. Ms. Browne joined the meeting at this time. Mr. Couture stated that it is an oil tank.

Mr. deFeyter asked if a pedestrian walk way should be added from the back parking lot to the caboose. Mr. Couture stated that it has never been a problem. Mr. Fitch stated that he does not see a need for the walk way. Ms. Duane stated that she did not see the need for the walk way. Mr. Allen stated that not many people park back there. Ms. Emerson asked Mr. Bergmann if he wanted the applicant to replace the parking space that is being removed to accommodate the stairs. Mr. Bergmann stated that it should be relocated.

Ms. Emerson stated that the applicant has already purchased the trees and asked if they can be planted at this time. Mr. Couture stated that Greener Image told him that he could plant the trees now and cover them with peat moss. Ms. Browne stated that the applicant shouldn't wait too long to plant the trees. Mr. deFeyter stated that the applicant should be aware that they must comply with the State Regulations as well. Mr. Couture stated that they have been approved by the State for car sales conditionally upon the Town approval. Ms. Woodall asked for public comment; there was none.

Mr. Bergmann made a motion, seconded by Ms. Duane, to conditionally approve the full site plan for Hydrokinetic EFX LTD (Map 60, Parcel 30-1) conditionally upon relocating one (1) parking space by the caboose on the plans; show the stairs into the caboose on the plans; remove the word "overflow" from the back parking area; the northern boundary needs to show a ten (10) foot setback on the plans; and this conditional approval will expire on December 17, 1998. Motion unanimously carried.

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**TOM & C REALTY, LLC - CONCURRENT SUBDIVISION AND SITE PLAN REVIEW (MAP 12, PARCEL 33C) FILE #FR98-16 AND #S98-18**

Tom Burke and Curt Burke, applicants; Edgar Allen of Thaddeus Thorne Surveys; Tom Dewhurst, Attorney for the applicant; and Town Counsel, Peter Hastings, appeared before the Board. Mr. Dewhurst stated that the engineering plans have been reviewed and approved by the Town Engineer. Ms. Emerson stated that this is a new application and needs to be determined complete or incomplete. Ms. Emerson stated that the Town Engineer, Paul DegliAngeli, has signed the plans and has submitted a memorandum of approval to the Board. Ms. Emerson stated that we do have a bond in place which has been approved by the Town. Ms. Emerson stated that we have an amended State driveway permit.

Ms. Emerson stated that the right-of-way has been relocated and approved by Mr. DegliAngeli. Ms. Emerson stated that it now needs to go before the Board of Selectmen for their approval. Ms. Woodall asked Mr. Hastings why under Article 147-17(4), the issue in regard to the right-of-way in the setback is not a Zoning Board of Adjustment (ZBA) issue. Mr. Hastings stated that it is not a structure. Mr. deFeyter stated that under definition it is suppose to be a right angle. Mr. Hastings stated that that requirement is part of the Site Plan Review regulations which the Board can waiver. Mr. Dewhurst stated that we have submitted a waiver for that.

Ms. Duane made a motion, seconded by Mr. Fitch, to accept the application of Tom & C Realty, LLC for a Concurrent Subdivision and Site Plan Review. Motion unanimously carried. Mr. Bergmann stated that this application was before us a while ago, but the conditional approval expired. Mr. Bergmann asked if the conditions from the last application have been satisfied. Ms. Emerson stated that the only item that needed to be met was that the Town and Roger Drew needed to agree to the relocation of the right-of-way. Ms. Emerson stated that the Board of Selectmen would not approve it until Mr. DegliAngeli approved it. Ms. Emerson stated that there were some design problems with the first application. Ms. Emerson stated that Mr. DegliAngeli has approved the new drawings. Ms. Emerson stated that tentatively the Board of Selectmen will discuss this on Tuesday. Mr. Bergmann asked if Mr. Drew has approved the new location and design of the right-o-way. Mr. Dewhurst stated that they have drafted an agreement this afternoon subject to his counsels review.

