

CONWAY PLANNING BOARD

MINUTES

FEBRUARY 8, 2024

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CONWAY PLANNING BOARD

MINUTES

FEBRUARY 8, 2024

A meeting of the Conway Planning Board was held on Thursday, February 8, 2024, beginning at 6:00 p.m. at the Conway Town Office, Conway, NH. Those present were: Chair, Benjamin Colbath; Selectmen’s Representative, Steven Porter; Vice Chair, Ailie Byers; Secretary, Erik Corbett; Eliza Grant; Bill Barbin; Mark Hounsell; Town Planner, Ryan O’Connor; and Assistant Planner, Holly Whitelaw. Alternate Ted Phillips was in attendance.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Porter made a motion, seconded by Ms. Byers, to approve the minutes of January 25, 2024, as written. Motion carried unanimously.

AGENDA OUT-OF-ORDER

Ms. Grant made a motion, seconded by Mr. Porter, to take the agenda out of order to discuss Huntington Ravine Management Co., Inc. Motion carried unanimously.

OTHER BUSINESS

Huntington Ravine Management Co., Inc./Tuckerman Brewing Company (File #NA24-02)

Kate Richardson of Bergeron Technical Services appeared before the Board. Kirsten Neves and Nic Stanciu were in attendance. This is a request to allow a permanent food truck (PID 277-183). Ms. Richardson presented an application for a not-applicable decision to install a permanent food truck at Tuckerman Brewing Company.

Chair asked for board comment; there was none. Chair asked for public comment; there was none.

Mr. O'Connor noted this request meets the proposed food truck ordinance. The Board agreed to allow for a permanent food truck, instead of requiring them to return after the ordinance is presented to the voters.

Mr. Porter made a motion, seconded by Ms. Grant, that the Planning Board determined that based on the provisions of §110-4. A.(5) regarding applicability, a permanent food truck 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. Chair Colbath asked for Board comment; there was none. Motion carried unanimously.

PUBLIC HEARING – ZONING AMENDMENTS PROPOSED BY THE PLANNING BOARD

§190-28 – Wetland and Watershed Protection Overlay District – The purpose of this amendment is for the inclusion of Low-Impact Development stormwater controls and expansion of the buffer to 250 feet from the edge of wetlands.

Mr. O'Connor noted there have been no changes to this amendment since the Board's last discussion. Chair Colbath asked for Board comment; there was none. Chair Colbath opened the public hearing at 6:05 p.m.

Chair Colbath asked for public comment. Robin Rocco, 2898 White Mountain Highway, said this is an important topic to consider, in light of the current state of the climate and the frequent occurrence of 50- and 100-year floods.

Chair Colbath closed public comment at 6:06 p.m.

Mr. Porter made a motion, seconded by Ms. Byers, to post §190-28, Wetland and Watershed Protection Overlay District, to the warrant. Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

§190-13.K.(11); §190-14.K.(11); §190-24.K.(11); and §190-31 – Kennels – The purpose of this amendment is to add the definition of Kennel and to include restrictions to limit potential noise for abutting property owners.

Mr. O'Connor noted there have been no changes to this amendment since the Board's last discussion.

Chair Colbath asked for Board comment; there was none. Chair Colbath opened the public hearing at 6:07 p.m. Chair Colbath asked for public comment; there was none. Chair Colbath closed public comment at 6:07 p.m.

Mr. Porter made a motion, seconded by Mr. Barbin, to post §190-13.K.(11); §190-14.K.(11); §190-24.K.(11); and §190-31, Kennels, to the warrant. Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

§190-17; §190-18; §190-19; §190-20; §190-22; and §190-23 – Outdoor Dining – The purpose of this amendment is to add the definition of Outdoor Dining Establishment and permit outdoor dining accessory to an approved restaurant use.

Chair Colbath asked for Board comment; there was none. Chair Colbath opened the public hearing at 6:08 p.m. Chair Colbath asked for public comment; there was none. Chair Colbath closed public comment at 6:08 p.m.

Mr. Porter made a motion, seconded by Mr. Barbin, to post §190-17; §190-18; §190-19; §190-20; §190-22; and §190-23, Outdoor Dining, to the warrant. Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

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§196 – Public Art – The purpose of this amendment is to create a Public Art Ordinance that addresses the installation of murals and also permits other art visible to the public on commercial and public property such as sculptures, street art, or other types of permanent art work.

Mr. O'Connor noted while this ordinance offers guidelines, it does not regulate content.

Chair Colbath asked for Board comment; there was none. Chair Colbath opened the public hearing at 6:09 p.m.

Chair Colbath asked for public comment. Larry Martin asked if the Board would decide on the mural content. Mr. O'Connor reiterated the Board does not regulate content. They will decide if a mural meets architectural standards for commercial buildings, is not a nuisance, and does not detract from the community. He clarified this ordinance is designed to delineate between signs and murals.

Chair Colbath referred to a letter submitted by Rob Barsamian that was received immediately before the meeting. He noted the need for such materials to be submitted in a timely fashion. Mr. O'Connor gave an overview of the letter.

Larry Martin noted his concern regarding a color being used as advertising and bypassing architectural guidelines. Mr. O'Connor reiterated this ordinance addresses anything commercial in nature and that the Board will review each mural for architectural standards.

Tom Eastman of Center Conway asked how this ordinance would affect existing murals. Mr. O'Connor noted existing murals are subject to the regulations that were in place when they were approved.

Chair Colbath closed public comment at 6:18 p.m.

Mr. Porter made a motion, seconded by Mr. Hounsell, to post §196, Public Art, to the warrant. Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

ROBERT NELSON (FILE #S24-02) – 2-LOT SUBDIVISION REVIEW (PID 288-20)

Mr. Porter made a motion, seconded by Chair Colbath, to accept the application of Robert Nelson for a subdivision review as complete with the Staff report. Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Josh McAllister of HEB Engineers appeared before the Board. He presented an application to subdivide 58.52 acres into two lots and to extend Deer Path Lane. Special exceptions were requested for driveway access and to extend Deer Path Lane. Deer Path Lane will be reconstructed to Town standards. He reviewed the pending permits and waiver.

Chair Colbath asked for Board comment; there was none.

Chair Colbath asked for public comment; there was none.

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Mr. McAllister read a waiver request for §130-36.A, Street Trees. **Mr. Porter made a motion, seconded by Mr. Barbin, to grant the waiver for §130-36.A.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Ms. Whitelaw reviewed the proposed conditions of approval.

Mr. Porter made a motion, seconded by Ms. Byers, to conditionally approve the 2-lot subdivision for Robert Nelson conditionally upon Town Engineer approval; NHDOT Driveway permit and indicating permit number on plan; NHDES Subdivision approval and indicating approval number on plan; NHDES Wetlands permit and indicating permit number on plan; submitting copies of all existing easements and deed restrictions; submitting an existing conditions plan to be included in the plan set and renumbering the sheets accordingly; adding a supplemental plan list to sheet 2 [V1.11]; revising the waivers granted table; submitting four copies of revised plans with original stamps and signatures; submitting a Mylar for recording; submitting a cost estimate for site improvements to be approved by the Town; \$200 for site inspections; 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 August 8, 2024. Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

RIVER RUN COMPANY, LLC (FILE #FR23-08 & #S23-09) – CONCURRENT FULL SITE PLAN AND UNIT SUBDIVISION REVIEW CONTINUED (PID 215-9 & 11)

Sheila Duane of River Run Company, LLC appeared before the Board. This is an application to construct 52 residential dwelling units and the continued use of the Nereledge Inn consisting of 12 dorm-style rooms and one apartment with associated infrastructure, and create a 42-unit residential subdivision at 94 & 130 River Road, North Conway. This hearing was continued from August 10, 2023, and September 14, 2023.

Ms. Duane asked for a continuance to June 2024, due to changes in the management of the company and time restrictions.

