

**CONWAY PLANNING BOARD**

**MINUTES**

**SEPTEMBER 8, 2011**

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**CONWAY PLANNING BOARD**

**MINUTES**

**SEPTEMBER 8, 2011**

A meeting of the Conway Planning Board was held on Thursday, September 8, 2011 beginning at 7:09 pm at the Conway Town Office in Center Conway, NH. Those present were: Chair, Steven Porter; Selectmen's Representative, Mary Seavey; Vice Chair, Martha Tobin; Secretary, Patricia Sell; Steven Hartmann; Scott Lees; Kevin Flanagan; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Hartmann made a motion, seconded by Ms. Tobin, to approve the Minutes of August 11, 2011 as written. Motion carried with Ms. Sell, Ms. Tobin, Ms. Seavey and Mr. Lee abstaining from voting.**

**Ms. Tobin made a motion, seconded by Ms. Sell, to approve the Minutes of August 25, 2011 as written. Motion unanimously carried.**

**OTHER BUSINESS**

**Italian Kitchens/Frank Welch (PID 235-38) – §123-4.A.5 (File #NA11-12)**: Frank Welch appeared before the Board. This is a request to permit a 300 square foot expansion for an apartment at 1903 White Mountain Highway, North Conway. Mr. Welch stated that he is not expanding the restaurant and he is not reducing the greenspace or the parking. Mr. Porter asked if it would be constructed on the back of building. Mr. Welch answered in the affirmative.

Mr. Irving stated a restaurant and a residence currently exist on the lot and he would like to add an apartment. Mr. Irving stated that the site is large enough to accommodate two residences and a restaurant. There was a brief discussion on whether this space would be an apartment or storage and the applicant would prefer this be an apartment. Mr. Irving stated that the certificate of occupancy indicates that there are 180 seats. Mr. Welch agreed. Mr. Irving asked how many parking spaces exist. Mr. Welch answered 63. Mr. Irving stated that 71 spaces are required.

**Ms. Sell made a motion, seconded by Ms. Tobin, that the Planning Board determined that based on the provisions of §123-4. A. 5., regarding applicability, that the construction of a 300 square foot expansion for an apartment is not subject to a Minor or 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 unanimously carried.**

**PROPOSED ZONING AMENDMENT DISCUSSION**

Mr. Irving stated that he would be putting together some changes to §147.13.16.8, earth disturbance to correct the NHDES reference. Mr. Irving stated that he would also be putting together changes to the Floodplain Conservation District. Mr. Irving stated that there would be

no effective changes, but it would add similar wording as referenced by FEMA. Mr. Irving stated the changes would not be making the ordinance any more or any less restrictive. Mr. Irving stated that FEMA has suggested adding definitions for basement, FIS (flood insurance study), historic structure, lowest floor and start of construction.

Mr. Lees suggested to change §147.13.8.6.5, temporary event sign setback to not require a setback from the right-of-way. After a lengthy discussion, the Board was not in favor of this change.

Mr. Lee suggested changing §147.13.8.6.7.6, A-frames, to allow one A-frame for every 150 feet of road frontage. After a lengthy discussion, the Board agreed to discuss this proposed amendment at the October 27, 2011 Planning Board meeting. Ms. Sell left at this time.

#### **OTHER BUSINESS CONTINUED**

**Ronald Routhier/Patricia Murphy (formerly Presidential Golf Corporation) - (PID 291-30) – Conditional Approval Expiring (File #S10-11):** Mr. Irving stated that they have not fulfilled the conditions of approval. Mr. Irving stated that the Town sent a certified letter notifying the new owners that this conditional approval would be expiring and they have not contacted the Town. **Ms. Tobin made a motion, seconded by Mr. Lee, to deny the application of Ronald Routhier and Patricia Murphy without prejudice. Motion unanimously carried.**

**Bowen NH Trust (PID 216-16 & 17) – Lot Merger:** Ms. Tobin made a motion, seconded by Mr. Lee, to sign the lot merger for Bowen NH Trust. **Motion unanimously carried.**

**Site plan amendment:** Kevin Flanagan submitted the attached package to the Board regarding §123-26, Site Lighting. Mr. Flanagan stated that he would like to remove §123-26.5. Mr. Irving stated that §123-26.5 helps with the up lighting. After a brief discussion, **Mr. Flanagan made a motion, seconded by Ms. Seavey, to review the removal of §123-26.5 from site lighting in the site plan review regulations. Motion defeated with Ms. Tobin, Mr. Hartmann, Mr. Lees and Mr. Porter voting in the negative and Ms. Seavey abstaining from voting.**

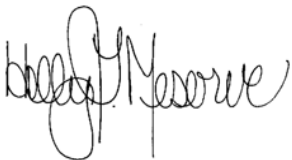
**Committee Reports:** There were none.

