

PLANNING BOARD MINUTES
Thursday, January 15, 2009

ROLL CALL:

Phil LoChiatto, Chairman – Present	Nancy Prendergast, Vice Chairman – Present
Rick Okerman, Secretary – Excused	Walter Kolodziej, Regular Member – Excused
Ruth-Ellen Post, Regular Member – Present	Pam Skinner, Regular Member – Excused
Louis Hersch, Alternate Member – Excused	Kristi St. Laurent, Alt Member – Present
Sy Wrenn, Alternate Member – Seated 8:10 pm	Bruce Breton, Selectmen Member – Present
Galen Stearns, Selectmen Alternate – Excused	

STAFF:

Al Turner, Director of Planning and Development – Present

Mr. LoChiatto opened the meeting at 7:00 pm. The Board stood and recited the Pledge of Allegiance. *Ms. St. Laurent replaced Mr. Okerman.*

PUBLIC MATTERS:

Citizen Petitions

Citizen Petition #2 – Petition of Charles McMahon and others to see if the Town will vote to rezone property at Range Road and Route 111 identified as lots 18-L-480, 18-L-450, 18-L301, 18-L-400, 18-L-300, 18-L-303, 18-L-302, 18-L-310, 18-L-201 at 41, 43, 49, 53, 57, 59, 61, 63 and 67 Range Road from Professional Business and Technology District to Business Commercial District “A”. This will enable the parcels to be zoned in a manner consistent with the creation of the new Route 111.

Mr. LoChiatto stated that this is a continuation from last night’s meeting, correspondence has been received from Attorney Campbell and there is not a fatal flaw in citizen petition #2, and text can be added to clarify the petition.

Ross McLeod, Nottingham Road, stated that lot 18-L-400 is one of the lots being discussed which is owned by Miacomet LLC, Mr. LoChiatto works for Miacomet LLC which is managed by Mr. Nickerson, this presents a conflict of interest for the Chairman, and he requested Mr. LoChiatto to recuse himself. Mr. LoChiatto stated he will reluctantly recuse himself to keep it clean. Mr. LoChiatto discussed the buffer zone, Attorney Campbell’s email says it is not a fatal flaw and does not need to be withdrawn. Mr. Turner, Mr. LoChiatto, and Mr. Sullivan have all spoken to Attorney Campbell regarding this.

Board discussion as to the how to interpret the petition, Attorney Campbell’s recommendation is based on the map he received, the petitioner asked for the entire lot, and clarification of the petition. *Mr. LoChiatto stepped down, and Ms. Prendergast took over as Chairman.*

Board discussion regarding the flaw in the petition, and the map that was attached to the cover sheet to Attorney Campbell. Board discussion with Mr. McMahon regarding Attorney Campbell stated that an additional commentary can be added to the petition for clarification, there is a buffer zone of 6 acres shown of the map, the intent of the petition is to keep the buffer, the Residential A portion is to remain Residential A, make a recommendation to the Selectmen to add the suggested language, Attorney Campbell does the summary, the note should be “portions” of the lot, there was no map with the petition, and the Selectmen put it in correct warrant form. Mr. McMahon showed the map that was shown to the petitioners.

Public comment from Betty Dunn, Woodvue Road, stated that there is another level of question about this petition, she did some research on making changes to petitions, the Planning Board needs to consider the many variables and potential for challenge, it is wise to not recommend, start again next time, and the petition as it reads includes all the lots.

Karl Dubay, Telo Road, asked to see the signed petition, he stated that he signed the petition at the Holiday Festivities, at that time Mr. McMahon was informing people of the petition and he had the map with him, he would not have signed the petition if it went all the way to the lake, would not have a Commercial A development against a lake, Attorney Campbell has reviewed the petition, and a lot of discussion occurred last night. Mr. Turner stated that he was told when the petition came in the zoning lines matched, and surprised that the petition said something different.

Alan Carpenter, 8 Glenwood Road, asked for clarification of Attorney Campbell's letter. Ms. Prendergast stated that it is not a fatal flaw, clarifying statement can be added, and Attorney Campbell will review once more.

Mr. Dubay stated the Board needs to discuss this further, it is clear that it is Commercial A, it is the right thing to do, and clarification language can be added.

Board discussion that Attorney Campbell may not understand the issue, the petitioners probably understood that the buffer was included, and the map was not attached to the petition.

Patrick Poore, Viau Road, asked if the map was attached when it was submitted, it was not attached so it is not a document of record, and it is hearsay.