Mr. O'Connor said this development has impacts to the flood plain. He noted the Town prefers the application be resubmitted to allow the Town Engineer adequate time for review and to notify abutters. The Board discussed the implications of continuing the current application versus submitting a new application. Mr. O'Connor noted special exceptions required by this project will soon expire as well.

Mr. Hounsell expressed his concern that this project poses a threat to the watershed. He is not in favor of the project and not in favor of continuing the site plan review.

Ms. Byers made a motion, seconded by Mr. Hounsell, to not continue and when they reapply, the fees are carried over; the only fees they would have to pay would be for noticing abutters. Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Porter made a motion, seconded by Mr. Hounsell, that the River Run Company, LLC application for a Concurrent Site Plan and Unit Subdivision review is not complete. Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

BARNES DEVELOPMENT, LLC (FILE #FR23-11 & S23-16) – CONCURRENT FULL SITE PLAN AND 31-UNIT SUBDIVISION REVIEW CONTINUED (PID 235-82)

Mark Lucy of Horizons Engineering appeared before the Board representing Barnes Development, LLC. This is an application to construct 10 residential rental apartments and 30 residential condominium townhouses with associated infrastructure, and create a 31-unit residential subdivision on Puddin Pond Drive, North Conway (PID 235-82). This hearing was continued from September 14, 2023.

Mr. O'Connor said Staff recommends this application be considered as complete and reviewed the two waiver requests. He noted they are requesting the use of alternative parking standards.

Mr. Barbin made a motion, seconded by Mr. Porter, to accept the application of Barnes Development, LLC for a Concurrent Site Plan and 31-Unit Subdivision Review as complete with the Staff report. Chair Colbath asked for Board comment; there was none. **Motion carried, with Mr. Hounsell being present.**

Mr. Lucy reviewed the site plan criteria of the proposed project. He noted the apartments will be deed restricted as long-term rentals.

He described two relic stockpiles that are not allowed within the 100-foot buffer, so these stockpiles will be removed and a vegetative buffer created. Chair Colbath questioned removing large, viable trees to achieve this. The Board suggested installing a berm with plantings to mitigate the impact of the buildings at the edge of the 100-foot buffer and Mr. Lucy agreed this could be done.

The Board discussed the potential danger of housing units being placed along the snowmobile easement and Ms. Grant suggested installing fencing to delineate the backyards along the easement. She also suggested installing signage on the easement at both ends of the property. The Board discussed speed limits on the snowmobile trail and Mr. Martin explained the state limits.

Chair Colbath asked for Board comment. Mr. Hounsell expressed his concern regarding the visual impact of this project from the Parkway. He said this project represents a rude disregard for the desires of the people of the Town regarding protecting the Parkway. Mr. Lucy noted the existing 100-foot buffer and that the project meets Town regulations. He said this project provides housing, which the Town needs.

The Board discussed the proximity of the buildings to the snowmobile easement and whether this could be an issue. Mr. Lucy suggested expanding the easement.

Mr. Hounsell suggested constructing the apartment building first, and Mr. Lucy explained the phasing plan his client has worked on with Mr. O'Connor. Mr. O'Connor requested submission of the phasing plan. The Board discussed the need for affordable housing, and expressed frustration that this project does not meet this need.

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Mr. Barbin expressed concern over applications being submitted before the new ordinances regarding watershed and Parkway protection take effect.

Chair Colbath asked for public comment. Larry Martin reviewed how the snowmobile easement was established. He also explained the source and content of the relic stockpiles and suggested test pits to determine what is underground at this location. Mr. Lucy said the piles Mr. Martin is referring to were removed last year and that test pits have been performed.

Mr. Hounsell asked if a wall could be required to block the project from the Parkway. Mr. O'Connor clarified screening can be required, which is usually vegetative.

Mr. Lucy agreed to return to the Board with site cross-sections, including building elevations, from the North-South Road, which will help determine how high the berms should be.

Chair Colbath closed public comment. **Mr. Porter made a motion, seconded by Ms. Byers, to continue the site plan review until April 11, 2024, with new information due by March 12, 2024. Motion carried, with Mr. Hounsell voting in the negative.**

The Board took a brief recess.

CONWAY POKER ROOM AND CASINO, LLC (FILE #FR23-12) – FULL SITE PLAN REVIEW CONTINUED (PID 265-147)

Attorney John Cronin and Brian Pratt of Fuss and O'Neil appeared before the Board. Stefan Huba, Tiffany Eddy, and Dick Anagnost were in attendance. This is an application to change the use from a grocery store to an 11,836 square foot restaurant/bar with accessory charitable gaming at 234 White Mountain Highway, Conway. This hearing was continued from December 14, 2023. Paul DegliAngeli, Deputy Town Manager, was also in attendance.

Mr. O'Connor noted the application was complete. As there is no zoning in place that directly regulates gaming, he noted the Board must comply with site plan regulations in an attempt to reduce any impacts to the community. This is an existing non-conforming use, with several waivers requested.

Mr. Porter made a motion, seconded by Mr. Barbin, to accept the application of Conway Poker Room and Casino, LLC for a full site plan review as complete with the Staff report.

Chair Colbath asked for Board comment. Mr. Hounsell presented a testimony (see attached).

Motion carried 4-3-0, with Mr. Hounsell, Mr. Corbett, and Mr. Barbin voting in opposition, and Ms. Byers, Mr. Porter, Ms. Grant, and Chair Colbath voting in favor.

Mr. Cronin disagreed with some of Mr. Hounsell's comments and requested his testimony be entered into the record as an exhibit, which was done. Mr. Cronin requested that Mr. Hounsell recuse himself from the discussion and cited his reasons. Mr. Hounsell refused to step down. He said he had no moral objection to the project, but a legal objection. Mr. Cronin and Mr. Hounsell had a spirited discussion about Mr. Hounsell's comments.

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Mr. Porter made a motion, seconded by Ms. Byers, that the Board ask Mr. Hounsell to recuse himself for this application. Chair Colbath asked for discussion. Mr. Hounsell said he will not recuse himself and Mr. Porter acknowledged the Board cannot compel a member to recuse themselves. **Motion was defeated, with Mr. Hounsell voting present.**

Mr. Cronin said Section 110 of the site plan regulations applies to preexisting buildings and this case is not one of them. It is their contention that the Board does not have jurisdiction for site plan review. They are appearing with the reservation of rights and in a spirit of cooperation to present the plan and engineering work that has been done by Mr. Pratt. He said a zoning determination has been made in accordance with the Town's regulations, so this is not relevant for discussion at this time.

Mr. Pratt reviewed the plan to convert a former grocery store to a restaurant with accessory charitable gaming. He noted the proposed changes in parking and increased greenspace. He explained how they are addressing some of the concerns of the abutter with screening and curb cuts. They have conditional approval for a DOT permit and that a trip generation analysis showed a reduction in total trips. He also described the proposed septic system and stormwater treatment plan. They will install one propane tank to eliminate the existing numerous propane tanks.

Mr. Pratt reviewed the waiver requests regarding number of driveways, greenspace, and number of trees. He thanked Mr. O'Connor for his help on this project.

Mr. Cronin noted a number of letters of support have been received and have been shared with Staff.

Chair Colbath asked for Board comment. The Board acknowledged the efforts to improve this site, including driveway access, greenspace, and parking. Mr. Porter asked about installing dark sky-compliant lighting and Mr. Pratt confirmed this is being done. Ms. Grant suggested reducing the number of proposed parking spaces, which Mr. Pratt said they have already done.

Chair Colbath asked for public comment. Larry Martin pointed out potential changes to resolve truck access issues. He asked about the proposed location of the propane tank.

