

CONWAY PLANNING BOARD

MINUTES

OCTOBER 27, 2022

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CONWAY PLANNING BOARD

MINUTES

OCTOBER 27, 2022

A meeting of the Conway Planning Board was held on Thursday, October 27, 2022 beginning at 7:00 pm at the Conway Village Fire Station, 97 Main Street, Conway, NH. Those present were: Chair, Ben Colbath; Selectmen's Representative, Steven Porter; Vice Chair, Ailie Byers [via video]; Secretary, Erik Corbett; Bill Barbin; Mark Hounsell; Alternate, Ted Phillips; Planning Director, Jamel Torres; and Planning Assistant, Holly Whitelaw. Alternate Steven Hartmann was in attendance.

APPOINTMENT OF ALTERNATE MEMBER

Mr. Colbath appointed Mr. Phillips as voting member.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Porter made a motion, seconded by Mr. Barbin, to approve the minutes of October 13, 2022 – work session and October 13, 2022 – regular session as written. Motion carried with Ms. Byers abstaining from voting.

STEVEN W. SEAVEY REVOCABLE TRUST OF 2007 (FILE #S22-05) – BOUNDARY LINE ADJUSTMENT REVIEW (PID 214-27 & 30)

Andy Fisher of Ammonoosuc Survey Company appeared before the Board. This is an application to convey one-acre of land from PID 214-27 to PID 214-30. Mr. Fisher gave an overview of the application. **Mr. Porter made a motion, seconded by Mr. Barbin, to accept the application of Steven W. Seavey Revocable Trust of 2007 for a boundary line adjustment review as complete with the staff report. Motion carried unanimously by roll call vote.**

Mr. Colbath asked for Board comment; Mr. Hounsell asked about the land conveyed to the State. Mr. Fisher stated it was conveyed as part of the bypass. Mr. Colbath asked for public comment; there was none. There were no waiver requests. **Mr. Porter made a motion, seconded by Mr. Hounsell, to approve the Boundary Line Adjustment for Steven W. Seavey Revocable Trust of 2007. Motion carried unanimously by roll call vote.** The plans were signed.

UPPER SACO VALLEY LAND TRUST (FILE #S22-06) – TWO-LOT SUBDIVISION AND BOUNDARY LINE ADJUSTMENT REVIEW (PID 245-30 & 65)

Loralie Gerard of HEB Engineers appeared before the Board. This is an application to convey ±1.25-acres of land from PID 245-30 to PID 245-65; and subdivide PID 245-65 into two-lots. Ms. Gerard reviewed the application. **Mr. Porter made a motion, seconded by Mr. Corbett, to accept the application of Upper Saco Valley Land Trust for a two-lot subdivision and boundary line adjustment review with the staff report as complete. Motion carried unanimously by roll call vote.**

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Ms. Gerard explained the project. Ms. Gerard stated in 1979 the Town voted to discontinue the road, the Town no longer has ownership or easement, so the road was dissolved and the land went to both abutters. Ms. Gerard stated in creating the 10-acre parcel soil testing was done to make sure it was adequate for a residential lot. Ms. Gerard stated they have shown a 4K and 8K area suitable for a septic system, and the plans show a well radius on lot. Ms. Gerard stated excluding wetlands on the proposed 10-acre parcel, 7 acres is suitable for building.

Mr. Colbath asked for Board comment; Mr. Hounsell asked why do you want to do this. Ms. Gerard stated it is the applicant's choice to create a 10-acre parcel. Mr. Hounsell asked what is the future use of this. Mr. Colbath stated this is an application for a boundary line adjustment and subdivision, any further development of that lot would have to come back to the Board. Mr. Hounsell stated that would be convenient if he didn't know some other things that played into it. Mr. Hounsell stated we are a Planning Board and it is prudent of us to be asking questions; why would the trust that is entrusted to conserve land want to create a 10-acre parcel without plans.

Mr. Hounsell stated they have a legal right to subdivide their land, and probably no option other than to approve, but we can take our time, and take the time to understand what is going on. Ms. Gerard stated that septic loading, test pits, and proposed wells are required by the Town of Conway Subdivision regulations; it proves that the lot is suitable for development. Mr. Hounsell asked on 10-acres such as this, how many housing units could be put on this. Ms. Gerard answered it could support 7 lots.