Board discussion that Attorney Campbell does not mention that a portion stays Residence A, it is up to the Selectmen to add the clarification, it is up to the Planning Board to vote to recommend or not recommend without knowing what the added commentary will be, have the Selectmen add their commentary and let Attorney Campbell review it for next week's meeting, could include rationale in the motion, and have Attorney Campbell attend the next meeting.

Ms. Post motioned to continue the discussion of citizen petition #2 to the next Planning Board meeting on January 21 at 7:00 pm. Mr. Breton seconded. Passed 4-0. *Mr. LoChiatto rejoined the Board and took over as Chairman.*

Citizen Petition #3 – Helen Cookson and others do formally request a zoning change be perpetuated from the status of “rural” to “neighborhood business” for the following properties: 1) Lot #603 @ 157 Rt 28, Windham, NH 03087, owners: Robert and Helen Cookson; 2) Lot #605 @ 159 Rt 28, Windham, NH 03087, owner: Angeline Denuccio; and 3) Lot #401 @ 151 Rt 28, Windham, NH 03087, owners: Christopher Paul and Maureen Kelleher.

Board discussion that the petitioners were not present, want to hear from the petitioners, discussion of the location of the properties, hear the petition and move on, was before the Board previously, and Neighborhood Business zoning is across the street from these lots. Mr. Breton motioned to open the citizen petition #3 for public hearing. Ms. Prendergast seconded. Passed 5-0. Mr. LoChiatto read the petition.

Public comment from Karl Dubay, Telo Road, stated that he signed the petition, he previously surveyed two of the three properties for a business that wanted to go there, the business didn't go there because

variances were needed, he would have brought more information if he knew, he stated he's speaking as a member of the public, this is on a straight stretch of road with excellent site distance, surrounded by wetlands which are part of the Spruce Pond open space, offered to bring information to next week's meeting, subject to the Rt 28 overlay district, currently is a residence, the highest and best use for the Town would be a neighborhood business, and it is not spot zoning.

Mr. Turner stated that Mr. Dubay doesn't have information for all three lots, and the third lot is next to a residential lot. Mr. Dubay offered to get the information for the other lot also. Board discussion regarding there is open space between the lots.

Ross McLeod, Nottingham Road, stated that he would like the Board to discuss whether this is or is not spot zoning, and the absence of the petitioners/owners speaks volumes towards whether it should be recommended or not.

Steve Zaines, Pleasant Street, asked whether the Board should send a message to the owners that they need to attend the meeting. Board discussion that is up to them to show up, and they have been notified.

Andrew Lane, Woodvue Road, stated that he used to live in the area, and Rt 28 is a good zone for Neighborhood Business or Commercial A.

Board discussion that there is other Neighborhood Business zoning in that area. Mr. LoChiatto read from Attorney Campbell's letter regarding spot zoning. Discussion continued regarding existing Neighborhood Business zoning is across the street, it was noted which businesses are currently in the area, this was on the warrant before and was without support of the Planning Board, the Board didn't have enough information at that time, and what does the Board want to do next.

Ms. Prendergast motioned to continue citizen petition #3 to the next meeting on January 21 at 7:00 pm. Mr. Breton seconded. Passed 5-0. *Mr. Wrenn joined the Board and replaced Ms. Skinner.*

Citizen Petition #4 – Andrew Lane and others petition for amendment to zoning ordinance to the Selectmen of the Town of Windham. The Town of Windham Zoning Ordinance regulating the Wetland and Watershed Protection District (“the Ordinance”) was enacted to preserve water resources and benefit public health, safety, and welfare. Clearly, the Ordinance did not intend to protect roadways, man-made pipes, and drainage culverts. The below amendment will not provide for an interruption in the delineation of a brook or stream but alternatively will prevent the unintended consequence of protecting roads, man-made pipes, and drainage culverts.

The undersigned legal voters of the Town of Windham request that Section 601.2 of the Town of Windham Zoning Ordinance regulating the Wetland and Watershed Protection District and providing a definition for a brook or stream within the Town of Windham be amended as follows:

From: “Brook or Stream: A brook or stream is a scoured natural or artificial channel indicating periods of concentrated water flow that has a contributory drainage area of 10 acres or more containing a wetland as defined in Section 601.2 -Wetlands of this ordinance. Roads, drainage culverts, or other man-made features do not constitute an interruption in the delineation of a brook or stream.

To: “Brook or Stream: A brook or stream is a scoured natural or artificial channel indicating periods of concentrated water flow that has a contributory drainage area of 10 acres or more containing a wetland as defined in Section 601.2 -Wetlands of this ordinance. Roads, drainage culverts, or other man-made features

do not constitute an interruption in the delineation of a brook or stream. Notwithstanding the foregoing, any water contained within a drainage culvert, man-made pipe, or other man-made feature is exempt from the setback requirements of Section 601.4.