Julie Bufford, abutter, asked if anything could be done about trucks waiting to unload blocking East Side Road. She expressed her concern about traffic and accidents, as this business will operate 365 days/year. She asked if the dumpsters and trash receptacles could be bearproof, due to previous issues with trash. She asked about planned security to control the potential increased noise and disruptive behavior.

Mr. O'Connor said the police chief will review the safety and security plan and anything he notes can be included as a condition of approval.

Mr. Anagnost complimented Mr. Hounsell on being an honorable man. He noted Towns are happy with his projects. He said there will be security onsite during operating hours and they will be instructed to ensure there are no issues with truck access. He said the trash issues are being addressed. He added he has not experienced issues with disruptive behavior at other locations.

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Mr. Hounsell noted the potential impact on the Town budget due to the need for increased police services as a result of this operation. Chair Colbath asked for clarification regarding the hours of business; Mr. Anagnost said they set hours of operation as allowed, but these are customer driven.

Shawn Bergeron of Bergeron Technical Services, representing abutter Rebecca Mulkern, noted he appealed this project a year ago and most of the issues have been addressed. He reviewed these issues, including installing fencing and a vegetative barrier along the East Side Road, closing the curb cut that aligns with the abutter's driveway, improving the dumpster enclosures, painting the rear of the building, and removing excess equipment.

Mr. Pratt read a waiver request for §110-20.C. **Mr. Barbin made a motion, seconded by Mr. Hounsell, to grant the waiver for §110-20.C.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Pratt read a waiver request for §130-29.B. **Mr. Hounsell made a motion, seconded by Mr. Porter, to grant the waiver for §130-29.B.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Pratt read a waiver request for §110-29.D. **Mr. Hounsell made a motion, seconded by Mr. Barbin, to grant the waiver for §110-29.D.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Ms. Grant made a motion, seconded by Ms. Byers, to accept the alternate parking standard. Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. O'Connor noted the concerns of the community reflect the need of this change in use to come before the Planning Board as a site plan. He said the applicant has done a wonderful job of improving the site and limiting the impacts to the property.

Chair Colbath closed public comment.

Ms. Whitelaw reviewed the proposed conditions of approval.

Mr. Porter made a motion, seconded by Mr. Barbin, to conditionally approve the full site plan for Conway Poker Room and Casino, LLC conditionally upon Town Engineer approval; Conway Village Fire Chief approval; Conway Village Fire District water and sewer approval; Conway Police Chief approval; indicating NHDOT Driveway Permit on plans; updating Waivers Granted table [if necessary]; submitting a landscaping maintenance document to be recorded indicating the responsibilities to maintain all landscaping located within the public right-of-way. The document must state the vegetation shall be replaced if dead, in poor health, determined to interfere with overhead power lines, or at the discretion of the Town of Conway and indicate book and page on the plans; indicating on the plans that all existing and proposed rooftop mechanical equipment be screened from any public rights-of-ways; submitting four copies of revised plans with original stamps and signatures; submitting \$295 for applicable application fees; submitting \$200 for inspection fees; submitting a construction cost estimate for all on- and off-site improvements to be approved by the Town; a performance guarantee for all on-site improvements; a performance

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guarantee for all off-site improvements, if necessary; when the conditions have been met, the plans can be signed out-of-session; this conditional approval will expire on August 8, 2024; and conditions subsequent to final approval, substantial completion of proposed application shall take place within twenty-four months of Planning Board approval to include all landscape improvements and connection to public sewer; the gaming floor shall not exceed 6,000 square feet without additional Site Plan approval; and at the discretion of the Police Chief, reasonable safety accommodations shall be made to the structure or planned operations prior to issuance of a Certificate of Occupancy. Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

RGMZ MOUNTAIN VALLEY TRUST, LLC (FILE #CR24-03) – CONCEPTUAL REVIEW (PID 246-38)

Casey Birch of Solli Engineering appeared before the Board for a conceptual review to expand the outdoor display areas, provide additional storage areas associated with Lowe’s, and provide two permanent food truck locations.

Mr. Birch reviewed the current situation on the property and the proposed changes, and asked for suggestions. The Board discussed the proposed changes, noting the importance of making the building and the screening visually appealing. They noted the food trucks should be located closer to the building for safety purposes. The Board discussed the number of parking spaces and if this could be reduced. Mr. O’Connor noted that pedestrian safety is one of their main concerns. The Board discussed adding greenspace, installing temporary bollards, blocking entrances, and creating pedestrian-friendly areas to control vehicle access.

Chair Colbath asked for public comment.

Larry Martin complimented Ms. Byers and Ms. Grant on their emphasis on adding greenspace and noted the importance of this.

Mr. Birch thanked the Board for their time and input.

OTHER BUSINESS CONTINUED

Walmart Real Estate Business Trust (File #NA24-03)

Edward Danza of Massa Multimedia Architects appeared before the Board. This is a request to change the color scheme of the building that is not consistent with the 1995 approval at 46 North South Road, Conway (PID 246-62).

Mr. Porter said the building was approved architecturally and color-wise to blend into the Valley. He said the Board attempts to hold businesses to the same standards.

Mr. Danza explained that Walmart is in the process of re-imaging stores. This proposal is to paint the existing exterior materials shades of gray. He said the blue color in certain locations is considered a wayfinding aspect for customers. They propose replacement of three non-illuminated signs, which will reduce the overall size of the signage. The Board noted signage is under the jurisdiction of zoning.

Chair Colbath asked for public comment.

Larry Martin reviewed the history of establishing the current colors of this building. He noted Walmart doesn't need a sign to be found. He questioned why this proposal was being presented and asked the Board to deny this request. He said snow removal should be improved. He also asked about greenspace.

Mr. Danza said he can change the blue to a shade of gray, if the Board requires this.

Chair Colbath noted his concern regarding Walmart spending money on this issue. He said this request is disingenuous to former Boards and the time they put into making these decisions. Ms. Grant said deviating from the agreed-upon colors might set a precedent.

Mr. Barbin made a motion, seconded by Ms. Grant, that the Planning Board determined that based on the provisions of §110-4. A.(5), regarding applicability, that changing the color scheme of the building that is not consistent with the 1995 approval is 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 significant relative to the existing development. Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Frenette Living Trust - Lot merger (PID 203-124 & 125):

Ms. Grant made a motion, seconded by Ms. Byers, to accept the lot merger. Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Infrastructure Review Ad-Hoc Committee Update

Mr. Corbett reported there has been no meeting.

Selectmen's Report

Mr. Porter apologized for his outburst to Mr. Lucy regarding Mr. Barsamian's project. He explained his frustration with developers saying they support providing affordable housing, yet do not do so.

Issues for Consideration

Mr. Hounsell suggested the Board should consider a bunk house.

Mr. Hounsell read a letter resigning his position on the Planning Board effective immediately.

Mr. Porter made a motion, seconded by Mr. Barbin, to accept the resignation of Mark Hounsell with regret.

Mr. O'Connor acknowledged Mr. Hounsell and the work and commitment he has put into the Board. He appreciates what Mr. Hounsell has taught him and the time he has spent with him. He acknowledged Mr. Hounsell's many years of excellent and lively service to the community that are appreciated, and said it has been an honor to share the room with him. He thanked him and wished him a happy birthday.

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Chair Colbath thanked Mr. Hounsell for his time on the Board and said he has grown in his position from Mr. Hounsell's presence on the Board.

Mr. Hounsell commended the Board members for the work they do and the direction they are leading the Town. He has appreciated the opportunity to serve the community. He stressed the importance of protecting the Town's water, including the river. He said he hoped Ted Phillips will run for the position and offered his support. He expressed his admiration for each Board and Staff member individually.

Motion carried, with Chair Colbath voting in the negative and Mr. Hounsell not voting.

Chair Colbath made a motion, seconded by Mr. Barbin, to accept Mr. Hounsell as an alternate Board member until April 9, 2024. Motion carried, with Mr. Hounsell not voting.

