

CONWAY PLANNING BOARD

MINUTES

AUGUST 14, 2008

A meeting of the Conway Planning Board was held on Thursday, August 14, 2008 beginning at 7:06 pm at the Conway Town Office in Center Conway, NH. Those present were: Chair, Steven Porter; Selectmen's Representative, Robert Drinkhall; Vice Chair, Martha Tobin; Secretary, Sean McFeeley; Theodore Sares; Patricia Sell; Dana Hysten; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve. Alternate, John Edgerton was in the audience.

REVIEW AND ACCEPTANCE OF MINUTES

The Minutes of July 24, 2008 were amended as follows: page 2, last paragraph, third line, should read "...that the grant ~~received by the MWVEC~~ would require the CVFD ~~required that they~~ to have water..." [see August 28, 2008 Planning Board Minutes for further modification]; and page 3, third paragraph, last line, should read, "...would also be reviewed ~~yearly~~ in two years." **Mr. Sares made a motion, seconded by Ms. Sell, to approve the Minutes of July 24, 2008 as amended. Motion carried with Ms. Tobin abstaining from voting.**

**KGI MOUNTAIN VALLEY MALL, LLC – FULL SITE PLAN REVIEW CONTINUED
(PID 246-38) FILE #FR08-04**

Josh McAllister of H.E. Bergeron Engineers appeared before the Board. This is an application to construct a 5,000 square foot retail building with associated parking, drainage and utilities. This application was accepted as complete on July 10, 2008.

Mr. Irving asked if there is a dumpster enclosure proposed for the new grease trap behind Hannaford. Mr. McAllister stated that it is not addressed at this time, but it can be added to the plan. Mr. Irving stated that they would move the parking space behind JC Penney westerly so as to not interfere with the access/egress door.

Mr. Sares asked if this building is proposed for a specific tenant. Richard Granara for KGI Properties who was in the audience answered in the negative and stated that it is a spec building. Mr. Porter asked for public comment; there was none.

Mr. Porter asked if the Board wanted him to read the requirements to grant a waiver. The Board agreed that they did not need the requirements to be read. Mr. Porter read the waiver requests for §123-6.B.2; §123-22.C; §123-29.A.2 & A.3; §123-29.D.1; and the waiver request reaffirming the waivers granted under File FR05-10 for §123-20.C; §123-20.F/§131-67.C.8.b; §123-20.G; §123-28; §123-30; §123-41; and §123-42.D. **Mr. Drinkhall made a motion, seconded by Mr. McFeeley, to approve the waivers for §123-6.B.2; §123-22.C; §123-29.A.2 & A.3; §123-29.D.1 and the waiver request reaffirming the waivers granted under File FR05-10 for §123-20.C; §123-20.F/§131-67.C.8.b; §123-20.G; §123-28; §123-30; §123-41; and §123-42.D.** Mr. Porter asked for Board comment; there was none. **Motion unanimously carried.**

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Mr. Sares stated from a planning stand point, as we build these buildings on spec and looking at the past to judge what happens in the future, it seems more than likely that an existing business is going to leave another location for this building and at the end of the game the Town is going to have large empty malls.

Mr. Drinkhall made a motion, seconded by Ms. Sell, to conditionally approve the Full Site Plan for KGI Mountain Valley Mall, LLC conditionally upon to indicating a dumpster enclosure around the grease dumpster behind Hannaford; relocating parking space in front of loading dock to not conflict with access/egress door and not interfere with loading dock behind JC Penney; a NHDOT Driveway Permit; an updated North Conway Fire Chief approval of final revised plans; North Conway Water Precinct water and sewer approval; submitting \$30 for recording additional plan; submitting a \$25 check made payable to Carroll County Registry of Deeds pursuant to RSA 478:17-g II (a); submitting a Mylar; submitting a performance guarantee for all site improvements; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on November 13, 2008. Motion unanimously carried.

MOUNT WASHINGTON VALLEY ECONOMIC COUNCIL – 17-LOT SUBDIVISION AND BOUNDARY LINE ADJUSTMENT REVIEW CONTINUED (PID 262-86.2 & 265-152) FILE #S08-04

Ms. Sell stepped away from the meeting at this time. Josh McAllister of H.E. Bergeron Engineers appeared before the Board. This is an application to subdivide 74± acres into 17-lots, extend Technology Lane, and construct two new roads and a boundary line adjustment to add land to Technology Lane. This application was accepted as complete on June 12, 2008.