#### **MASTER PLAN AMENDMENT DISCUSSION**

The Board determined there were no necessary changes to the Master Plan at this time and they would look at it again in a year.

Meeting adjourned at 7:25 pm.

Respectfully Submitted,



Holly L. Meserve, Planning Assistant

Site Plan Review Regulations (§123) specifically §123-26:

## Conway Site Plan Review Guidelines

**123-26. Lighting.** Lighting of sites shall be designed to prevent off-site disturbance, nuisance or hazard. All outdoor light sources shall be designed, directed and/or shielded such that the nighttime lighting is primarily contained on the site, shielding to the extent necessary abutting properties and roads. No light source shall be permitted if that light causes glare or other safety problems on an adjacent street.

1. Outdoor lighting fixtures shall not be mounted higher than twenty-five (25) feet;
2. Individual light fixtures (or the sum for clusters of fixtures supported on a single pole) shall not exceed 40,000 lumens. As an incentive to promote the use of energy efficient Light Emitting Diode (LED) fixtures, if site lighting is comprised entirely of energy efficient LED fixtures the maximum illuminance of individual light fixtures (or the sum for clusters of fixtures supported on a single pole) may be increased by twenty-five percent (25%) and shall not exceed 50,000 lumens;
3. The total initial site lumens of all site lighting systems shall not exceed four (4) lumens per square foot of disturbed area. As an incentive to promote the use of energy efficient LED fixtures, if site lighting is comprised entirely of energy efficient LED fixtures the total initial site lumens of all site lighting systems may be increased by ten percent (10%) and shall not exceed 4.4 lumens per square foot of disturbed area;
4. Site lighting shall not trespass beyond property lines; luminance along property lines shall be measured within six (6) feet of finish grade along the property line;
5. *All lighting fixtures shall be listed as approved by the International Dark Sky Association (IDA), fully shielded and installed per manufacturer's specifications;*
6. The Board may reduce the permitted heights to reduce or eliminate undue adverse impacts.

I would like to ask the planning board consider revising Item 123.6 of the Conway Site Plan Review Guide. In particular, I'd like to propose that line 5, regarding approved IDA fixtures, be removed; or that we consider revising our entire rule altogether.

Lines 1 – 4 are all specific to what the ordinance requires, but line 5 requires that all fixtures carry an IDA approval, meaning that all older fixtures need to be replaced during a site plan review, even if they might adhere to the first 4 specifications.

Older lighting fixtures, as well as non-approved IDA fixtures may very well be in compliance to the guidelines' quantitative specifications, but in the instances of them not carrying the IDA approval, they will either

- need to be disposed of, which does not necessarily prevent them from being used again by residential properties since people might collect these fixtures at the town's free store or weekend yard sales; or
- the site plan could request a waiver for the board to consider in regards to adherence to item 5;

History

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- The origination of 123-26.Lighting was discussed in the meeting minutes of December 9<sup>th</sup>, 2010.
- Subsequently, a public hearing was scheduled for February 24<sup>th</sup>, 2011
- The meeting minutes of Febuary 24<sup>th</sup> indicated that there were no members of the public present (page 4 of 5) for the hearing; Mr. Porter asked for comments from the board, and it is further noteds that the board made no comment at the time,
- On Febuary 24<sup>th</sup>, the board adopted the amendment without comment from its members or from the public.

## Personal Notes

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Our current rule is going to be un-necessarily costly to property owners. We have already had 2 Site Plans come before this board that regarding the new lighting rule. In one instance a waiver was granted for lighting fixtures that didn't carry the IDA certification, and in the other instance, a waiver was not granted to a property which had only 2 years earlier been approved with the same lighting fixtures in place at the time.