Mr. deFeyter stated that the purpose of having a setback is to provide for future growth. Mr. Hastings stated not necessarily and that there are many reasons for setbacks. Mr. deFeyter stated that none of us envisioned Route 16 expanding as much as it is. Mr. deFeyter asked if the East Conway Road expanded and Roger Drew does have a right to access his land, what would happen. Mr. Hastings stated that the State will mandate a different driveway. Ms. Browne asked who pays for it. Mr. Hastings answered whoever condemns it. Mr. Hastings stated that it is a State road, therefore, the State would have to pay for it. Ms. Browne stated that we allow the a road in the setback and the State will have to pay for it. Mr. Hastings stated that you can speculate, but no one knows what will happen.

Ms. Emerson stated that she would like to remind the Board that one of the reasons for the setback was so frontage roads could be created. Ms. Woodall stated that we discussed that and we were told that we couldn't tell them where they could put there driveway. Ms. Woodall stated that four (4) lots can share a driveway. Ms. Emerson stated that former Planning Board member Cindy Briggs and Alternate, Robert Barriault both stated at the public haring that the reasons for the setback was for access roads. Mr. Hastings stated that if the State wants to expand you cannot look at something in the ordinance that is perspective.

Mr. deFeyter asked why the road cannot be moved further back. Mr. Tom Burke stated that the proposed location is the least steepest location. Mr. Tom Burke stated that this is an existing condition as the road was already started before the law was changed. Mr. Dewhurst stated that the waiver requirements lets the Board look at the uniqueness of the land. Ms. Woodall stated that the word "driveway" needs to be changed to "right-of-way". Mr. Dewhurst stated that the deed says it is a right-of-way. Ms. Browne asked if there was a plan showing existing grading. Mr. Dewhurst referred to pages 3 and 4 of the plan set. The Board reviewed the grading plans. Ms. Emerson stated that Ms. Woodall did speak to Mr. DegliAngeli

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today in regard to the right-of-way. Ms. Woodall stated that Mr. DegliAngeli stated that if he was to design the right-of-way he would have had it in the same proposed location. Ms. Duane stated that the road is there. Ms. Browne stated that it is not the start of a road. Mr. Dewhurst stated that it was on the original plans that were submitted to the State. Mr. Dewhurst stated that that is where the road was located and we have discussed this before during the last application and the waiver was approved. Ms. Woodall stated that this is a new application. Mr. Dewhurst agreed.

Mr. deFeyter asked Roger Drew how he felt about the proposed right-of-way. Mr. Drew stated that the location and design is good as any, but he wants to discuss the agreement with his attorney. Mr. Dewhurst stated that Mr. Drew did speak to the engineer. Mr. Drew agreed. Mr. Dewhurst asked Mr. Drew if he was happy with the location. Mr. Drew stated that he prefers the old location, but this one is fine. Ms. Woodall read the waiver request for Article 123-30.A(2) & (4). Mr. deFeyter asked if the Board could approve the waiver conditionally upon Roger Drew and the Town signing the agreement. Mr. Hastings stated that he thinks you would want that as a condition.

Mr. Drew asked what is the width of the existing right-of-way. Mr. Hastings stated that it has never been determined. Ms. Woodall read Article 123-30. Mr. Hastings stated that the Board should not be granting a waiver under Article 123-30.A(2). Mr. Bergmann stated that the waiver request needs to be amended. Mr. Dewhurst corrected the waiver by removing Article 123-30.A(2) from the request. Ms. Woodall read the reasons to grant a waiver. Ms. Duane made a motion, seconded by Mr. Fitch, to approve the waiver request for Article 123-30.A(4). Mr. deFeyter stated that he thought there was going to be a condition on the waiver. Mr. Hastings stated that it should be a condition of approval. The motion carried with Ms. Woodall voting in the negative and Ms. Browne and Mr. Bergmann abstained from voting.

Mr. Fitch asked why Ms. Browne and Mr. Bergmann abstained. Ms. Browne stated that she understands the situation between the Burkes and Roger Drew and she knows the law. Ms. Browne stated that it is not appropriate to be in the setback and she does not feel it is fully justified why the road cannot be behind the setback. Mr. deFeyter stated that he changed his vote to approve the waiver because a lot two doors down does not have a fifty (50) foot setback which is not consistent. Mr. deFeyter stated that he is uncomfortable with it, but he will vote in favor of the waiver. Mr. Bergmann stated that the fifty (50) foot setback was added before these two (2) lots were sold.