Mr. Colbath asked for public comment; Tom Caughey of 17 Greenstone Street stated the plan shows Mountain Street as a 3-rod road, and it is his understanding that it is fee simple. Ms. Gerard stated the Town of Conway does not own the soil that it is on, it is usually through an easement. Ms. Gerard stated when it is discontinued, the property lines go to the center and then goes to the abutters. Ms. Gerard stated this is what happened on Mountain Street in 1979; there has been surveys that didn't show the property lines properly. Ms. Gerard stated a portion from Church Street to Route 302 is still under the Town maintenance, they don't own it in fee or have a deed, but they have the right to maintain and improve that section.

Dan Bailey of 213 Redstone Street stated there was already a meeting with the Redstone people and Habitat for Humanity; they are ruining a little village. Mr. Colbath stated they have the right to move their property lines; if there is a proposed development, you would be noticed for that. Mr. Hounsell stated we are bound legally only to do certain things; we are also bound legally and morally to ask questions.

Ed Wagner, lives in Redstone, stated he thinks it is troubling that some of the same people here tonight were at the same meeting at the Redstone Fire Station that said they were going to build on that lot, and the Board is now acting like they don't know what is going on. Mr. Colbath stated the Board has to review what they applied for; he was not invited to any meeting in Redstone. Mr. Colbath stated he recognizes there is a lot of concern for this lot and its potential use. Mr. Hounsell stated the Board is limited to what they can do, and outside of this meeting people will know his feelings, but the Board is just doing their job and has to take them as they come.

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Deb Haynes of Redstone stated there is a natural spring there that runs through a spring house, which to her is historical, and if those homes get built what is going to happen to the natural spring, and have any test pits been done. Ms. Hayes stated in the old days they dumped all their garbage, so there are paint cans and oil cans; so, any disruption of that land will send that into our water supply. Ms. Gerard stated the spring house is on the 10-acres and any development of any sort cannot impact that area; it has to be protected.

Neil Henry of 311 Redstone Street asked if this was a complete application, as he is the Redstone Fire Chief and he has not given this approval. Mr. Torres stated Fire Chief approval would be a condition of approval.

Clayton Leavitt of 85 Bolton Hill Road asked why there are marks on both sides of Bolton Hill Road. Mr. Leavitt stated Bolton Hill Road is a separate development and it is a private road that is maintained by the citizens of Bolton Hill Road. Ms. Gerard stated those are random traverse where we locate monumentation on both sides of the road in order to make sure the boundary lines of the lots they are creating are correct.

Ms. Gerard stated Bolton Hill Road is a private road, however, in the Upper Saco Valley Land Trust's deed, when it was purchased from Schiavi, states they have the right to use Bolton Hill Road. Mr. Leavitt stated that is not in our deeds, and there are no more provisions for more development; so, he is not sure where they think they are granted access to do that. Ms. Gerard stated in their deed it states at the point of cul-de-sac of the remaining land they were granted the use of the cul-de-sac.

Ms. Gerard stated the Bolton Hill Road has a map and parcel number, PID 245-66, and is owned by Redstone Properties, Inc. Ms. Gerard stated Mr. Leavitt is indicating that the association owns the road, but there is no deed from Schiavi, or Redstone Properties, to the association.

Mr. Leavitt asked if they get a hold of the piece of property the Town of Conway owns does that change what they can do. Mr. Colbath stated at that point it is speculation, the Town of Conway lot is not on the application, it is not part of our decision, and he does not know the history of this piece of land. Mr. Colbath stated it is not part of the application tonight, but it could be moving forward.

Bill Marvel who lives in South Conway stated when he was on the Planning Board, he remembers Peter Hastings reminding us that we were not to create non-conforming or oddly shape lots; it was a general standard that we would follow. Mr. Marvel stated while that land has had a hook on it all of the time it belonged to the other parcel it is made to look a great deal odder by the proposed subdivision. Mr. Marvel stated it seems odd to him, however, adding the Town of Conway lot would remove the oddness of it.

Mr. Marvel stated now that he sees the Town of Conway has held onto this lot while selling other lots makes him a little suspicious. Mr. Marvel stated if the Town has a plan of selling, trading, or giving that parcel to the proposed 10-acre piece that would be a shame; that would make it much easier to develop.

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Mr. Colbath stated he cannot speak to the Town of Conway's piece of land, and recommended they go to a Board of Selectmen meeting as we don't have the answer for that. Rod Henry of Redstone stated he tried to buy it from the Town, and there was indication that they didn't know what they were going to do with the property as it might be traded; and now you're trying to tell him that someone didn't know something was going on.

Mr. Wagner asked what impact this will have on the people directly on Redstone Street from the water coming down; how will that effect our wells and septic, if at all. Ms. Gerard stated what is shown on the plan is that this lot can stand on its own; you cannot create a lot that cannot contain its own well and its own septic. Ms. Gerard stated it shouldn't impact anyone else as the State won't approve a septic design if it did.

