

**CONWAY PLANNING BOARD**

**MINUTES**

**SEPTEMBER 26, 2002**

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A meeting of the Conway Planning Board was held on Thursday, September 26, 2002, beginning at 7:00 p.m. Those present were: Chair, Sheila Duane; Selectmen's Representative, Dick O'Brien; Vice Chair, Robert Drinkhall; Brian Glynn; David Robinson; Alternate, Cesare Macchionni; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

**APPOINTMENT OF ALTERNATE**

Ms. Duane appointed Mr. Macchionni as a voting member.

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Drinkhall made a motion, seconded by Mr. Glynn, to approve the Minutes of September 12, 2002 as written. Motion carried with Mr. O'Brien abstaining from voting.**

**THOMAS FADDEN AND VICKI GRAVES – 4-LOT SUBDIVISION  
CONTINUED (PID 255-5.1) FILE #S02-08**

Edgar Allen of Thaddeus Thorne Surveys and Peter Malia, Town Attorney, appeared before the Board. Mr. Allen stated that there was a question regarding the validity of the State driveway permit. Mr. Allen stated that he has received a letter from NHDOT stating that the driveway permit is valid.

Mr. Malia stated that the right-of-way situation has been discussed for the past couple of months. Mr. Malia stated if the development meets all applicable Town codes then the development should be approved whether or not there is a private deed restriction. Mr. Malia stated if the application is approved it should be conditional upon a right-of-way relocation agreement.

Paul Mullen, Attorney for Lee Deschambeault, and Bob Zimmerman, Attorney for the developer, appeared before the Board. Mr. Mullen stated that he responded to the September 9, 2002 letter from Randy Talon of the NHDOT and Mr. Talon has turned this situation over to the Attorney General's Office. Mr. Mullen stated that any movement of the right-of-way would have to be agreeable to all parties.

Mr. Mullen stated that it is still his position that the driveway permit is invalid. Mr. Mullen stated that the movement of the easement would have to be put before the Board of Selectmen. Ms. Duane stated that we had a similar situation with the Roger Drew's right-of-way over the Burke property. Ms. Duane stated that we went around and around

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and it was finally worked out. Ms. Duane stated that if the plans are conditionally approved they cannot change and if there were a change, the applicant would have to reapply to the Planning Board. Ms. Duane stated that she would like to see the application continued. Mr. Mullen stated that continuing the application would make sense. Mr. Mullen stated that he would like to see that happen in order to see this situation resolved before an approval is granted.

Mr. Zimmerman stated that the applicants have made an application that is consistent with the use of the road, but it was turned down because access was unstable and it was requested that we move it. Mr. Zimmerman stated that the applicant did move the access to a better location. Mr. Zimmerman stated that the applicants are requesting a conditional approval.

Ms. Duane stated that the easement is to be agreed upon by all parties. Ms. Duane stated if the right-of-way has to be changed on the plans, it would have to be at the applicant's expense. Mr. Zimmerman stated that the applicant is willing to take that chance. Mr. Malia stated that it is risky for the applicant to go forward, but if they meet the requirements an approval should be granted conditionally upon the Town and the applicant coming to an agreement.

Nancy Hayes stated that she has interest in the right-of-way to a point as a portion of the right-of-way goes over her property. Ms. Hayes stated that the applicant has never asked about moving this easement and she thought it was premature because it hadn't gone to the Board of Selectmen. Ms. Hayes stated that she thinks continuing the application would be best.

Mr. Mullen referred to Article 131-14.C. and stated that the Board needs to make an informed decision and the State as a condition states that the existing right-of-way must be blocked. Mr. Mullen stated that it is being done without all parties being asked permission. Mr. Mullen stated that the road subdivision couldn't be depicted upon because it is not agreed upon the road. Mr. Mullen requested that the application be denied or continued.

Ms. Duane stated that the easement for logging would now go over a residential subdivision and possibly a paved Town road. Ms. Duane stated that Town roads are posted in the spring. Mr. Zimmerman stated that the easement relative to the Hayes property would not change. Mr. Zimmerman stated if it is allowed and the conditions are met they have a place to go if there rights are impaired, but that is not in this forum.

Ms. Hayes stated that they are not necessarily against the project, but there are two other existing driveway permits that access to a better portion of this land. Mr. Robinson asked if the Town has any other access to our property. Mr. Irving answered in the negative. Mr. Malia stated that Mr. Deschambeault has rights just like the Town does, the only condition is to block it, and they cannot do that until Mr. Deschambeault is satisfied. Mr. Mullen stated that this will impede his rights and it should be resolved prior to an approval. Mr. Drinkhall stated if the applicant wants a conditional approval they know

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what they are getting themselves into. Ms. Duane asked for further public comment; there was none.

Mr. Robinson stated that the Town seems to be satisfied with the condition, but he doesn't understand what it is Mr. Deschambeault needs. Ms. Duane stated that Mr. Deschambeault has an easement over this land and part of this approval is that the easement has to be moved. Mr. Malia stated that the applicant is working on an agreement that will satisfy Mr. Deschambeault. Mr. Zimmerman stated that they have been working it out, but there are still questions of a few details, which don't belong, in the public record.