Media Questions

Tom Eastman of the Conway Daily Sun thanked Mr. Hounsell for his love of and commitment to the Town. He said he appreciated Mr. Hounsell's availability to the Press. He said he was present during the original Walmart discussions, and appreciated the efforts of that Board.

He asked if the Board members had comments on the physical improvement of the casino project. Mr. Hounsell reviewed the process the Board went through with this project. He noted the state is going to allow host communities to receive additional revenue. He reiterated that his was never a moral argument. He noted the clientele will differ from the current tourists and might require additional police services.

Chair Colbath said he does not appreciate the position the state has put the Board in, and that the state cares more about revenue than the will of the citizens.

Ms. Byers said it is disturbing to repeatedly have members of state leadership and legislators say that New Hampshire is a place about local control, then consistently pass legislation or policies that are in direct conflict with this, while appearing in front of the Town and stating they have local control.

Mr. Corbett said you hear lots about local control until the locals try to take control.

Mr. Porter said it is good that the site is being cleaned up, but it is frustrating when lawyers dictate what can and cannot be done. He noted his personal opinion is that gambling is not good for the area.

Ms. Grant said while the site will be improved, the use is problematic.

Mr. Barbin said while the site will be improved, the voters of Conway have voted down gambling. He wished the voters could have had an opportunity to have a say on this topic.

Meeting was adjourned at 10:06 p.m.

Respectfully submitted, Beth Haggeli

§ 190-28. Wetland and Watershed Protection Overlay (WWPO) District.

The WWPO District is primarily designed to protect the public health, safety and general welfare by protecting valuable wetland and water resources; preventing the harmful filling, draining, sedimentation, or alteration of wetlands and watercourses; protecting unique and unusual natural areas; preventing the development of structures and land uses on naturally occurring wetlands, which could contribute to pollution of surface water and groundwater by sewage; preventing the destruction or significant degradation of wetlands which provide flood and storm control by the hydrologic absorption and storage capacity of the wetland; protecting fish and wildlife habitats by providing breeding, nesting, and feeding grounds for many forms of plant and animal life, including rare, threatened, or endangered species; protect existing and potential water supplies, aquifers and aquifer recharge areas; providing pollution treatment to maintain water quality; preventing expenditures of municipal funds for the purpose of providing and/or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands; providing for compatible land uses in and adjacent to wetlands or surface waters which serve to enhance, preserve, and protect wetland areas and water bodies as natural resources. Excavation shall be prohibited in statutory wetlands unless permitted New Hampshire Department of Environmental Services (NH DES). Land uses permitted in this district are represented in the Permitted Use Table included as an attachment to this chapter.

District boundaries and map.

(1) District boundaries.

(a) The WWPO District shall be comprised of all land within 250 feet from the edge of:

- [1] All water bodies, excluding Great Ponds, which are covered under the Shoreline Protection Overlay District; and certain man-made water bodies, such as fire ponds, agricultural/irrigation ponds, sedimentation/detention basins, and sewerage lagoons;
- [2] All year-round watercourses;
- [3] All wetland areas of three or more contiguous acres, excluding constructed or legally altered wetlands that are not part of a wetland mitigation plan, and vegetated swales and roadside ditches;
- [4] All wetland areas as shown on the Town of Conway 1997 Wetlands Composite Map abutting a water body or year-round watercourse defined on the Town's GIS mapping resource, regardless of the wetland acreage involved;
- [5] All perennial watercourses and hydric areas depicted as having poorly or very poorly drained soils according to the Soils Survey of Carroll County, New Hampshire (approved in 1973, and issued in 1977); and
- [6] All wetland areas, except wet woodlands (designated as WW-1 and WW-2), identified and delineated in a report entitled "The Wetlands of Conway, New

Hampshire - An Inventory and Evaluation," United States Department of Agricultural Extension Service Wetlands Project, Report No. 1, dated 1979.

- (b) Disputed or incorrectly delineated wetlands. When there is a dispute over the delineation of a mapped wetland, or in cases where an unmapped wetland is delineated, it may be resolved with a plan certified by a wetland or soil scientist licensed by the State of New Hampshire that delineates the wetlands in accordance with the criteria established in and defined by the Corps of Engineers Wetlands Delineation Manual Technical Report Y-87-1, Environmental Laboratory, Department of the Army, 1987 and Regional Field Indicators for Identifying Hydric Soils in New England, New England Interstate Water Pollution Control Commission, 1998.

(2) District map. The WWPO District Map is **included as an attachment to this chapter.**

B. Shoreline and wetland setbacks.

- (1) Each structure shall have a one-hundred-foot minimum setback from the edge of the water or edge of wetland, whichever is farther landward. Boat storage sheds, however, may be set back a minimum of 50 feet from the edge of the water or edge of wetland. In the Residential/Agricultural District, storage sheds shall be set back a minimum of 50 feet from the edge of water or edge of the wetland. Only one storage shed is allowed per lot within the buffer.

(2) Special provisions.

- (a) No septic tank or leach field may be constructed or enlarged closer than 100 feet to any wetland.

C. Impervious surface coverage within the WWPO shall not exceed 25%; including but not limited to buildings, driveways, and sidewalks. Qualifying areas within the WWPO may be used to meet greenspace requirements as defined by Site Plan Regulations §110-29.B.

D. Any development within the WWPO which requires Site Plan review shall meet the following performance standards and apply methodologies from the New Hampshire Stormwater Manual Volume 1, 2, and 3 as amended or other equivalent means, all such methods shall be indicated on any proposed site plan.

- (1) Low-impact development (LID) site planning and design strategies shall be used to the maximum extent practicable to achieve the following:

- [1] Recharge groundwater and reduce total runoff volumes

- [2] Control peak rates for flood control

- [3] Reduce pollutant loading

- (2) Stormwater directed to a qualifying wetland shall be treated onsite and achieve at least 80% removal of total suspended solids and at least 50% removal of both total nitrogen and total phosphorus using appropriate treatment measures, as

specified in the New Hampshire Stormwater Manual, Volumes 1 and 2, as amended or other equivalent means.

- (3) All bioretention areas shall be planted with native plantings appropriate for site conditions in sufficient numbers and density to prevent soil erosion and to achieve LID water quality treatment requirements. Standard wet ponds and other stormwater treatment areas shall meet NH DES stormwater standards.
- (4) The design of stormwater management systems shall be based on the 100-year storm as indicated in the most recent edition of the NH Stormwater Manual as published by the NH DES.
- (5) A proposed site plan must include erosion and sediment control measures, limits of disturbance, and temporary and permanent soil stabilization measures in accordance with the NH DES Stormwater Manual Volume 3 as amended or other equivalent means.
- (6) The placement and installation of any required culverts within the WWPO shall use methods that minimize impacts to the natural stream substrate and limit disturbance to streambeds. All such methods shall be indicated on proposed site plans.

E. Shoreline and wetland buffer. There shall be a fifty-foot-wide vegetated buffer along the edge of the water or edge of wetland, whichever is farther landward. This buffer serves as a natural filter to protect the waters and wetlands from contaminated surface runoff, provides habitat for terrestrial wildlife, protects aesthetic qualities of the water and wetland environment and helps prevent erosion of the shoreline. The following restrictions shall apply to the buffer:

- (1) One access path across the buffer, up to 10 feet in width (measured parallel to the shoreline), is allowed for each 150 feet of water frontage. Such paths shall be designed to prevent erosion and runoff into the water or wetland. Path installation may occur only after receipt of a zoning permit from the Zoning Officer.
- (2) Municipal trails on government lands and municipal trails across other lands (for which the Town of Conway has accepted trail easements) may be located within shoreline and wetland buffers, provided that they are designed and maintained to prevent erosion and runoff into the water or wetland.
- (3) No vegetation less than four inches in diameter, measured at 4 1/2 feet above ground level, shall be cut, trimmed, pruned or removed, except to provide for permitted access paths.
- (4) For vegetation four inches or more in diameter, measured 4 1/2 feet above ground level (hereafter referred to as "trees"), no more than 10% of the basal area of trees may be removed from the buffer (not including the area of permitted access paths) in any five-year period. Before any cutting may occur, the Zoning Officer shall be provided with a plat indicating the size and location of all trees in the buffer, which indicates the total basal area before and after the proposed cutting and which indicates all measures to be taken to prevent destruction of the buffer and protect the

water quality. Cutting may occur only after receipt of a zoning permit from the Zoning Officer.

