



OLD VALUES - NEW HORIZONS
PLANNING AND DEVELOPMENT

PO Box 120, Windham, New Hampshire 03087
(603) 432-3806 / Fax (603) 432-7362
www.WindhamNewHampshire.com

**Planning Board Meeting Minutes
December 16, 2009**

Roll Call:

Phil LoChiatto, Chairman – Arrived at 8:30PM
Nancy Prendergast, Member – Present
Ruth-Ellen Post, Member – Present
Louis Hersch, Alternate – Excused
Sy Wrenn, Alternate – Present
Ross McLeod, Selectman Alternate - Excused

Rick Okerman, Vice Chairman – Present
Walter Kolodziej, Member – Excused
Pam Skinner, Member – Present
Kristi St. Laurent, Alternate – Arrived at 6:40PM
Bruce Breton, Selectman Member - Present

Staff:

Laura Scott, Community Development Director – Present
Elizabeth Wood – Community Planner - Present
Paula Wrenn – Minute Taker – Present

Mr. Wrenn is seated for Mr. LoChiatto.

Call to Order/Attendance/Pledge of Allegiance

Mr. Okerman opened the meeting at 6:30PM, followed by the Pledge of Allegiance.

2010 Town Meeting Zoning Amendments

Section 601 Wetland and Watershed Protection District. Delete the existing Section 601 and replace it with a new Ordinance under the authority granted under RSA 674:16 Grant of Power and 674:21 Innovative Land Use Controls. The Ordinance describes the purpose of the District, the authority of the Planning Board of grant Conditional Use Permits under specific conditions and provisions, how the terms used in the Ordinance are defined, and how appeals under this Ordinance are taken. The boundaries of the District are explained, as well as those exemptions to the District and provisions of the Ordinance, the methodology for delineating the boundaries of the District, and how to resolve disputes in the District boundaries are outlined. Permitted and prohibited uses are detailed; conditional uses permit application requirements and the criteria the Planning Board is to use in reviewing and issuing conditional use permits is specified; and the requirements for the renovation and expansion of non-conforming structures located within the District.

Ms. St. Laurent arrived at 6:40PM and is seated for Mr. Kolodziej.

Mr. Okerman read into the record the memo from Dr. James Finn, Chairman of Windham Conservation Commission, dated December 16, 2009.

No new business after 10pm unless agreed to by the Planning Board.
Any remaining items will be placed on the agenda for the next available Planning Board meeting.
Information pertaining to any item on the agenda is available for public review at the
Planning Department during normal business hours or by calling for information at (603) 432-3806.

Ms. Scott said Mr. Steven Keach, P.E. of Keach-Nordstrom Associates, Inc., the Town's appointed consulting engineer, is prepared to make a presentation on the proposed amendment, as well as addressing the comments from Legal Counsel and Conservation Commission.

Mr. Keach said that over the years the Town has changed the WWPD ordinance. The Ordinance has lost clarity and does not reflect the changes to regulations at the State level which also created inconsistencies.

Mr. Keach proposed a new Article 601 that largely preserved the intent, integrity and content of the current WWPD Ordinance but tried to improve the way it read, the way it will be applied, and its administration. At the time it was in acted at the Town level, the State Legislature had not in acted the Innovative Land Use Planning stature. Therefore, the WWPD Ordinance, as written, did not hold open the opportunity for the Conditional Use Permit.

Mr. Keach identified the changes to the most recent proposed draft.

Section 601.1 have minor changes in the text. The Authority section is different because this is adopted under Section RSA 674:21.

Section 601.4 reads identical except removed "slopes greater than 12%.." Dr. Finn requested in his letter of December 16th that this wording be maintained in the WWPD ordinance. Mr. Keach said that Mr. Wilder explained at a recent Workshop Session about the 12% slope and this was not done for WWPD reasons but to protect the erosion of slopes. Mr. Keach said if the Town wants to restrict development on steep slopes they should expand this restriction to all slope areas in Town

Section 601.4.2 B. will remain the same with the exception to the extent that any Brook or Stream, "as defined herein, is tributary (enters) or discharges form (exists) these listed Ponds. In such circumstances, the Wetland and Watershed Protection District boundary associated with such tributary or discharge brooks or streams shall extend along the full length of....."

Section 601.4.4 is a new section added 'Boundary Disputes'. Mr. Keach said this section provides a procedure to follow when there is a disagreement between two parties over boundaries.

Section 601.8 CONDITIONAL USES is a new section in the WWPD. Mr. Keach said they are relying on RSA 674:21 to allow the Planning Board to grant Conditional Use permits under specific criteria that are specifically related to WWPD and wetlands function and value.