**Mr. Drinkhall made a motion, seconded by Mr. Glynn, to conditionally approve the 4-lot subdivision for Thomas Fadden and Vicki Graves conditionally upon the submission of final and Mylar plans; a mutual agreement between the Conway Board of Selectmen and the applicant regarding the relocation of the Town's right-of-way; a performance guarantee for 100% of all site improvements; and this conditional approval will expire in 90 days [October 15, 2002].**

Mr. Mullen stated that there is no approved road at this time, it is set forth, but not agreed upon and the permit is in question. Mr. Irving stated that the Town has received letters from the State stating that the driveway permit is valid. Mr. Mullen stated that Mr. Talon has forwarded this situation to the Attorney General's office and you don't do that if there is a question. Mr. Malia stated that the last correspondence we have from the State is that it is a valid driveway permit. **Motion carried with Mr. O'Brien abstaining from voting.**

**Mr. Drinkhall made a motion, seconded by Mr. Glynn, that when the conditions have been met, the plans can be signed in-session. Motion unanimously carried.**

**FRED AND KAREN JOHNSON – BOUNDARY LINE ADJUSTMENT (PID 260-34&36) FILE #S02-10**

Edgar Allen of Thaddeus Thorne Surveys appeared before the Board and explained the application. Mr. Allen stated that they are giving one lot with no road frontage fifty-feet of road frontage. **Mr. O'Brien made a motion, seconded by Mr. Glynn, to accept the application of Fred and Karen Johnson for a Subdivision/Boundary Line Adjustment Review as complete. Motion unanimously carried.**

Ms. Duane asked for public comments; Mary Brooks asked what is the distance that a driveway has to be from her property line. Ms. Duane answered fifteen feet. Mr. Irving stated that Ms. Brooks' driveway is closer to her property line than he could be to his. Ms. Brooks stated that her driveway is paved. Mr. Irving stated that there is not a requirement for residential driveways to be paved.

Mr. Allen stated that there are no plans at this time to move his present access to the property. Mr. Allen stated that all he wants is his back lot to have road frontage. Mary

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Honeycutt stated that they currently a right-of-way over her property and asked why they need another access. Mr. Irving stated that they would need a driveway permit to add another or move their access.

Nancy O'Brien asked if there is enough land to subdivide it at a later date. Mr. Irving answered in the affirmative and stated that the fifty-foot access would be considered a driveway at this time as it only accesses one home. Ms. Duane stated that there is no road proposed at this time.

Ms. Duane read the requirements to grant waivers. Ms. Duane read a waiver request for Articles 131-24.C. & 131-25.C.; 131-24.E. & 131-25.E.; and 131-24.J., K., L., N., O., P., T., U., V. & W. **Mr. Drinkhall made a motion, seconded by Mr. Robinson, to grant the waiver requests for Articles 131-24.C. & 131-25.C.; 131-24.E. & 131-25.E.; and 131-24.J., K., L., N., O., P., T., U., V. & W. Motion unanimously carried.**

**Mr. Glynn made a motion, seconded by Mr. Drinkhall, to conditionally approve the Boundary Line Adjustment for Fred and Karen Johnson conditionally upon adding the granted waivers to the plans; and when the conditions have been met, the plans can be signed out-of-session. Motion unanimously carried.**

**THOMAS AND LAURIE MACK KUGEL/CAFÉ NOCHE – FULL SITE PLAN REVIEW (PID 276-292) FILE #FR02-11**

Thomas Kugel, owner, and Douglas Burnell of H.E. Bergeron Civil Engineers appeared before the Board. **Mr. Glynn made a motion, seconded by Mr. Drinkhall, to accept the application of Thomas and Laurie Mack Kugel for a full site plan review as complete. Motion unanimously carried.**

Mr. Burnell explained the project. Mr. Irving gave an overview of the Zoning Board of Adjustment approval and condition. Mr. Robinson asked if the fence between Café Noche and Cumberland Farms is going away. Mr. Kugel answered in the affirmative and stated that they might need to lower the fence.

Ms. Duane read the waiver requests for Articles 123-20.F., 131-67.C.8.(b)&(f), 123-20.G., 123-21.I., 123-21.A., 123-22.B. & C., 123-25., 123-27., 123-20.F., 131-67.C.8.(a), 123-29.A.2., A3., & A.5., 123-29.B.; and 123-35.D.8,9,&10. **Mr. O'Brien made a motion, seconded by Mr. Glynn, to grant the waiver requests for Articles 123-20.F., 131-67.C.8.(b)&(f), 123-20.G., 123-21.I., 123-21.A., 123-22.B. & C., 123-25., 123-27., 123-20.F., 131-67.C.8.(a), 123-29.A.2., A3., & A.5., 123-29.B.; and 123-35.D.8,9,&10. Motion unanimously carried.**

Ms. Duane read the waiver request for Article 123-32. Ms. Duane asked what is the issue with the dumpster. Mr. Irving stated that there are several reasons for screening a dumpster ; visual barrier from site, keeping animals out; and to contain any debris that may get spilled. After a brief discussion, Mr. Kugel withdrew the waiver request for Article 123-32.

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**Mr. Glynn made a motion, seconded by Mr. Drinkhall, to conditionally approve the Full Site Plan Review for Thomas and Laurie Mack Kugel conditionally upon, for Phase I, adding dumpster enclosure to the plan, adding dumpster detail to the plan, adding the granted waivers to the plan; adding a supplemental plan note to the plan (Architectural Elevations); when the conditions have been met, the plans can be signed out-of-session; and conditionally upon, for Phase II, prior to the issuance of a building permit for Phase II, a mutual agreement between the Town Engineer and the Conway Village Fire District must be obtained in regard to the drainage from the front overhang; and this conditional approval will expire in 90 days [December 15, 2002]. Motion unanimously carried.**

Meeting adjourned at 9:00 p.m.

Respectfully Submitted,

Holly L. Meserve  
Recording Secretary