- (5) No cutting or trimming of living tree limbs shall be permitted.
- (6) Dead trees and dead limbs may be cut down only after receipt of a zoning permit from the Zoning Officer.
- (7) For beaches permitted herein, where some clearing of land within the buffer is required, in no case shall such clearing for a beach extend inland more than 10 feet from the normal high-water elevation, and such clearing shall be no longer than the permitted beach.
- (8) Agricultural and timber harvesting activities and operations shall be permitted uses within the buffer area, provided they conform to best management practices established by the United States Department of Agriculture Natural Resources Conservation Service, Cooperative Extension and/or the New Hampshire Department of Agriculture and RSA Ch.227-J.

F. Docks. Docks which are completely removed from the water for the winter season shall be permitted as follows:

- (1) Maximum number of docks shall be one per 150 feet of water frontage, but lots with less than 150 feet of water frontage are permitted one dock.
- (2) A dock shall not extend more than 30 feet into the water.
- (3) A dock shall not be wider than 10 feet in width.
- (4) A zoning permit must be obtained prior to the installation of a dock.

G. Private beaches. Beaches which are not owned by a unit of government shall be regulated as follows:

- (1) Existing beaches may be maintained without the use of any machines or motorized equipment below the high-water elevation. Washed sand shall be the only material which may be added to the beach. The amount of washed sand added shall not exceed one cubic yard per three feet of beach length in any five-year period. A zoning permit and all applicable state permits shall be required before any sand is deposited, and it shall be the responsibility of the Zoning Officer to maintain records to monitor beach maintenance.
- (2) New beaches may be created only when the following conditions are met:
 - (a) The lot shall be considered to have an area suitable for a beach if it meets each of the following criteria:
 - [1] The slope of land from the high-water elevation to a line 10 feet inland shall not have slopes steeper than 10%.
 - [2] The slope of the land from the high-water elevation to a line 20 feet out into the water shall have slopes greater than 10%.

- [3] The proposed beach site shall be determined by an independent wildlife biologist to be of minimal importance as fish habitat and/or spawning area (written report from the wildlife biologist shall be provided to the Town).
 - [4] The area proposed for a beach above the high-water elevation is not on or within 10 feet of poorly or very poorly drained soils or wetlands.
 - [5] All proposed beaches must comply with the requirements set forth in RSA Ch. 482-A and the New Hampshire Code of Administrative Rules, as amended.
[Amended 4-11-2017 ATM by Art. 2]
- (b) A beach shall be no longer than 10% of the length of water frontage, except that no beach shall be required to be less than 15 feet in length.
 - (c) No more than one cubic yard of sand per three feet of beach length shall be used to create the beach. Compliance with this requirement shall be documented to the Zoning Officer by means of providing all receipts for beach construction. Only washed sand shall be used for beach construction.
 - (d) Once established, the maintenance requirements listed in Subsection E(1) shall apply.
 - (e) Erosion control measures shall be provided such that runoff shall not run across the beach, with a design certified by a New Hampshire licensed professional engineer and reviewed by the Carroll County Conservation District.
 - (f) A New Hampshire licensed professional engineer shall inspect the site three times: before construction; after grubbing but before sand is added; and when construction is completed. The professional engineer shall certify that all work is completed in accordance with the plans provided to the Town and in accordance with these requirements.
 - (g) All other required permits and approvals are obtained.
- H. Shorefront common areas. Shorefront common areas are those areas used for water recreation and/or access by users living off-site. Such areas shall comply with the following:
- (1) Shorefront common areas shall not be located on lots smaller than two acres.
 - (2) The lot shall have, at a minimum, 50 feet of water frontage per family or household having rights of use; provided, however, that no more than 500 feet of water frontage shall be required for any one shorefront common area.
 - (3) Parking lots for shorefront common areas shall be set back a minimum of 200 feet from the normal high-water elevation. The parking area shall be screened from view of the water by a strip, at least 25 feet wide, of trees and shrubs.
 - (4) Creation or alteration of shorefront common areas shall be subject to site plan review. [1] Editor's Note: See Ch. 110, Site Plan Review.
- I. Earth disturbance. Prior to any work activity in which digging will occur or the ground's vegetative cover will be removed or substantially disturbed, sufficient erosion and sedimentation control measures shall be installed in accordance with RSA 485-A:17 and the

New Hampshire Code of Administrative Rules, as amended. Such measures, which may include hay bales and silt fences, shall be maintained in proper working order until the ground surface is stabilized and no longer subject to erosion. The control measures shall be installed to protect the water, the wetland and the buffer (in order to preserve the buffer's natural filtering capacity). [Amended 4-11-2017 ATM by Art. 2]

- J. Water quality. In order to afford maximum protection to water quality, the application of chemical fertilizer, insecticides or other chemicals shall be prohibited in the district. In addition, drainage shall be controlled and treated as best as is reasonably possible for any construction or activity, or as a result of any land use, such as access paths. Local regulation of pesticide management is preempted by RSA 430:49.
- K. Special exceptions. The following shall be prohibited unless granted a special exception by the Zoning Board of Adjustment. If granted a special exception under this section, a site plan review approval shall be required prior to construction. References to the "shoreline" shall be considered either the shoreline of the water body/watercourse or the edge of wetland, whichever is farther landward. Any special exception shall be granted only after having found that there is no better feasible alternative, in keeping with state and federal standards for the issuance of development permits in 404 jurisdictional wetlands.
 - (1) Protective riprap. Riprap to protect shores from erosion shall be granted a special exception by the Zoning Board of Adjustment, provided that the following conditions are met:
 - (a) All required state and federal permits are obtained; and
 - (b) The shoreline is being eroded by action of the waters and the riprap will protect the shoreline from further erosion without enhancing erosion at another location on the shoreline.
 - (2) Building on undersized lots. Building on pre-existing lots with insufficient acreage shall be granted a special exception by the Zoning Board of Adjustment, provided that the following conditions are met:
 - (a) There is a state-approved septic system or connection to a municipal sewer.
 - (b) Any building to be constructed shall be configured and located on the lot to create the maximum shoreline setback practical. If appropriate, rear and sideline setbacks may be reduced by the Zoning Board of Adjustment by up to 50% to facilitate maximum shoreline protection.
 - (c) Clearing of lots may be limited by the Zoning Board of Adjustment as a condition of approval so as to prevent erosion runoff problems.
 - (3) Municipal and state facilities. Municipal and state facilities, including beaches and boat launches, shall be granted a special exception by the Zoning Board of Adjustment, provided that the following conditions are met:
 - (a) All required state and federal permits are obtained.
 - (b) Sand for a beach shall not be deposited in water which is deeper than 4.5 feet nor farther than 75 feet out from the high-water elevation. For erosion control of the

beach area, a barrier shall be constructed between the water and the sand on the beach. The site shall not be normally subject to erosion by action of the water nor by the grade of the shoreline slope.