Section 601.5 Normal High Water Mark: Mr. Keach added the text “The Normal High Water Mark for artificially impounded ponds shall be the waterline at full pond, as determined by the elevation of the spillway crest”.

Section 601.8.1 Mr. Keach explained this section provides a formal role under the Zoning Ordinance that affords the “Conservation Commission up to 45-days to formally review and consider the application and provide the Planning Board with a written recommendation, which the Planning Board shall carefully review and consider prior to concluding its deliberations with regard to the application.”

Section 601.9 Mr. Keach said he tried to keep the definition of the ‘district’ essentially identical to what it has always been ‘is not to create new non-conforming structures’.

Mr. Keach reviewed his (Memo dated December 16th) and Attorney Campbell’s (Letters dated December 7th & 14th) suggested changes.

Section 601.4.2 B Mr. Keach recommends the text of this Section to incorporate the specific modification in wording recommended by Attorney Campbell “as defined herein, is tributary (enters) or discharges from (exits) these listed Ponds. In such circumstances, the Wetland and Watershed Protection District boundary associated with such tributary or discharge brooks or streams shall extend along the full length of the thread of that Brook or Stream until reaching, or beginning at, the.....”

Section 601.4.4 Mr. Keach recommends that Attorney Campbell’s proposed wording be incorporated “in connection with any application requiring land use approval by the Town,…”

Section 601.5 Definitions of Words and Terms

- Brook, Stream: Mr. Keach proposed changing the word ‘seasonal’ to intermittent’ as the NHDES no longer uses the word seasonal.
- Buffer: Mr. Campbell proposed remove the wording ‘and measured perpendicular from...’ as it causes confusion. Mr. Keach concurs.
- Normal High Water Mark: Mr. Keach proposed adding the wording “The Normal High Water Mark for artificially impounded ponds shall be the waterline at full pond, as determined by the elevation of the spillway crest.”

Section 601.6 Attorney Campbell proposed adding the wording “The following uses that do not result in the erection of any permanent building or conflict with the stated purposes of the Section...”

Section 601.6 A Mr. Keach proposed inserting the word “*Unpaved* pedestrian walks...”

Mr. Keach reviewed the three concerns in Dr. James Finn, Chairman of Windham Conservation Commission, letter dated December 16, 2009.

- Mr. Keach said the loss of WWPD protection for areas of land with slopes greater than 12% should be for all slopes; not just for slopes immediately adjacent to WWPD areas. He believes the changes that have occurred to the Subdivision Regulations, Site Plan Regulations and in the States regulatory role deal with this adequately.
- Mr. Keach said Dr. Finn has concern of the deletion of 'watershed which is a 10-acre wetland' is incorrect. He said a watershed is not a 10-acre wetland. A watershed of 10 acres is exactly that. However, it is true that the WWPD has defined a headwaters area to a certain point that is 10-acres or more.
- Mr. Keach said 601.8.1 carves out a specific role for the Conservation Commission "the Planning Board shall afford the Conservation Commission up to 45-days to formally review and consider the application....."

Mr. Okerman asked the Board if they had any questions.

Mr. Wrenn referred to Attorney Campbell's letter of December 7th in his proposed wording to Section 601.3 "Where a Wetland Watershed Protection District exists under the provisions of Section 601.4; it supersedes any underlying zoning for such area" and asked if this should be added. Mr. Keach said he feels it creates confusion.

Ms. Post said adding the proposed wording will add clarity to Section 601.3.

Ms. Prendergast asked Mr. Keach if the intent of the 12% slope restriction was to do with the treatment of the water. Mr. Keach said the restriction originally was done because of erosion control.

Ms. St. Laurent asked Mr. Keach if he believes that the changes that have occurred to the Subdivision Regulations, Site Plan Regulations and state drainage regulation address these issues specifically and the 12% sloping can be excluded from the WWPD. Mr. Keach does believe it does to some extent.

Mr. Okerman opened discussion to the Public.

Mr. Bernie Roulliard is a member of the Conservation Commission. He said he is disappointed that the Conservation Commission was not consulted on the need to revise the Ordinance. The following points were addressed by Mr. Roulliard:

- 12% slope was specifically for the protection of WWPD
- Definition for streams – would like to see the definition maintained in the ordinance
- is concerned with Conditional Uses as it further water downs the ordinance
- the proposed revisions in the Ordinance does not clarify or give clear guidance instead opens up subjective interpretations and swaying arguments by developers and engineers
- the ordinance is premature and should not move onto the ballot

Mr. Roulliard presented a memo with additional changes to the proposed Ordinance outlining his key points and his proposed changes. A copy was given to Ms Scott for the record.