Mr. Irving asked that the applicant submit a letter requesting a waiver of the 65-day statutory requirement. Mr. McAllister stated that the applicant would like to request a continuance. **Mr. Drinkhall made a motion, seconded by Ms. Tobin, to continue the Subdivision and Boundary Line Adjustment review for Mount Washington Valley Economic Council until September 11, 2008. Motion unanimously carried.**

OTHER BUSINESS

Red Jacket Mountain View Inn (PID 230-51) – Determination regarding sound and visual impact (File #MR08-01): Chris Meier of Cooper Cargill Chant representing the Red Jacket Mountain View Inn appeared before the Board. Mr. Meier stated that he has submitted a package with his applicant's intent. Ms. Sell rejoined the meeting at this time. Mr. Meier stated that the North Conway Fire Chief objected to a fence immediately around the facility so they are proposing an 8-foot wood barrier at the property line, five-feet off the parking lot. Mr. Meier stated that the fence consists of 1"x 6"x 8' cedar boards with 1" gaps to allow for infiltration of snow and wind.

Mr. Meier stated that they are also insulating the concrete within the mechanical room which will reduce the sound. Mr. Meier stated that the sound alarms have been changed to light alarms and moved to the other side of the property so not visible to the abutters and more visible to the

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employees. Mr. Meier stated that the costs estimate is approximately \$19,000. Mr. Irving asked if the Fire Chief and the Building Inspector were aware of the alarm changes. Mr. Meier stated that he will make sure that is done.

Mr. Drinkhall asked if the Fire Chief had concerns regarding the fence. Mr. Porter read the letter from Chief Patrick Preece of the North Conway Fire Department dated July 24, 2008. Mr. Drinkhall asked if the service roadway could be increased in order to keep the fence directly around the unit. Mr. Meier answered in the negative and stated that the propane field is on the other side and Chief Preece wanted that strip specifically. Mr. Sares stated that he is not aware of any propane fields. Mr. Meier stated that there are propane tanks underground in that area.

Ms. Sell asked if the applicant explored any acoustic fencing that is specifically used to reduce sound. Mr. Meier stated that they did not explore any other material as the Board had indicated wood. Mr. Sares stated that the board suggested wood or other material. Ms. Sell stated that she has information on other types of sound reducing barriers that may be less expensive. Ms. Sell submitted that information to the Board at this time [which is located in the file]. Mr. Meier stated that it is his understanding that wood is a good sound buffer and is more attractive.

Mr. Porter asked if this option was discussed with the abutters. Mr. Meier answered in the negative. Mr. Porter asked if the applicant reviewed the possibility of relocating the propane tanks. Mr. Meier answered in the negative. Mr. Hylen stated at first glance it appears the applicant has a good plan and it appears to meet what the Board had asked, but he would like to hear from the abutters. Ms. Tobin stated she is familiar with the wall that is proposed and she is concerned with the type of construction. Ms. Tobin stated that she would agree that it is a wonderful plan on the applicant's thinking of what the Board said, but there are other options.

Mr. Sares asked if the fence is proposed for the southern property line. Mr. Meier answered in the affirmative. Mr. Sares stated that the Board suggested a barrier around the unit itself, but there was an intervening factor. Mr. Sares stated that Chief Preece denied a barrier directly around the unit so the applicant is reacting to that intervening factor. Mr. Sares stated we are receiving a plan based on what the Chief has said and he doesn't like ~~it~~ **the way the Red Jacket reacted to that** [see August 28, 2008 Minutes for modification].

Mr. Hylen stated when the Chief stated that he wouldn't accept the barrier directly around the unit; the Red Jacket probably asked the Chief what he thought about a fence on the property line. Ms. Sell stated the height and the material used would be more effective if sound reducing material is used and as suggested in the package she submitted earlier wood is not a good sound reducer.

Mr. Sares stated there is another point here as we have been at this for quite some time, cost has to be reviewed and at some point we have to say enough is enough, pending, of course, on the abutters. Mr. Porter stated that the Board discussed putting something around the structure itself even if it means the propane tanks have to move. Ms. Sell asked what the recourse down the road is if there is still a nuisance. Mr. Meier stated that there is always the option of a civil suit.