- (c) In order to shield the view of parked vehicles from the water and to protect the water from runoff from parking areas, parking shall be located behind a landscaped area of natural or planted vegetation at least 50 feet in depth. Parking areas shall be gravel. Appropriate drainage controls shall be constructed and maintained to protect the Great Pond.
 - (d) Footpaths may be cleared across the vegetated area for access to the beach. They shall be kept at a minimum width which serves pedestrian access to the water.
- (4) Wetland or stream crossing: the construction of a wetland or stream crossing for purposes of streets, roads and other access ways and utility right-of-way easements, including power lines and pipelines. A special exception for these uses may be granted if the following conditions are met:
- (a) The use is essential to the productive use of land not in the district; and
 - (b) The use is so located and constructed as to minimize the detrimental impact upon the wetlands.
- (5) Water storage or impoundment: the construction of a water storage or impoundment.
- (6) Any use not otherwise permitted or otherwise allowed by special exception in a wetland, which may include the erection of a structure, dredging, filling, draining or otherwise altering the surface configuration of a wetland. A special exception may be granted, provided that the following conditions are met:
- (a) The proposed use will not conflict with the purpose and intent of the district. To support this claim, the applicant shall provide proper written evidence, which shall be accompanied by the findings of a review by the United States Natural Resources Conservation Service; and
 - (b) The use is permitted in the underlying zoning district.

Proposed Kennel Amendments

§190-31 Definitions:

Kennel – An establishment or domicile which houses 10 or more Domestic Animals for any period of time. Kennels shall include any establishment as defined by RSA 466:4.III, Commercial Kennels; and are subject to RSA 466:6, Group Licensing.

(11) Kennels. A special exception may be granted to permit kennels for transient (fewer than 30 days) housing of domestic animals or commercial breeding facilities for domestic animals, provided that:

(a) The minimum lot size is two acres.

(b) Animal housing areas, if indoors, shall be set back 40 feet from side and rear property lines and 60 feet from rights-of-way. Pastures/Outdoor exercise areas shall be set back 15 feet from any property line.

(c) A written plan for the disposal/removal of animal waste must be submitted along with the application requesting the special exception from the Zoning Board of Adjustment. This plan must be approved by the Board as a condition of the special exception approval, if granted.

(d) All animals shall be kept in an indoor area between the hours of 6:00 p.m. and 8:00 a.m.

(e) The values of surrounding properties are not diminished.

[Added 4-11-2023 ATM by Art. 11]

(f) There will be no nuisance to abutters and/or neighbors preventing the peaceful enjoyment of their property and home.

[Added 4-11-2023 ATM by Art. 11]

(g) Additional conditions may be attached to this special exception by the Board of Adjustment consistent with the intent and purpose of this chapter to protect the health, safety, and general welfare of the Town's residents.

[Added 4-11-2023 ATM by Art. 11]

(e) At no time shall noise from a Kennel operation exceed 70 decibels when measured at a property line. Sound barriers or additional setback area may be required to limit sound impacts on abutting properties. At any time, the Town may demand noise levels be verified by a qualified engineer.

Proposed Outdoor Dining Ordinance

Outdoor Dining Establishment

An area on private property, a public sidewalk, or public way where patrons may consume food and/or beverages provided by a licensed restaurant. Such restaurants may either provide table service in the outdoor dining areas or sell take-out items to be consumed within the outdoor dining area.

Proposed Ordinance Language:

The proposal would amend the following Commercial sections of Conway Zoning Ordinance, Chapter 190.

190-17(O) – Center Conway Village Commercial District

190-18(O) – Conway Village Commercial District

190-19(O) – North Conway Village Commercial District

190-20(O) – Highway Commercial

190-22(M) – Industrial One

190-23(M) – Industrial Two

(O,M). Outdoor Dining Establishments are permitted in the zoning district as an accessory to any approved Restaurant use.

- (1) An Outdoor Dining Establishment application shall be accompanied by a plot plan, drawn to scale and dimensioned to include seating arrangements and immediately adjacent physical features such as fire hydrants, trees, structures, sidewalks, and pedestrian or vehicular travel ways. The plan shall be reviewed by the fire chief to ensure unimpeded pedestrian access. Outdoor Dining areas shall be designed to maintain compliance with requirements of the American Disabilities Act (ADA).
- (2) Establishments serving alcohol shall hold a valid liquor license from the State Liquor Commission prior to occupancy of the space. The license shall explicitly identify the Outdoor Dining area. Any permission granted by the Town of Conway will be subject to requirements of the State Liquor Commission.
- (3) Outdoor dining areas must be maintained. A minimum of one trash receptacle shall be provided and identified on the plot plan. Plantings, barriers, and outdoor furniture shall be maintained and suitable for the intended purpose.

- (4) Outdoor dining areas shall be separated from vehicular and pedestrian traffic. The separation must be adequate to ensure public safety; the minimum height of the barrier shall be 36 inches and the maximum height shall be 48 inches. Where no curbing or adequate vehicular separation exists, concrete or similar barriers shall be installed to prevent vehicular passage.
- (5) Outdoor entertainment associated with the dining area must not be considered a nuisance as defined in Site Plan Regulations 110-39 and shall adhere to 97-6.A, Noise Restrictions.
- (6) Occupancy limits shall be established by the Fire Chief. Applications must indicate that adequate parking can be provided as per Site Plan Regulations §110-21.
- (7) Dining areas and associated equipment are subject to all applicable setbacks.
- (8) Restroom facilities shall be readily accessible.
- (9) Outdoor Dining applications may be reviewed as a Small Undertaking as per Site Plan Regulations § 110-4. Site Plan review is required for any proposal which reduces total site greenspace to less than 30%, proposes a reduction of greenspace of greater than 2,000 square feet, or increases structural floor area by greater than 25% or 1,000 square feet, whichever is more restrictive.

Chapter 196 Public Art

§ 196-1 Purpose and Intent:

Regulations for Public Art were formulated to maintain a quality visual aesthetic while allowing for creative expression in appropriate locations. The established review criteria provide guidance concerning the compatibility and appropriateness of theme, location, design, placement, massing, scale, and materials of publicly displayed art with no intrusion into the artistic expression or the content of work.

§ 196-2 Applicability:

This chapter shall apply to any proposed, altered, or amended Public Art installation on commercial or public property in all Zoning Districts. Public art is encouraged in the Commercial and Industrial zones.

§ 196-3 Definitions:

MURAL Any permitted art painted or applied directly on a building, structure, fence, or object within the public view that is located on public or private property.

SIGN Any device, fixture, placard, structure or attachment thereto that uses color, form, graphic, illumination, symbol, or writing to advertise, announce the purpose of, or identify the purpose of any person or entity, or to communicate information of any kind to the public, whether commercial or noncommercial. Any portion of any awning, either freestanding or attached to a structure, decorated with any sign element, either attached or part thereof, shall be considered a wall sign.

VANDALISM Any unpermitted writings, drawings, or other material posted on a public or private property. Typically, this is unlawfully placed on property not owned by the person posting the material.

PUBLIC ART Any original work of art which is sited in a manner accessible and visible to the public regardless if the installation is temporary or permanent.

§ 196-4 Plan Submittal and Approval:

A Zoning Permit shall be submitted to the Zoning Officer for any proposed Public Art on commercial or public property for review of the criteria below. The Planning Board shall consider applications at a Public Hearing. Public Art proposals on public property shall be referred to the Selectboard.

A. Any application for proposed or altered Public Art shall include:

- (a) The proposed design of the mural or artwork, in full color, drawn to scale. Designs should be representative of the community and the natural beauty of the Mount Washington Valley.

- (b) Artist Qualifications. The artist must demonstrate appropriate experience and provide examples of past similar work. The use of local artist, historians, or other community resources is highly encouraged in the design and installation.
- (c) A list of the proposed materials and the method of their application.
- (d) A document indicating the property owner's liability for maintenance and removal of vandalism. A schedule of maintenance must be provided. If the Public Art installation is not maintained, the Town of Conway reserves the right to demand removal at the expense of the property owner.