Mr. Porter stated he would like more information on the parcel that is owned by the Town; he would like to table the discussion and continue the hearing until we have that information. Mr. Porter stated as a member of the Board of Selectmen he does not recall ever discussing this piece of property, and he would like to do some research on this property. Mr. Hounsell agreed with the continuance and stated the reason this land was not put back on the tax rolls is something only the Board of Selectmen can provide and we should get answers to that.

Mr. Colbath stated he is in favor of continuing as he is concerned with the water quality and the trash; he is not comfortable with the waiver for the percolation test and the test pit. Mr. Barbin stated he agrees with continuing the application; it seems like the people of Redstone had a meeting with someone and know more about this situation than he does. Mr. Barbin stated he is expected to make a decision on step one in the process of the next meeting they all want to come to; he doesn't think we have enough information.

Mr. Hounsell stated there are old paint cans and can be assured they have lead in them; think there is a legal requirement of land owners to report such a situation to NHDES and come up with a mitigation plan. Mr. Hounsell stated he would like to ask for additional information regarding the liability and removal of the hazardous material. Mr. Colbath stated the water safety is a huge issue here, especially with the potential pollutants on the site. Mr. Colbath stated we would like some reassurances that that is not going to be an issue.

Abby King of USVLT stated we are requesting an approval for a boundary line adjustment and subdivision and she needs to know what information the Board needs that is relevant to that. Mr. Hounsell stated he would like to know what the applicant intends to do about the alleged paint cans and hazardous material that is on the property. Ms. King stated they are not proposing nor do they plan to propose any development; Upper Saco Valley Land Trust does not develop property.

Mr. Barbin asked if all they have to prove is that they are creating a buildable lot. Ms. Gerard stated that is correct. Mr. Barbin asked with this having a former commercial use would it not be subject to a level one site assessment for hazardous materials. Mr. Barbin asked is it a buildable lot if we don't know about the contamination on it. Ms. Gerard stated it is not part of the subdivision regulations, but the Board can ask for additional information; she would just need clarification of what additional information is necessary to satisfy the Board.

Mr. Hounsell stated he thinks we need a level one assessment from the Department of Environmental Services; they need to provide comment on the potential damage to prove that that it is a buildable lot.

Mr. Porter made a motion, seconded by Mr. Hounsell, to continue to application for Upper Saco Valley Land Trust until December 8, 2022 at 7:00 pm at the Conway Town Office.

Steve Fortin of 57 Bolton Hill Road stated his concern is where this is a developable lot and talking about line adjustments, he would like to see it be considered that access from Bolton Hill Road be taken off of that 10-acre lot to maintain the character of our neighborhood; if it was developed it would give them significant access from our road and that would change the character. Mr. Colbath stated this comment would be for when/if they develop that lot. **Motion carried by roll call vote with Ms. Byers abstaining from voting.**

NELSON-BERGMAN GROUP, INC. (FILE #S21-15) – 27-LOT SUBDIVISION REVIEW CONTINUED (PID 258-68)

Steve Harding of Sebago Technics appeared before the Board. This is an application to subdivide ±280 acres into 27-lots. Mr. Torres stated at the last meeting there was a letter from the homeowner's association regarding the existing Pemigewasset Drive and Old Goshen Road in Phase I on the development. Mr. Torres stated staff requested more time to review that letter, which staff did; a letter was sent to Shawn Bergeron on behalf of the homeowner's association and we have incorporated a condition of approval related to that letter.

Mr. Colbath asked for Board comment; Mr. Barbin asked how many phases are engineered. Mr. Harding stated there are two phases. Mr. Barbin stated there are drawings that show more phases. Mr. Harding stated way back there were more phases, but it was conceptual. Mr. Colbath stated Paul DegliAngeli's letter does reference four phases. Mr. Harding stated the owner is only looking at phase two.

Mr. Colbath asked for public comment; Shawn Bergeron of Bergeron Technical Services representing the homeowner's association stated a lot of our questions from the last meeting were answered; we have a couple of conditions, if the Board gets to a conditional approval. Mr. Bergeron stated a lot has been accomplished and they appreciate that.

Steve Hartmann stated commercial activity has increased on Old Goshen Road, and asked if there is any way to restrict all commercial traffic for this development to Pemigewasset Drive. Ariane Reynolds of 169 Old Goshen Road stated just today dump trucks by the dozen were going up and down our road. Ms. Reynolds asked why do they have to come up Old Goshen Road when they have their own private road to come up; they have a designated right-turn lane into Pemigewasset Drive. Mr. Hartmann suggested putting something as a condition of approval that access to the development is on their own road.