Ms. Woodall stated that the plans should state that it is the Town's right-of-way as well as Mr. Drew's. Mr. Hastings stated that the right-of-way goes to Mr. Drew's land and then the Town has a right-of-way over Mr. Drew's land. Ms. Duane stated that the deed refers to it as a right-of-way. Mr. deFeyter stated that it would just clarify it if it was on the plans. Mr. Allen stated that he thought the Town was relinquishing their rights to the right-of-way. Mr. Hastings stated that that is under consideration. Ms. Woodall asked the applicants if they had an excavation permit. Mr. Tom Burke stated that they had a permit to remove loam. Ms. Woodall stated that the permit would have to be rescinded.

Ms. Emerson stated that the loam has already been removed. Mr. Dewhurst stated that the loam is 100% removed and piled. Mr. Hastings stated that the Board can make it a condition to surrender the permit. Mr. Curt Burke asked why they needed to rescind the permit. Mr. Dewhurst stated that they don't. Ms. Duane asked what rescinding the permit will accomplish. Mr. Dewhurst stated that they cannot do any work under the permit any more. Mr. Curt Burke stated that the job is complete. Mr. Hastings stated that the applicant should not be operating under the excavation permit and when the applicant receives approval they cannot do any more work under the permit. Mr. Hastings stated that they can move around what they have piled on site and they can remove it, but they cannot remove any more.

Ms. Woodall asked about the parking calculations. Mr. deFeyter asked if they needed a waiver for the gravel parking lot. Ms. Emerson stated that it is a parking area and/or for storage. Mr. deFeyter stated that it is identified for parking. Mr. Curt Burke stated that it is for equipment storage and they are not going to pave an area that is going to have bull dozers going over it. Mr. deFeyter stated that they are required to have eight (8) parking spaces. Mr. Allen stated that there will be heavy trucks and that is why they wanted it to remain gravel. Ms. Browne stated that she doesn't see any problem with it, but we do need a waiver

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request. Ms. Woodall read a waiver request for Article 123-23.B and the requirements to grant a waiver. Mr. Bergmann stated that the waiver request should define the parking area and the word "back" should be added to parking lot. Ms. Duane made a motion, seconded by Mr. deFeyter, to approve the waiver request for Article 123-23.B. for the back parking lot only. Motion unanimously carried.

Mr. deFeyter discussed lighting and stated that the applicant needs to make sure that all light is contained on the property. Ms. Woodall asked for public comment on the waiver; there was none. Ms. Woodall reviewed the green space and landscaping requirements. Ms. Woodall asked for public comment on the entire application; there was none. Mr. Bergmann asked what about the subdivision. Ms. Emerson stated that they meet the lot size requirements and they have obtained State approval.

Mr. Bergmann made a motion, seconded by Ms. Duane, to conditionally approve the Concurrent Subdivision and Site Plan for Tom & C Realty, LLC, conditionally upon the Town of Conway Board of Selectmen and Roger Drew releasing the original right-of-way to the proposed relocated right-of-way; the right-of-way must be constructed per the plan specifications; the old section of the right-of-way to be relocated will be abandoned and closed; add Town of Conway right-of-way to the plans; change the word "access" to the word "right-of-way" to the plans; and the applicant cannot continue to operate under the Excavation Permit.

Ms. Emerson asked about an expiration date. Mr. Dewhurst asked why the conditional approval is not good for three (3) years. Ms. Woodall stated that the Board has been putting time frames on conditional approvals. Ms. Emerson stated that the Board's policy is three (3) years and it hasn't been changed yet. Ms. Emerson stated that there has been no public hearing. Mr. Tom Burke stated that he would like a three year approval as there could be a legal problem. Mr. Tom Burke stated that we were not granted an extension and he would like a longer approval because there could be a legal problem or pending court time. Ms. Woodall stated that the applicant can submit a request for an extension. Mr. Dewhurst stated that it was denied the first time around. Mr. Bergmann stated that the applicant did not come before the Board. Ms. Emerson stated that she told the applicant that they did not need to be before the Board as this is a procedural issue. Ms. Emerson stated that the Board has always granted extensions in the past.