Mr. Thomas Case spoke on the following items:

- 601.1.2 RSA 674:21 entitled Innovative Land Use Controls is under WWPD and Workforce Housing. He would like to see it separated out and adopted as a second article. If not, instead of saying 674:21 specify the actual section of the RSA.
- his interpretation of the 12% slope was to give the water a chance to percolate into the ground while flowing toward a wetland.
- Brook & Stream - asked "What is the State's definition of perennial and seasonal brooks or streams? Are there brooks and streams in the Town that aren't subject to the jurisdiction of the State of NH?"
- the requirements for the Conditional Use Permit are very subjective.

Attorney Bill Mason spoke about the definition of Brook and Stream as proposed in the ordinance. He said if the brook/stream is within the jurisdiction of NHDES and the Wetlands Bureau that the public should know that is the source of the definition. He would also like some tightening in the ordinance that would indicate the jurisdiction of NHDES and Wetlands as defined by that bureau would indicate what the public would be dealing with in order to present to the Town.

Mr. Tom Murray questions Section 601.1.2 and RSA 674:21 entitled 'Innovative Land Use Control' if the process to incorporate it into the Ordinance is legal. Mr. Murray would like Attorney Campbell's comments on this. He does not believe it should be taken away from ZBA and given to Planning Board. Mr. Murray said giving the authority to the Planning Board would take away the benefit to the applicant for a rehearing with ZBA. Mr. Murray said any appeal under the Planning Board would have to go to Superior Court.

Ms. Scott said that the ZBA Chair has requested to know the number of Variance applications from the WWPD for 2009 (11 applications) and 2008 (6 applications).

Mr. Murray asked Ms. Scott how many were approved. Ms. Scott did not have that information only the total applied for.

Mr. Murray said the WWPD Ordinance, as presented, is premature and should not go to ballot. He would like the Conservation Commission involved.

Mr. Alan Carpenter talked about the following:

- after reviewing previous Planning Board minutes and other documents, he could not find any authorization for the rewriting of the WWPD Ordinance and the hiring of a consultant. Asked the Board to forward this information to him.
- recommends that we do not proceed to Ballot with the current written Ordinance of the WWPD
- 200' setbacks from the 12% slope are not about erosion control but water quality. The process in place works and wants retained in the new Ordinance.
- why do we need to remove the 10-acre watershed area
- Is the Conditional Use Permit better than the Variance process
- has the new ordinance, as drafted, been applied to any of the recently approved subdivisions to see what the impact would be
- how are vernal pools covered? Ms. Scott said in the current Zoning Ordinance Section 716 there are regulations on vernal pools.

Mr. Christopher Nickerson of Edward N. Herberts requested the Board to postpone the Final Site Plan Review Application of 5 Industrial Drive to the January 13, 2010 Planning Board Meeting.

Ms. Prendergast made motion to continue the Final Site Plan Review Application of 5 Industrial Drive to January 13, 2010. Seconded by Ms. Post. Motion passed 7-0.

Mr. Wayne Morris said we should keep the 12% slope in the WWPD until we have a separate Slope Ordinance.

Mr. Morris said the Innovative Land Use Control said "standards which shall guide the person or board which administers the Ordinance". He asked the Board if they have a standard that would fit that requirement. Mr. Keach said yes.

Mr. Morris said the Conditional Use Permit is very subjective. Mr. Morris refers to Attorney Campbell's memo of December 14th where Attorney Campbell questions if the Planning Board understands the full impact of this ordinance as it is written.

Mr. William Schroeder handed out a document with proposed suggestions:

- the definition of Brook/Stream should refer to RSA 482-A to eliminate vagueness.

- Points 2 & 3 had been addressed by Mr. Keach and Attorney Campbell's comments. The present Ordinance doesn't provide enough watershed protection. Mr. Schroeder said the Town should ask DES for advice and a suggested model ordinance.

Ms. Kathleen DiFruscia of Cobbetts Pond Improvement Association said the Ordinance does not address the Town's watershed and that is why she filed a Citizen's Petition for an overlay district for Cobbetts Pond. She suggests that the Board review the existing and proposed WWPD Ordinance; the Citizen's Petition she filed and expand the wording to other lakes/ponds in Town. Then the Board might be able to provide the maximum protection for the wetlands, watershed for brooks and streams and other watersheds that are not protected by the Shoreland Act.

Ms. DiFruscia concurs with most of the comments made by the public tonight.