Ron Smith of 174 Pemigewasset Drive stated they have a construction entrance and it should be used. John Buonavolonta of 286 Old Goshen Road stated about 6:30 every morning a dump truck starts up and there are several bangs, and there is heavy equipment that is the size of the road there; he is asking the Board to make their neighborhood safe, and make a decision stopping trucks from coming up our road.

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Mr. Bergeron stated we would like to ask the Board consider two other conditions; that the Nelson-Bergman Group as the developer of Phase I install all granite highway bounds along Pemigewasset Drive as required by §130-67.A.(1) of the Conway Subdivision Regulations, and provide two copies of the as-built drawings as required by §130-67.I.(1) of the Conway Subdivision Regulations to the Saco River Run Homeowner’s Association.

Mr. Bergeron stated they have to submit a petition by October 1, 2023 requesting that the voters at the annual meeting in 2024 to consider taking over Pemigewasset Drive as a Town road. Mr. Bergeron stated if they are unsuccessful of convincing the voters they should do that, it is imperative that the owner’s association be provided copies of the as-built drawings because maintenance and further construction, and anything to do with that road, will be their responsibility.

Mr. Porter made a motion, seconded by Mr. Phillips, to conditionally approve the 27-lot subdivision for Nelson-Bergman Group, Inc. conditionally upon Town Engineer approval; NHDES subdivision approval and indicating approval number on plan; NHDES Dredge and Fill approval and indicating approval number on plan; adding a note to the plan that states “All construction equipment and materials must either be utilized or removed from the site once construction is substantially complete. If the equipment and materials are left on-site, the on-site surety shall be used to cover the cost of removing any remaining construction equipment and/or materials”; adding a note to the plan that states “The majority of construction traffic shall utilize the construction access located closest to Route 302 along Pemigewasset Drive as much as reasonably possible”; installing all granite highway bounds (right-of-way) monuments along Pemigewasset Drive as required by §130-67.A.(1); providing two copies of the As-Built drawings as required by §130-67.I.(1); submitting a revised and recorded Declaration of Covenants addressing stormwater maintenance and fire cistern maintenance and filling and indicating book and page on plan; Center Conway Fire Chief approval is required for utilization of the existing fire cistern being stored on site. If approval is not granted, it shall be removed from the site; submitting a bond for the protection and potential repairs to Pemigewasset Drive and the existing portion of Old Goshen Road during Phase 2 construction; submitting four copies of revised plans with original stamps and signatures; submitting a Mylar for recording; submitting a \$25 check made payable to the Carroll County Registry of Deeds for the LCHIP fee; submitting \$600 for inspection fees; a performance guarantee for all on-site improvements; a performance guarantee for all off-site improvements [if necessary]; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on October 26, 2023. Motion carried unanimously.

TARBERRY COMPANY, LLC (FILE #CC22-04) – CONCEPTUAL CONSULTATION

Dan Lucchetti of HEB Engineers and Ace Tarberry and Sheila Duane of the Tarberry Company, LLC appeared before the Board. This is a conceptual consultation to covert retail and storage area into a food hall-style space with multiple food and beverage providers with seating space available to patrons.

OTHER BUSINESS

Lisa Belen (File #NA22-12) – This is a request to allow a home-based daycare center for 7-15 children (PID 266-107): Lisa Belen appeared before the Board. Ms. Belen stated they will only have 12 children; a sprinkler system would be required for over 12 children. Ms. Belen stated six cars fit in the driveway comfortably. Ms. Belen stated her families are aware of the speed limit in this area. Ms. Belen stated there are no alterations to the outside, they just renovated the basement.

Mr. Colbath asked for Board comment; Mr. Corbett asked how many children are there now. Ms. Belen answered six. Mr. Colbath asked for public comment; Mr. Colbath stated the Board did receive an email from an abutter, Sarah Montgomery Kennett, which was provided to the Board. Mr. Colbath stated that Eliza Grant, who could not attend this evening, has asked about snow removal. Ms. Belen stated they have a plow contractor who will push the snow as far back as possible.

Mr. Barbin made a motion, seconded by Ms. Byers, that the Planning Board determined that based on the provisions of §110-4. A.(5), regarding applicability, that a home-based daycare center for 7-15 children is not subject to a 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 carried unanimously by roll call vote.

Selectmen's Report: Mr. Porter stated the elevator is now working at Town Hall. The Board thanked the Fire Station for the use of their facility.

Issues for consideration: Mr. Colbath stated we have received a letter from Chief Solomon regarding the Avesta Housing project [attached]. Mr. Colbath stated this is for informational purposes only at this time.