B. Public Art installations are prohibited of the following:

- (a) Placement in a manner which interferes with the identification or recognition of an exit, fire escape, stairway, window, any form of egress, or ADA access.
- (b) Identification of prices, products, or services for any commercial use.
- (c) Include any advertisement or be commercial in nature. Public art must not contain lettering, symbols or references directly to the promotion of any product, business, brand, organization, or service. The name, logo, or other indicator of the sponsor of the mural or the mural artist shall be discreetly displayed and shall not exceed 2% of the overall design.
- (d) Contain false statements, obscene language or images, or create a clear and present danger to the general public.

§ 196-5 Design Standards:

- A. Architecture. The proposal complements the architectural design of the building on which the Public Art is proposed.
- B. Structural Integrity. The location and materials of Public Art must have the structural integrity to support proposed materials.
- C. Historic Nature. If the site is a designated landmark, a structure of merit, or a point of historical interest, the Planning Board may require a review be provided by the New Hampshire Division of Historical Resources indicating the proposal will not adversely affect the historic nature.
- D. Appropriateness. The proposal does not detract from the character of the surrounding area or neighborhood as determined by the Planning Board.
- E. Limitations. The proposal does not conflict with any prohibitions of § 110-39, Nuisances.

- F. Materials are of superior quality and intended for exterior use. Permanent installations must have a weatherproof and vandalism-resistant coating.
- G. Murals placed on a structure. Murals located on a front facade shall not exceed more than 25% of the area of which the mural is located. Murals located on the side or rear of a structure must be appropriate in scale and be suited for the character of the neighborhood, as determined by the Planning Board. Area requirements are cumulative and are not required to be contiguous.
- H. Murals placed on an object or surface not considered a structure to include murals on pavement, hardscaped areas, and objects such as light post or guardrails shall be appropriate in scale and be suited for the character of the neighborhood, as determined by the Planning Board.
- I. Total sculpture footprint area shall not exceed 250 square feet per acre. Square footage requirements are cumulative and are not required to be contiguous.
- J. Public Art shall not be placed within any setback or restrict pedestrian or vehicular travel. This does not apply to murals placed within a setback if the location is a legally existing nonconforming use.
- K. Public Art must be properly maintained to ensure that material failure, such as peeling paint, is corrected and vandalism is removed promptly. Removal of vandalism is the responsibility of the property owner and shall be removed within seven (7) days.

February 8, 2024

Via Email c/o Assistant Planner Holly Whitelaw: hwhitelaw@conwaynh.org

Chairman Benjamin Colbath
Conway Planning Board
P.O. Box 2680
23 Main Street
Conway, NH 03818

Re: Proposed "Public Art" Ordinance (New Section 196 to Zoning Ordinance)

Dear Chairman Colbath and Members of the Board:

I am writing on behalf of Settlers Green to express our great concern about the proposed "Public Art" ordinance that will be considered at tonight's Planning Board meeting. After reviewing the provisions and discussing them with counsel, we believe that the proposed ordinance will be impractical to apply and will give rise to a host of problems.

By way of example, we note the following based on our review:

- The proposed ordinance does not limit regulation to works of art visible from public roadways. Rather, it seeks to regulate any art (including murals and sculptures) on private land that is merely open to the public. Thus, Settlers, for example, could not install a sculpture or exterior painting in one of its courtyards not visible from a public (or even private) roadway, without seeking Planning Board approval. Under the plain language of proposal, *none of Settlers tenants could even install a portrait or painting in its store without Planning Board approval because its store is open to the public.* This is overreach and unnecessary. What public purpose is being met by regulating such works of art?
- The proposed ordinance expands beyond the regulation of "signs" and "murals" to sculptures and other works of art. Therefore, rather than refining the regulation of signs to foster the creation of works of art, the ordinance imposes more, rather than less regulation on artists and their works.
- The definition of "SIGN" includes "any device, fixture, placard [or] structure . . . that uses color, form, graphic, illumination, symbol, or writing to . . . communicate information of any kind to the public, whether commercial or noncommercial." This expansive definition makes the separate definition of "MURAL" irrelevant, because every "mural" would be a "sign" under this broad definition. In short, the definitions are not precise, and murals will be "signs," even if that was not intended.

- The proposed ordinance provides that “[d]esigns should be representative of the community and the natural beauty of the Mount Washington Valley.” This is a content-based regulation, and we do not believe it is legally permitted. Moreover, this requirement is going to be impossible to objectively apply. It could also lead to absurd results. By way of example, will a mural depicting a seashore and lighthouse be impermissible because such depictions do not represent the community or the Valley?
- The proposed ordinance requires artist “qualifications” and states that any artist “must demonstrate appropriate experience and provide examples of past similar work.” Does the town really want to be in a position of “vetting” artists and deciding whether a particular artist’s work is of satisfactory quality and taste? Applying this literally, no new artist could ever create a public work of art because they could not meet the Ordinance’s “experience” requirement. The Town does not vet those who install or design signs or check their prior work before allowing them to install a sign. Why would it do so for works of art?
- The proposed ordinance prohibits public art that is “commercial in nature” or that contains “lettering, symbols or reference directly to the promotion of any product . . . or service.” This is so ambiguous and broad as to be unmanageable. Is a mural or sculpture of a snow skier allowed or does it promote skis or buying lift tickets at the local ski resort? Is a mural or sculpture of someone playing a guitar allowed or does it promote the purchase of guitars or tickets for concerts in the Valley?

There are other issues with the proposed ordinance, but we wanted to provide the Board with a sampling of our concerns. We hope the Board appreciates the very sensitive nature of such regulations in light of the First Amendment, particularly with respect to those provisions that allow the Board to deny a particular artist or particular content, such as when determining whether a particular proposed mural or sculpture is “suited” to the neighborhood or otherwise suitable.

Though we know that the Board was well intentioned, we asked that the Board reject the proposal, as drafted.

Thank you for your consideration.



Rob Barsamian

cc: Ryan O'Connor, Town Planner, at roconnor@conwaynh.org
Paul Degliangeli, Town Engineer, at pauld@conwaynh.org

Planning Board member Mark Hounsell's loyal opposition to Conway Poker Room & Casino application as being complete

I present this testimony for the record,

The evening of February 18, 2023, was when I first became aware of the substantial revisions to the state's Charitable Gaming Law that caught the people of Conway unaware. I had been asked to represent the concerns of the WORD OF LIFE CHRISTIAN FELLOWSHIP church who objected to a massive hotel/casino proposed by former state Senator, Andy Sanborn and his wife, House of Representative member, Laurie Sanborn, who at the time was the Chairman of the **Commission to Study the Effect of Recent Changes to Charitable Gaming Laws**. Rep. Sanborn has been removed from the commission as she and her husband remain under investigation for defrauding the Federal Government. Representative Sanborn remains the Chairman of the House Ways and Means Committee that has legislative oversight of Charitable Gaming. This akin to the "fox guarding the henhouse."

A couple of important developments for the board to take note of. One, in December of 2023 Andy Sanborn's charitable gaming license was suspended for six months and he was ordered to sell his Concord Casino to a new owner approved by the New Hampshire Lottery Commission. If Sanborn fails to do so, the casino's license will be revoked for two years, which would make it much harder for him to sell his business. Two, there has been a lawsuit filed in Merrimack Superior Court asking the court to invalidate the surprise decision made by the Concord Planning Board to Sanborn's proposed casino.

The proposed new Casino is located less than a quarter of a mile from the church's campus on Old Loudon Road in Concord.