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Mr. Porter asked for public comment; Ronald Alexander, Project Manager for the Red Jacket, stated that propane tanks had to be installed at the current location and had to go underground, per the Town. Mr. Alexander stated that the cost of the underground tank farm was \$45,000 to install, so moving them would not save a lot of money, plus the new location would require Planning Board approval.

Mr. Alexander stated that he spoke to Chief Preece, and the barrier directly around the unit was not acceptable to him as he needs the access. Mr. Alexander stated that he proceeded to ask Chief Preece if a fence at the property line would be acceptable to him and he agreed. Mr. Alexander stated it was a simple question. Mr. Porter stated what we need to keep in mind is that the HVAC system was not on the original plans. Mr. Alexander disagreed and stated that the violation was the concrete pad and if the unit had been on sonotubes we would not be here.

Catherine Reddington of 84 Duprey Road stated that the propane tanks were on the original site plan, but the HVAC unit was not on the plans that we worked on with the Red Jacket for over a year. Ms. Reddington stated there was a proposal for a larger propane tank right behind her property and it was stated that it was not a good idea. Ms. Reddington stated that she has been the biggest voice during this process and if she would have seen the HVAC unit on the plans she would have had comments on it, but it was not there.

Ms. Reddington stated that she has had her own noise study done and submitted the report and photographs of other similar units to the Board at this time [which is located in the file]. Ms. Reddington stated that there is a noise impact and the proposed fence is not going to do anything to reduce the noise. Ms. Reddington stated that she does not agree with the barrier being proposed by the Red Jacket.

Jim Kelly of Dewhurst Law Firm representing Catherine Reddington stated the conclusion of the report submitted by Ms. Reddington is located on page 3 and the conclusion is that the proposed material does not absorb sound. Mr. Kelly stated that the Board is on track in reviewing the type of material to be used and where on the unit the noise is coming from. Mr. Kelly proposed that the Board hold a meeting at the unit and go over the issues and invite Chief Preece to determine where the noise is coming from and how to effectively mitigate it.

Ed Furman of 50 Duprey Road stated the abutter's have been coming here defending their own properties for over a year and thanked the Board in helping them out. Mr. Furman stated that the original plan did not have the HVAC unit or the concrete pad on it and splitting hairs by stating if constructed on sonotubes a site plan would not be necessary. Mr. Furman stated if it was on the original plan or if they had done what they had originally said they would do the propane tanks would not have been a problem.

Mr. Furman stated he does not know if anyone involved in this asked the Fire Chief if the propane tanks were moved if he then would allow a wall directly around the unit. Mr. Furman stated that there have been many misrepresentations by the Red Jacket during this process and the proposed fence will not block any noise and will block very little visually.

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Mr. Furman stated that he is speaking as the least affected abutter and there is no reason his neighbors should be more impacted than he is as he doesn't like his impact. Mr. Furman questioned the length of the fence and stated that the arborvitaes are not planted as proposed, so what makes the Board think the applicant is going to construct a fence as proposed. Mr. Furman stated that he had his property surveyed and Ms. Reddington had her property surveyed. Mr. Furman stated that there are now stakes that were put in by Glen Builders that are inside their property lines.

Mr. Furman stated that prior to this he spoke to the former General Manager of the Red Jacket and he was plowing their parking lot onto his property and ruining his landscaping. Mr. Alexander asked Mr. Furman if he had fixed his landscaping. Mr. Furman answered in the negative. Mr. Alexander called Mr. Furman a liar. Mr. Furman responded that Mr. Alexander was the liar. Mr. Porter stated if there were any more outbursts like this he would ask Mr. Alexander to leave. Mr. Alexander stated that he would do one better and leave now and stated that this is absurd that the Board would still listen to this. Mr. Alexander left at this time.

Mr. Furman stated that the applicant has come in before with misrepresentations and trying to slide things by and they have thumbed their nose at this Board, the Board of Selectmen and the Courts. Mr. Furman stated that this is of their own doing as the abutters have been here meeting after meeting trying to protect their rights. Mr. Furman stated that the cost of constructing a sound and visual barrier around the unit and moving the propane tanks as suggested by the Board would be less than running a fence along the property line. Mr. Furman stated that it would not cost the same to move the propane tanks as it was to install the propane tanks. Mr. Furman stated that the dollar factors involved was created by the Red Jacket and they have more than recouped what this will cost.