Our rule should be friendly enough to not un-necessarily inconvenience businesses that have already made an investment in lighting fixtures. Some custom lighting fixtures may cost in excess of \$500 per piece, and that does include installation costs, and yet still other fixtures may have been custom made for a site, but since they are not carrying the IDA approval, they will need to request a waiver from this board if they are to be allowed to use such a custom fixture.

Beginning in June, 2011, the IDA has begun providing communities with the Model Lighting Ordinance Kit. Since this document was released only four months after our own rule was adopted, it would be in the town's interest for us to review it, specifically since it is published by the very organization that we reference in our current rule.

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In 2009, Governor Lynch signed HB585 , *relative to outdoor lighting efficiency* .

The bill specifically does not regard private property, but rather, instructs municipalities to consider the issue of Light Pollution in its own purchasing for municipal properties. What is important to note however is that the bill makes no reference to IDA as an organization of standards, nor does it require specific approval of any lighting device by a non-profit organization.

I spoke with Scott Kardel at the IDA (<http://www.darksky.org>) regarding municipal rules and regulations for dark-sky compliance.

Mr. Kardel first directed me to a brand new resource called the Model Lighting Ordinance (MLO) ([http://docs.darksky.org/MLO/MLO\\_FINAL\\_June2011.pdf](http://docs.darksky.org/MLO/MLO_FINAL_June2011.pdf) ) which serves to assist boards like ours in drafting regulations.

Mr. Kardel pointed out that the IDA certification program has only been in existence for perhaps 5 years; implying that older lighting fixtures may very well be in compliance with their standards, but since they were manufactured and designed prior to the program's origination, none of these items will carry the IDA approval. For this reason, their MLO does not include recommendation for municipalities to specifically require an IDA approval for fixtures.

One note that Mr Kardel pointed out to me in regards to our own lighting rule regards the measure of ground lighting (refer to point 123-26.lighting item 3). He asserted that ground lighting is a function of the distance of the fixture from the ground, so a light fixture which might be close to the ground surface for walk ways could possibly toss off more than 4 lumens per square foot on the ground, but not have a high impact on light being directed toward the sky. For instance, a flash light being held a foot over a driveway will create much more light per square foot than it would if it were being held 5 feet off of the ground.

Mr. Kardel offered his assistance with any questions or guidance we may be interested in seeking, should we choose to alter our current lighting rule.

**CHAPTER 212**

**HB 585-FN - FINAL VERSION**

24Mar2009... 0895h

05/06/09 1464s

19May2009... 1963eba

**2009 SESSION**

09-0061

05/09

**HOUSE BILL 585-FN**

**AN ACT relative to outdoor lighting efficiency.**

**SPONSORS:** Rep. Bridgham, Carr 2; Rep. C. Pennington Brown, Rock 9; Rep. S. Kelly, Merr 7; Rep. Shattuck, Hills 1; Rep. Major, Rock 8

**COMMITTEE:** Science, Technology and Energy

**AMENDED ANALYSIS**

**This bill:**

**I. Establishes requirements for the state and municipal purchase of outdoor lighting systems.**

**II. Establishes the "New Hampshire dark skies" policy to encourage outdoor lighting efficiency at the municipal level.**

**III. Requires the public utilities commission to establish requirements for an electric utility rate for partial night use of outdoor lighting systems.**

**IV. Requires the department of transportation to review criteria for roadway lighting to maximize efficiency and cost savings.**

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

24Mar2009... 0895h

05/06/09 1464s

19May2009... 1963eba

09-0061

05/09

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Nine*

AN ACT relative to outdoor lighting efficiency.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

212:1 New Chapter; Outdoor Lighting Efficiency. Amend RSA by inserting after chapter 9-C the following new chapter:

### CHAPTER 9-D

#### OUTDOOR LIGHTING EFFICIENCY

9-D:1 Definitions. In this chapter:

I. "Fixture" means the assembly that holds a lamp and may include an assembly housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and a refractor or lens.

II. "Fully shielded luminaire" means a luminaire that allows no direct light emissions above a horizontal plane through the luminaire's lowest light-emitting part.

III. "Glare" means direct light emitting from a luminaire that is significantly greater than luminance to which the eyes are adapted which causes reduced vision or momentary blindness.