Mr. Torres stated they are close to signing a contract with the company for the Master Plan update.

Media Questions: Tom Eastman of the Conway Daily Sun asked how Habitat for Humanity falls into the Upper Saco Valley Land Trust application. Mr. Eastman asked if there has been a formal discussion or plan. Mr. Colbath stated there has been no formal presentation, discussion or application.

Meeting adjourned at 9:45 pm.

Respectfully Submitted,

Holly L. Whitelaw
Planning Assistant



Conway Fire Department

97 Main Street • 128 West Main St

Conway, NH 03818

Phone: (603) 447-2681 Fax: (603) 447-2766



October 21, 2022

Planning Board
Town of Conway
PO Box 2680
Conway, NH 03818

Members of the Planning Board,

I have discovered a problem with the Avesta Housing project in Conway.

The information submitted to the fire department for subdivision and site plan review was incomplete. No plans or notes on phasing of the project and no timelines were submitted or discussed. In addition, Avesta Housing now says that they are not responsible at all for completing the road and water line loop.

My approval was premised on the completion of Technology Lane, allowing two ways in and out of the apartment complex, and the looping of the waterline which improves fire flow and creates redundancy.

Avesta Housing now advises that they plan to build out all four buildings without completing either the road or the water line. This is not what I approved and not acceptable to me.

I reviewed your minutes from June of 2020 and found no mention of the road and water line being completed after the building, or not at all. The only mention of phasing at all was to move the trail relocation to phase one.

Attached is a copy of the letter I sent to Avesta Housing.

Respectfully,

Stephen Solomon, Chief
Conway Fire Department



Conway Fire Department

97 Main Street • 128 West Main St

Conway, NH 03818

Phone: (603) 447-2681 Fax: (603) 447-2766



October 21, 2022

Todd Rothstein
Avesta Housing
307 Cumberland Ave
Portland, Me 04101

Early in 2020, Avesta Housing submitted subdivision and site plans for a 156 unit apartment complex on Technology Lane in Conway. I reviewed these plans, submitted comments, had changes made, and ultimately approved them. The plans I approved in August 2020 included the water line being looped and Technology Lane being completed.

In August of 2022, I was informed that Avesta Housing is planning to complete all four buildings without the road or water line loop. In fact, Avesta Housing informed me that they are not even responsible for completing the water main or road and that the Mt. Washington Valley Economic Council is responsible for that.

I looked into this and found that Avesta Housing had failed to submit the phasing plan to me for review. I requested and received that in August 2022, reviewed it and found that it does not contain any information regarding when the buildings will be built or the fact that the applicant, Avesta Housing has no intention of completing the road or water line. I further reviewed the minutes of the Planning Board meeting from June 11, 2020 at which Avesta was discussed and received conditional approval and found no time line or mention of Avesta not being responsible for the whole project there either. I contacted the Water/ Wastewater Superintendent. He was under the same impression, that the water and sewer lines were to be completed in conjunction with the building. In addition I noted that the submitted plans, sheet 5 number 8 states that utilities would be completed in Spring of 2021.

I have reached out to Avesta for additional information and to seek a mutually acceptable resolution. We had a conference call on 08/18/2022. Avesta was to get back to me with a timeline for review and information regarding what water flow would be available on the top floor of building four with buildings one, two, and three in operation. On 09/06/2022 Avesta gave me the following time line:


Building	Construction Start	Occupancy
1	June 2022	August 2023
2	April 2024	May 2025
3	April 2027	May 2028
4	April 2027	October 2028

I again asked when in this time line the road and water line would be completed and was told, "The water line and road associated with Avesta's development will be done concurrently with Building's #3 and 4. As Josh described on our call, Mt Washington Valley Economic Council is responsible for the infrastructure beyond that point and I can't speak to their anticipated schedule."

Avesta's timeline is unacceptable. Had the information been provided during review I would not have approved the project with such a long timeline for completion. Furthermore, the repeated statements from Avesta that they are not responsible for completing the road and water line are incomprehensible.

On 09/20/2022 I received a basic 'Needed Fire Flow' calculation for one of the Avesta buildings. This is not what was discussed in the August conference call and so simple a calculation, that I routinely do this with plans review and would not have needed a Fire Protection Engineer to assist.

Please be advised that I will not be signing permits for any construction beyond building one until such time as Avesta Housing completes the road and water line loop. In addition, I will be notifying the Planning Board of this ongoing issue..



Stephen Solomon, Chief
Conway Fire Department

Cc: Planning Board
Town of Conway