Mr. Irving stated the question for the Board is whether the applicant has satisfied the sound and visual impact. Mr. Irving stated that the Board could call for a site visit if the Board thinks it would provide them with additional information. Mr. Sares stated that he does not need a site visit. The majority of the Board did not want a site visit.

Lynn Garafalo of 50 Duprey Road stated they are tired of the whole thing and they want some sound abatement. Michelle Seavey of 68 Duprey Road stated she is here because her family cannot enjoy their back yard and she wants it done right. Ms. Seavey suggested that the Red Jacket come to the abutters with a plan so it can be settled.

Mr. Furman stated that Ms. Garafalo is an Audiologist and she has reviewed the report submitted by Ms. Reddington. Mr. Furman stated that the report reflects that the level of the noise generated by the HVAC unit and the pump house that operates the wave pool are well above the normal that people have to live with.

Shawn Bergeron of Bergeron Technical Services stated that he does not have a dog in this fight and believes that both sides are missing some key elements. Mr. Bergeron stated that he prepared the application for the proposed booster system for the Birch Hill area and there are two options to reduce sound, block it or absorb it. Mr. Bergeron stated a big heavy object blocks noise and the 1" thick wall proposed by the applicant will not do anything to reduce sound.

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Mr. Bergeron stated if you want to block the noise you want to be close to the source and be a substantial mass. Mr. Bergeron stated he believes under the Town regulations the Board has the right to hire an independent acoustical engineer to come up with a plan to mitigate the sound. Mr. Bergeron stated that this is dragging out way too long and the Town should hire someone to get it resolved. Mr. Porter closed public comment.

Ms. Sell asked if the Red Jacket could get together and work with the abutters. Mr. Sares stated the Board is not a mediator and this has been dragging on too long, but he does want it done correctly. Mr. Meier suggested increasing the width of the boards to 2” and increasing the height to 10-feet. Ms. Sell stated she agrees that the abutters have a right to enjoy their property and acoustical fencing would be appropriate.

Mr. Sares made a motion, seconded by Mr. Drinkhall, that the Red Jacket provide a cost comparison analysis of the fence proposal on the southern boundary line versus moving the propane tank, increasing the roadway and installing an abatement enclosure around the HVAC unit including acoustical fencing.

Ms. Tobin asked why the Board is considering cost. Mr. Sares stated that the cost has to provide public good. Mr. McFeeley stated what is being proposed is not effective to reduce the noise. **Motion was defeated with Mr. McFeeley, Ms. Sell, Ms. Tobin and Mr. Drinkhall voting in the negative.**

Mr. Hylen stated that he is concerned with giving the applicant a broad scope of what to do because the Board gave them direction last time and they didn't quite get there. Mr. Sares stated if a cost comparison of option number 2 was provided and is too costly then the Board could deal with the first option and make it better. Ms. Sell stated that an acoustical fence should be installed.

Mr. Irving stated that Board could give the Red Jacket another try to come back to this Board with another proposal. **Mr. Drinkhall motion, seconded by Ms. Sell, to give the Red Jacket another try to come back to the Board with another proposal.** Mr. Sares asked what the applicant loses if they don't do anything. Mr. Irving stated they would not have satisfied the condition and the Board could start the process of revoking their approval. Ms. Sell stated that she would like to move forward. Mr. Irving stated that the Board should first make the determination if the applicant has satisfied the condition. **Mr. Drinkhall withdrew his motion. Ms. Sell withdrew her second.**

Mr. Sares motion, seconded by Mr. Drinkhall, that the proposal has satisfied the noise and visual impact. Motion defeated with Mr. Sares voting in the affirmative.

Mr. Drinkhall made a motion, seconded by Mr. McFeeley, to give the Red Jacket another opportunity to satisfy the noise and visual impact. Mr. Drinkhall asked if the applicant is acceptable to this suggestion. Mr. Meier stated that he would be sending letters to the abutter's asking what they want and to work with Pat Preece. Mr. Irving asked would the Red Jacket like another opportunity. Mr. Meier answered in the affirmative. **Motion carried with Mr. Sares abstaining from voting.**

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Ms. Tobin made a motion, seconded by Ms. Sell, for the applicant to submit new information by end of business September 4, 2008 to be considered at the September 25, 2008 Planning Board meeting. Motion unanimously carried.