On January 26, 2023, under the agenda item, "Issues for Consideration", I informed this board, based on the revelation of Sanborn's Concord application that it "*is my understanding that there might be a charitable gaming operation coming to Conway, and (I) believe that it would constitute a change of use...*"

I believe it is important and it is revealing to read the minutes of this board's exchange with the New Hampshire Lottery's Director, Charles McIntyre and the Lottery's Chief Compliance Officer, Attorney John Conforti from this board's meeting of February 9, 2023, one year ago tomorrow. During that exchange board Chairman, Ben Colbath stated, "*we (the town) were not aware of this type of gaming...*" Chairman Colbath went on to further state, "*We now know what charitable gaming is because here it is in front of us, but no one (knew) about it until it is too late. our concern is that it is being pushed into the community*".

At that same meeting, I also stated, that I “*was led to believe that the interest of the Lottery Commission as far as to coming into a community is that it is done in accordance with local planning and life safety, but (I) don’t see any attention given to it by the Lottery Commission*”.

Further, at the same meeting I asked, “*if there is a way to have your commission sit down and discuss what type of rules should be put in place before going much further as far as informing communities of what exactly charitable gaming has become?*” To which Director McIntyre responded, “we have had a number of communities reach out to us and we have been available to speak to ones that have had issues; it is up to the community on if it is allowed and its location, it is a local control issue, and we would respect that.” It is correct to conclude by this response by New Hampshire Lottery's executive director, that local control superseded the right of the applicant to operate a charitable gaming facility based solely on the state’s charitable gaming laws.

Board member Dr. Eliza Grant stated, “*ultimately we have local zoning and planning over this site, and this should have gone through the Zoning Board of Adjustment and then go through the planning process.*”

According to NH Public Radio report of October 17, 2023, entitled, “What should the future of NH’s charitable gaming look like? A state panel tries to figure it out”, Charles McIntyre, the New Hampshire Lottery's executive director, noted that “significant sums of money” are likely coming into the state as more facilities bring in slot machines. He said *one potential regulatory change could be allocating some of those proceeds to the towns and cities where charitable casinos are located.*

Conway Poker Room & Casino (applicant) applied for and received a second building permit from the town, as their first permit had expired. Applicant sought to change the current use of an existing commercial site from a grocery store to a restaurant with “*indoor commercial entertainment*.” This administrative decision was appealed by an abutter, Rebecca Mulkern, causing the permit to be correctly withdrawn by the town in accordance with the law.

Subsequently the town denied the applicant a building permit. A denial that was upheld by the Zoning Board of Adjustment.

The applicant was not entirely forthcoming with neither the first, nor the second building permit application as it pertained to information on the building application. That coupled with the fast-changing state charitable gaming laws and the state failing to advise the town of the changes, it was reasonable for the town planners and the building inspectors to issue the permits based on the long-standing tradition of approving an

“occasional night of gambling” for the benefit of local charities who previously retain 100% of the proceeds.

Not happy with the town’s refusal applicant is posturing by threatening to sue the town for \$10 million, an amount that any responsible court through a jury trial would ever approve. While this gun to our heads is a threat it must not divert this board upholding of local zoning ordinances and our constitutionally protected town charter. From our charter I now quote,

“RIGHTS OF THE COMMUNITY

Under this Home Rule Charter the citizens of Conway shall forever retain sovereign control, and a responsibility subject only to the preemption of the Constitutions and Laws of the United States and New Hampshire over all areas of commerce and necessities of an ever-modernizing society which without limitation of the foregoing (including) Social evils including gambling.”

There in lays our reason to vote NO on the question currently before us. This application is NOT complete. It is not complete because the people of Conway have NOT HAD A VOTE YET TO DETERMINE THEIR APPROVAL OF CHARITABLE GAMING IN CONWAY AS IT RELATES TO APPROVAL OR DISAPPROVAL IN THE TOWN OF CONWAY OF THE QUESTION ASKING ABOUT WHAT THAT MEANS TO THEM. UNTIL THAT VOTE NO ONE KNOWS HOW THE VOTERS WILL ADDRESS THE PERMITTED USE. UNTIL THAT VOTE gambling is not a permitted use

To those who might argue that particular charter provision does not count I submit, if that provision does not count how can any other provision in the charter count? We cannot, we must not, succumb to the pressure of picking and choosing what law to support and what law to ignore.

At the end of these comments, I am including an email from the applicant’s representative Stefan Huba dated December 13, 2023. I encourage you to take the time to read it. In addition to being insulting to me personally as well this board it reveals the extremes this applicant will go to avoid the democratic process and respecting the will of the people of Conway

Huba, perhaps on the advice of his lawyer, formally requested the recusal of Member Mark Hounsell from further participation in the hearing process Huba claims that that I was, “*expressing objections based on (my) personal views of morality rather than the legal merits of the application.*” Be assured that I am not. Although I recognize there is a “moral argument” to be made, I have not, am not and will not violate my oath of office to uphold the law based on a personally held point of view. I never have done so and I

never will. The decision on the morality of charitable gaming is exactly why it is written into the original and current Town of Conway's Charter. Therefore, it does not matter how I view it from a moral standpoint. It matters that the people's right to decide is defended by this planning boards understanding now.

What this board has before us is an application that is not supported by our town charter. The question of the legality of this proposed project to for the courts to decide. For now, the people's expressed will, supported by Article 39 of the New Hampshire Constitution and having received prior endorsement for state government provides that *the citizens of Conway shall forever retain sovereign control...*"

Ironically, in two months, on April 9th the voters of Conway will be asked to replace our current charter with one that if adopted will remove the prohibition against gambling. Should that happen the legal barrier that presently renders this application as being incomplete will go away. I say let the people decide! Until such time, our town charter hold preeminence over NH's insufficient and apparently not yet completed charitable gaming laws. This is my legal argument and is one that as hope will impact our decision-making process tonight.

Thank you for your kind attention.

Mark Hounsell

From: Stefan Huba <StefanHuba@p2e.com>

Sent: Wednesday, December 13, 2023 9:31 AM

To: 'Holly L. Whitelaw' <hwhitelaw@conwaynh.org>

Cc: roconnor@conwaynh.org

Subject: Conway Poker Room site plan application (FILE #FR23-12) - Request for Member Recusal

Dear Ms. Whitelaw,

I hope this email finds you well and in good spirits. I am writing to express my concerns regarding the forthcoming Planning Board hearings for the review of the Conway Poker Room site plan application (FILE #FR23-12) and to formally request the recusal of Member Mark Hounsell from further participation in the hearing process.

Member Hounsell has been publicly outspoken against our project, expressing objections based on his personal views of morality rather than the legal merits of the application. While I acknowledge the diversity of opinions within the community, I

believe that impartiality and fairness are essential components of the decision-making process for matters such as ours.

It is my understanding that members of the Town Planning Board are expected to approach their duties with an open mind and free from bias. However, the public opposition and editorial comments made by Member Hounsell raises concerns about his ability to remain impartial in the ongoing hearings. This request clearly meets the legal standard for recusal.

To ensure the integrity of the hearing process and to uphold the principles of fairness and due process, I kindly request that Member Hounsell and any other member of the Appropriate Casino Land Use (A.C.L.U.) ad hoc study committee that may be or have been influenced by Member Hounsell voluntarily recuse themselves from any further participation in the proceedings related to our site plan application. I contend that Member Hounsell's and other Member's public statements against the project based on morality compromise the appearance of impartiality and may impact the credibility of the decision-making process.

While I understand that board members may have formal challenges, I sincerely hope that a voluntary recusal would be the most appropriate course of action to address the concerns raised. I trust that the Town Planning Board is committed to conducting fair and unbiased hearings, and I appreciate your attention to this matter.

Thank you for your understanding and prompt consideration of this request. I look forward to a fair and impartial hearing process that thoroughly evaluates the legal merits of our site plan application.

Sincerely,

STEFAN HUBA

PENINSULA PACIFIC ENTERTAINMENT DEVELOPMENT, LLC

P: 630.359.1823

E: stefanhuba@p2e.com

O. 630.359.1823

NEW HAMPSHIRE GROUP, LLC

887B Central Ave | Dover, NH 03829

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