Mr. LoChiatto read the citizen petition.

Comment from the petitioner, Andrew Lane, Woodvue Road, he stated this came about because of a court case, he explained that this is a technical correction of the ordinance, he further discussed the protection of streams even with a culvert, culverts have a setback, the Town has been sued regarding this, it is a purposeless protection of a culvert, in his case the pipe in the culvert is on an angle and uphill, this will bring about surprising results with building within 100' of a culvert, if the amendment doesn't happen the Town could need a variance to maintain an existing road, and he read a letter that he sent to the Board. He further discussed that this is costing the Town money for court costs, this would be a tax positive for the Town as people will add accessory buildings and pay more taxes, and he is the President of the Canobie Lake Recreation Association.

Board discussion with Mr. Lane regarding 30 people signed the petition, the definition of the culvert, does not include open culverts, what are the other man-made features, and there is merit to the citizen petition but needs to be looked into further. Mr. LoChiatto read a definition of a culvert from the Websters Dictionary. Mr. Lane stated that the Board should choose the lesser of the two evils. Board discussion continued regarding the definition of a stream and setbacks, water cannot come into a pipe on the sides only from the ends, eliminate the man-made feature, it can't be changed now, this can be interpreted different ways, not comfortable with the unintended consequences, road repairs could require a Special Permit, there is some ambiguity, and the Board cannot change the petition.

Public comment from Betty Dunn, Woodvue Road, stated that Russ Wilder was unable to attend this evening but asked Ms. Dunn to make some comments, he was a major drafter of the ordinance, this petition causes unnecessary tinkering with the ordinance, she discussed potential problems, she urged the Board to not recommend the petition, there have been court cases going on about this, the Supreme Court decided that it's a use ordinance not a setback requirement, this further confuses the issue, this amendment makes it more difficult to interpret, the Board has interpreted the ordinance for years, the Lane's have a building which has been found in the violation with the Wetland and Watershed Protection ordinance, and stated that this should not be recommended by the Board.

Board discussion with Ms. Dunn regarding the court case confirms what the Town has done all along, and our ordinance is not in question because of the court base but rather is solidified.

Eric Mawby, 7 Woodvue Road, stated that regulation 600 intends to protect water, before signing the petition he considered whether the basis of the petition is rational and the intent reasonable, the petition asks for the culvert be exempt, periods during the year water does travel through the culvert, and asked that the Board consider the petition.

William Schroder, Woodvue Road, stated the Lane's motivation is because of an accessory building on their property, this is to resolve that situation, he stated that he and another neighbor Al Letizio are opposed to the building because it was built in the WWPDP, the case has been to court several times, would this improve the ordinance or not, he thinks it would create confusion, he asked how would this be interpreted in an example, and asked the Board to not recommend the petition.

Karl Dubay, Telo Road, stated that the neighbors have been fighting in court for years and it's

heartbreaking, the proposed petition needs clarification, we can have quality development and protect the waters, sees the intent of the petition, it is a use variance issue, and it needs more than a few tweaks.

Steve Zaines, Pleasant Street, stated that an engineering study should be done, and there is water everywhere in Windham and lots of culverts with structures near them.

Mr. Lane responded to the public comments asked the Board to discount what Ms. Dunn said as it is hearsay, the variance type is irrelevant, received a building permit and certificate of occupancy for his garage, feels like a victim, needs to go for a use variance because of the culvert setbacks, the WWPD definition is ambiguous, he discussed the new interpretation of the WWPD, the garage is downstream from the culvert, would still like to recommend the petition, there is nothing confusing, and the courts interpreted that the culvert is protected just as the stream is.

Board discussion regarding the Planning Board should look at this next year, it is a valid concern and needs to be addressed, and this should be discussed at workshop meetings.

Ms. Prendergast motioned that the planning Board not recommend citizens petition #4 as it is moved forward to Town warrant. Ms. Post seconded. Passed 5-1. Mr. Wrenn opposed. Board discussion to work with the petitioner.

Citizen Petition #5 – Soterios Zaines and others petition a proposed by-law will not allow political signs on public land but allow them on private property only.

Mr. LoChiatto read the petition. Mr. Turner gave the written clarification to the Board and stated that there are two letters from Attorney Campbell regarding this petition.

Comment from the petitioner Mr. Zaines shared photos of political signs, the people with large and excessive signs did not win, the political signs are way out of control, the State says you can't put signs on State land but it is difficult to enforce, this ordinance has a bit more bite in it, have political signs only on private property, and wants to regulate the number of signs and the size of the signs.