Mr. Hastings stated that the applicant cannot do anything on the site until they are granted final approval. Mr. deFeyter read Article 123-17. Ms. Emerson stated that the applicant cannot do any work until the conditions have been met. Ms. Woodall stated that if the applicant comes back in ninety (90) days and they are going to court then the Board will extend it. Mr. Dewhurst stated that he would like to know when the policy changed. Mr. deFeyter stated that there was a public hearing. Ms. Emerson stated that there was no public hearing. Mr. deFeyter stated that a conditional approval can only be granted for minor issues. Mr. Bergmann stated that this is not a minor issue. Ms. Emerson read Article 123-17 further and stated that the conditions could not be discretionary. Ms. Emerson stated that either she has a signature from the Town and Roger Drew or she doesn't; there is no discretion there. Mr. Hastings stated that within a year there is going to be an agreement or they are going to be in court.

Mr. Bergmann stated that they will know in 30 days. Mr. Hastings disagreed and stated that the Board should give them nine (9) months and if they are in court to resolve the issue the Board should grant an extension to a time frame consistent with Court. Mr. Hastings stated that the Town is satisfied, but Mr. Drew is in a different position. Mr. Hastings stated that the Board should grant them nine (9) months and if in court they will come back before the Board. Mr. Hastings stated that in an event they are in court the Board will grant an extension of time, but if not in court and it is not resolved then the Board can deny the application.

Ms. Emerson asked as a point of clarification if the applicant is in Court that doesn't mean the Board cannot deny the extension. Mr. Hastings stated that it should be a part of the condition that the extension will be approved. Mr. Bergmann made a motion to amend the motion, seconded by Ms. Duane, to add an expiration date of August 19, 1999, however, if this application is in court and not resolved by the above date, the Planning Board will grant an extension to a time frame that is consistent with the court. The Motion to amend unanimously carried. The motion as amended unanimously carried.

**Adopted: As written - January 21, 1999**

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The Board reviewed the attached amendments. Ms. Woodall asked for public comment; Conrad Briggs of the Conservation Commission stated that Article 147-11.1.1.B(2)(a) should be amended to include the word "new". Mr. Briggs stated that this should apply to any application that has never been applied for or either held permits through the Town or the State. Mark Kern stated that the EPA's intent is not to modify on-going projects, but to make new applications follow these regulations.

Chester Lucy stated that the State Shoreline Protection act should be listed and not referenced. Ms. Emerson stated that this small section is a part of the entire zoning ordinance which lists the State Shoreline Protection. Mr. Lucy stated that this does not address road run-off. Mr. deFeyter referred to page 2, item C. Mr. Lucy asked about drainage. Ms. Browne stated that it should be addressed next year. Mr. Pinkham discussed State requirements for controlling.

Mr. Hill stated that he disagreed with the wetland definition. Steve Morrill stated that you need to define the wetlands before you write an ordinance. Mr. Bergmann left at this time. The Board agreed that they would have a worksession to discuss the suggestions made by both the public and the Board.

Ms. Browne made a motion, seconded by Ms. Duane, to continue the public hearing on the Wetland District until December 17, 1998. Motion unanimously carried. The Board agreed to a workshop on December 10, 1998.

**PUBLIC HEARING - SPECIAL HIGHWAY CORRIDOR DISTRICT**

Ms. Woodall asked for public comment; Bayard Kennett discussed development limitations between the buffer boundary and the overlay boundary. Mr. Kennett also addressed the parking and building limitations. The Board agreed that they would have a worksession to discuss suggestions made by both the public and the Board.

Mr. deFeyter made a motion, seconded by Mr. Fitch, to continue the public hearing on the Special Highway Corridor District until December 17, 1998. Motion unanimously carried.

**OTHER BUSINESS**

Roman Catholic Bishop of Manchester - Conceptual Review: Marty Risley appeared before the Board and gave a brief overview of a site plan proposed for the former Wild Things site.

Clementine Realty Trust - Plan Signing: The Board agreed all the conditions had been met and signed the plans.

Discussion of amendment to 1999 CIP update, restroom section: Ms. Emerson submitted a memo to the Board from Robert Barriault. After a brief review, Ms. Browne made a motion, seconded by Mr. deFeyter, that the Planning Board feels that the cost of the proposed should be determined before the voters vote for approval and to upgrade this to necessary. Motion unanimously carried.

Memorial Hospital - Plan Signing: The Board agreed to sign the plans based upon advise from Town Counsel even though the approval had expired.

Meeting adjourned at 12:00 p.m.

Respectfully Submitted,

Holly L. Meserve  
Recording Secretary