IV. "Illuminance" means the unit measure of light at a surface.

V. "Light trespass" means light emitted by a luminaire that shines beyond the boundaries of the property on which the luminaire is located.

VI. "Lumen" means a unit of measure of luminous flux.

VII. "Luminaire" means the complete lighting system, including the lamp and the fixture.

VIII. "Lamp" means the component of a luminaire that produces the specific form of radiant energy that is observed as light.

IX. "Permanent outdoor luminaire" means any luminaire or system of luminaires that is outdoors and intended to be used for 21 days or longer.

X. "State highway" means any of the highways of the state classified in RSA 229:5.

#### 9-D:2 State Purchase of Permanent Outdoor Lighting Design.

I. No state funds shall be used to install or replace any permanent outdoor luminaire unless:

(a) The luminaire is a fully shielded luminaire when the rated output of the luminaire is greater than 1,800 lumens.

(b) The maximum illuminance at the designated surface does not exceed the minimum illuminance level recommended for that purpose by the Illuminating Engineering Society of North America or the Federal Highway Administration.

(c) The director of the agency responsible for the funding of such luminaire or having authority over the illuminated infrastructure ensures that consideration is given to minimizing glare and light trespass.

II. The requirements of paragraph I shall not apply if:

(a) Compliance would create a conflict with federal laws or regulations;

(b) The director of the agency responsible for funding the installation of such luminaire or having authority over the illuminated infrastructure determines that there is a compelling safety interest that cannot be addressed by any other method;

(c) With respect to roadway lighting on state highways, when in specific instances the commissioner of transportation determines that use of a fully shielded luminaire would compromise the safety of the public utilizing the highway, increase

the cost of the lighting plan or lighting replacement for the highway, or violate any provision of federal law; or

(d) The luminaire shall be used to illuminate designated public and historic structures, monuments, and flags of the United States of America and the state of New Hampshire.

III. No public utility company may install or replace a permanent outdoor luminaire for roadway lighting if the cost of operating such luminaire is paid for by municipal funds, unless:

(a) The luminaire is a fully shielded luminaire when the rated output of the luminaire is greater than 1,800 lumens.

(b) The maximum illuminance at the designated surface does not exceed the minimum illuminance recommended for that purpose by the Illuminating Engineering Society of North America or the Federal Highway Administration.

(c) The governing body of a municipality may waive the provisions of subparagraphs (a) and (b) when, after written notice from the public utility company 30 days prior to the installation or replacement of the luminaire, the governing body determines that a waiver is necessary for the lighting application. Such notice shall be in such form as the governing body shall prescribe and may include a description of the lighting plan and a description of the efforts that have been made to comply with the provisions of RSA 9-D:3. The governing body may consider design safety, costs, and other factors deemed appropriate by the governing body.

9-D:3 New Hampshire Dark Sky Policy. It shall be the policy of the state of New Hampshire to encourage municipalities to enact such local ordinances and regulations as they deem appropriate to conserve energy consumed by outdoor lighting; to minimize light pollution and glare; and to preserve dark skies as a feature of rural character wherever practicable.

9-D:4 Part-Night Rate for Roadway and Area Lighting. To encourage cost savings and energy conservation, the public utilities commission shall, subject to its ratemaking authority under RSA 378, develop a rate for part-night or midnight service for unmetered street or area lighting. Such a rate shall be revenue neutral with respect to utility distribution revenue.

9-D:5 Report by Department of Transportation. The department of transportation shall:

I. Review and update its criteria for roadway lighting to ensure that its current standards and procedures conform to commonly accepted best practices.

**II. Explore how energy and maintenance costs can be reduced by replacing existing luminaries with lower-wattage, fully shielded luminaries or by eliminating roadway lighting altogether where appropriate.**

**III. Beginning November 1, 2009 and each November 1 thereafter, submit an annual report of its activities and findings to the office of energy and planning.**

**212:2 Contingency. If HB 464-FN of the 2009 legislative session becomes law, RSA 9-D as inserted by section 1 of this act shall be renumbered as RSA 9-E and the reference to RSA 9-D:3 in RSA 9-D:2 as inserted by section 1 of this act shall be renumbered RSA 9-E:3.**

**212:3 Effective Date. This act shall take effect 60 days after its passage.**

**Approved: July 15, 2009**

**Effective Date: September 13, 2009**