Board discussion with Mr. Zaines discussed enforcement of the regulations through volunteers, would need permission from individual land owners, we do not have the personnel to get the signs down, and candidates should be informed of the regulation when they sign up.

Mr. LoChiatto stated he signed the petition, he didn't know all the attachments were there, doesn't agree with the attachments and would not have signed it, agrees that signs should not be in the right-of-way, and Attorney Campbell stated in his letter that the restriction already exists so the petition has no practical effect. Mr. Zaines stated he did not intend to dupe anyone.

Board discussion regarding what Attorney Campbell reviewed, only one sentence would be added, citizen petitions can't be amended, an invalid petition cannot be on the ballot, zoning ordinance is only for private land, the signs would need permits or not enforce it, and the State passed a law that is not enforced.

Ross McLeod, Nottingham Road, stated the Board is an elected Board and being asked to comment on a petition that will restrict communication come election time, the restriction is for the content of the sign, he discussed how often political signs are posted vs. others types of signs, can regulate to a certain point, has problems for the 1st Amendment, and cannot restrict a sign based on content as per State courts.

Andrew Lane, Woodvue Road, stated it is a noble cause, don't political signs have a time limit, and to reduce clutter have no sign within 10' of another sign.

Karl Dubay, Telo Road, asked the Board to read Attorney Campbell's notes, what do you do with the different types of right-of-ways, and he urged the Board to vote not in favor of this petition.

Mr. Zaimes asked what the Board would be voting on. Board discussion that the Board will vote on the petition as written.

Ms. Post motioned that the Planning Board not recommend citizen petition #5 as it is moved forward to Town warrant. Ms. Prendergast seconded. Passed 6-0.

Proposed Zoning Map Amendments

Amendment #8 – Amend Zoning District Map by rezoning property on Lowell Road south of Westchester Road and Cobbetts Pond Road, lots 20-E-250, 20-E-251, 20-E-252, 20-E-260, 20-E-270, 20-E-275 at #42 through #52 Lowell Road from Rural District to Neighborhood Business District and lots 21-D-100, 21-D-101, 21-D-102, and southerly portion of 21-D-105 and westerly portion of 21-D-107 at #37 through #47 Lowell Road from Residential District “A” to Neighborhood Business District.

Board discussion regarding the first hearing for these parcels was for Commercial A, and two parcels have been dropped and changed the proposal to Neighborhood Business. Mr. Turner further described the parcels on a map. Board discussion regarding dropping two parcels, which parcels are residences, not rezone the tank farm as Neighborhood Business, the tank farm is there by variance, some lots have split zoning, and it is the balance of the lot.

Public comment from Christine Lane, Woodvue Road, asked about the lots that have been dropped, she asked the Board to support this zoning change, and appreciates that the Board decided to go with the suggestion of Neighborhood Business rather than Commercial A.

Mr. Turner stated that the lot was removed in the legal ad but the house number was not removed, and it can be changed as a typo. Mr. LoChiatto read a letter from Amy Spencer. Board discussion regarding the lots included, not going beyond the tank farm, Pawtucket Subdivision is a natural stopping point, the house next to the tank farm has a good reason to change zoning, and have supported Ms. Spencer throughout the discussions.

Ms. Prendergast motioned to send zoning map amendment #8 to warrant with the change of “37-47” to “37-43” Lowell Road as #43 is the last lot as described in the amendment. Mr. Wrenn seconded. Passed 6-0.

Proposed Zoning Amendments

Amendment # 3 – Amend Section 603.1.5 by deleting this section in its entirety and adding a new Section 704.6: There may be outdoor, overnight parking of one commercial vehicle in all residential districts having less than 12,000 G.V.W., two or less axles and not exceed Federal Highway Cost Allocation Study (HCAS) of SU2. The outdoor, overnight parking of one unregistered motor vehicle is permitted.

Mr. LoChiatto read the amendment. Board discussion regarding the Town attorney's letter states that the amendment needs more study, not going forward with the amendment, changes have been made as a

result of Attorney Campbell's comments, Carol Murray reviewed this for us, a few words need to be moved around, what about large farming vehicles, only want to restrict in the residential areas not the rural areas, is rural currently restricted, 75% of the Town is rural zoned, and needs more study. No public comment.

Ms. Post motioned that the Planning Board not move the proposed zoning amendment #3 to Town warrant and to follow Town counsel's recommendation to pursue further study. Mr. Breton seconded. Passed 6-0.

Mr. Breton motioned to adjourn. Ms. Prendergast seconded. Passed 6-0. Meeting adjourned at 10:20 pm.

These minutes are in draft form and have not yet been reviewed and approved.
Respectfully submitted, Nancy Charland