Luke McDonald Holdings, LLC (PID 215-31) – Request to Extend Conditional Approval (File #FR07-02): Ms. Tobin made a motion, seconded by Ms. Sell, to extend the conditional approval for Luke McDonald Holdings, LLC until August 13, 2009. Mr. Hylen asked what the good cause is. Mr. Bergeron stated when we obtained the original conditional approval; we thought this was going to move quicker than it had. Mr. Bergeron stated that the applicant owns two other abutting properties even though under different names and they are trying to put together a plan for all three lots. Mr. Bergeron stated that they have been working with the Town Engineer and NHDOT and expect to submit a new plan within the next few weeks. **Motion unanimously carried.**

Amethyst Hill Properties (PID 252-47) – Request to Extend Conditional Approval (File #FR07-10): Dana Jones, Sales Manager for White Mountain Oil, appeared before the Board. Mr. Sares stated that the market change is not the Board's issue. Mr. Sares stated that he has a problem with this one as they are requesting a continuance for market reasons and not for any other reasons. Mr. Jones stated that the company's position is that we know we are not going to start this project this fall. Mr. Sares asked why the applicant wants to extend the expiration date. Mr. Jones stated that we are not going to construct the project now and need the money they would use for bonding to purchase fuel.

Mr. Irving stated that the only outstanding item is bonding. Mr. Hylen stated part of good cause is why it hasn't been done yet. Mr. Irving stated that they didn't receive their Site Specific permit until late this spring. **Ms. Tobin made a motion, seconded by Mr. Sares, to extend the conditional approval for Amethyst Hill Properties until June 11, 2009. Motion unanimously carried.**

Peaked Mountain, LLC (PID 219-303) – Request to extend Conditional Approval (Files #S06-21 & #S05-11): Ed McBurney appeared before the board. Mr. McBurney stated the Town offers two options, bond the entire cost of the project or construct the entire project. Mr. McBurney stated that the project requires extending the sewer line along Thompson Road, which the applicant would have done last year, but the Town Engineer did not want any work done during the cold weather.

Mr. Irving stated other than bonding there are supplemental review fees that are outstanding and should be paid within 30-days. Mr. Porter asked why construction has not begun. Mr. Sares stated that it was an unusual winter. Mr. McFeeley asked if there would be any sort of precedent if it was extended. Mr. Irving answered in the negative and stated that it is part of the regulations. Mr. Hylen stated that it has been two years already and he cannot justify extending it for another year. Ms. Tobin stated she has been part of this application from the beginning and she cannot see extending it again. Mr. Sares stated that due to the complexity and the winter he can support the request.

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Mr. McBurney stated the applicant has spent a lot of time negotiating easements with the Town for the recreational trails and fire protection. Mr. McBurney stated that the Town is going to reconstruct that road at some point and it might be more cost effective to do it together. Mr. Drinkhall asked if there would be any hardship to or extra time required by staff. Mr. Irving answered in the negative.

Mr. Drinkhall made a motion, seconded by Mr. Sares, to extend the conditional approvals for Files #S06-21 and #S05-21 for Peaked Mountain, LLC until August 27, 2009 with the condition that the Town supplemental fees to be paid within 10-days. Motion defeated with Mr. Drinkhall voting in favor.

Mr. Sares made a motion, seconded by Ms. Sell, to extend the conditional approvals for Files #S06-21 and #S05-21 for Peaked Mountain, LLC until August 27, 2009 with the condition that the Town supplemental fees to be paid within 30-days. Motion carried with Ms. Tobin and Mr. Hysten voting in the negative. Mr. Irving stated that the supplemental review fee is \$857.50

Committee Reports: There were none.

Master Plan: There was no discussion.

Discussion of increasing setbacks between commercial and residential properties: Ms. Sell made a motion, seconded by Ms. Tobin, to put the discussion of increasing setbacks between commercial and residential properties on the next agenda. Motion unanimously carried.

Meeting adjourned at 9:35 pm.

Respectfully Submitted,

Holly L. Meserve
Planning Assistant