Ms. DiFruscia commented on the following Sections in the Ordinance:

- Section 601.4.2 A the proposed language weakens the existing ordinance particularly where the wetland area in question is contiguous with other wetland areas that are protected by the WWPD
- Section 601.5 concurs with the change of wording in Brooks, Stream from seasonal to 'intermittent'
- Section 601.6 A has been weakened with the removal of the existing clause stating "these uses are permitted" and proposes the following wording to be added "provided that there are adequate provisions for waste product disposal and for parking outside the WWPD".
- Section 601.8 Ms. DiFruscia said it is very subjective. The proposed wording lacks sufficient detail with regard to performance standards and what the permit submittal requirements are necessary for project review and proposal.
- Section 601.8C is far too subjective where it states "the applicant is able to demonstrate to the satisfaction of the Planning Board". She said this language could put the Town in a position for substantial litigation. This section needs far more detail with regard to the standards and submittal requirements for project alternative analysis.
- Section 601.7 Prohibited Uses – would like language "that any activity which directs site hydrology meaning surface waters and ground water flows away from its existing point of discharge away from the site:; Ms. DiFruscia said when doing any construction in the WWPD, she would like the water flow in the same direction of preconstruction.

Ms. DiFruscia would like to see a definition of 'structure'. Ms. Scott said any definition that is not outlined in the WWPD Ordinance falls under the general Zoning Ordinance definitions. Ms. DiFruscia would like to see a reference to that in the Ordinance.

Ms. DiFruscia said the Board should spend more time on the rewriting of the Ordinance and further study the watershed issue and wetlands as they are somewhat related.

Mr. Andrew Lane spoke about high water mark spillway crest. He said it would shrink the size of the protected area. Mr. Lane would like the original wording be retained.

Mr. Lane said 601.4.2 B. that the wording should be "Cobbetts Pond, Canobie Lake, Shadow Lake, Rock Pond, Moeckel Pond, or land situated within 100-feet of the Normal High Water Mark of the same." He said the Board needs to be careful what they restrict in the watershed district.

Mrs. Chris Lane thanked the Board and Mr. Keach for all the work they have done on the WWPDP Ordinance. She said it is very clearly written and the simpler the better. There are changes in Mr. Keach's December 16th proposed draft of the WWPDP Ordinance Amendment she proposes:

- Section 601.4.1 C. would like to add a notation at the end "and Flat Rock Brook; for purpose of flood control if in a flood plain..."
- Section 601.4.2 B. would like the first sentence to end with "100-feet of the Normal High Water Mark of the same."
- Section 601.4.3 fourth line up from the bottom 'comma after Wetland Scientist'. Third line up from bottom 'comma after Licensed Land Surveyor'.
- Section 601.4.4 fourth line down 'the Planning Board or its....'
- Section 601.5 Definitions – Pond should be 'Any year-round.'
- Section 601.8.2 G. "Maintenance of existing above and below ground..."
- Section 601.8 B. fifth line down "alternative for citing such improvements..."
- Section 601.9.1 third line down 'separation...'

Ms. Betty Dunn is concerned with the amount of time (2 hrs) we have spent on the Ordinance tonight. She said that the citizens that have presented tonight are very familiar with the original Ordinance and are not in support of the proposed Ordinance. Ms. Dunn is requesting that an analysis be done on the proposed Ordinance; however, does not believe it would be completed in time for the Ballot. She is also concerned with comments from the Conservation Commission. Ms. Dunn does not think that the standards for 'Conditional Use Permits' are clear enough. She said the proposed Ordinance is not ready to go to Ballot and the Board should work on it for another year involving all committees in Town that have knowledge on the WWPDP Ordinance in order to 'get it right'.

Ms. Scott addressed some of the administrative questions that were asked by members of the public:

- Vernal Pools - there is a whole section in the Zoning Ordinance on vernal Pools and there are no proposed changes to the Section

- Mr. Keach pointed out that there are standards in the proposed Ordinance as to how the Planning Board is to review Conditional Use applications
- outlined the difference between the application for a Variance with the ZBA and application for a 'Conditional Use Permit' with the Planning Board.
- you do not need a separate ordinance to authorize Innovative Land Use Controls in order to do a 'Conditional Use Permit'. There are Innovative Land Use Controls in our Zoning Ordinance for cluster developments, accessory apartments and impact fees already.
- outlined the process and authorizations that Community Development and Planning Board went through with regard to rewriting the WWPD Ordinance.

Mr. Keach spoke answers questions from the public.

- Section 601.5 Definitions
 - Brook & Stream – Perennial and Intermittent are in the State's RSA482.A. If there is a brook/stream; and it requires a wetland permit to work in it, there will be a WWPD associated with it. If a brook/stream has a WWPD associated with it, connectivity becomes irrelevant because if the WWPD has a series of segments, all segments are in; and if it is interrupted, the entirety is in.
- Section 601.4.1 lists all the items that are within the WWPD. The definition in the current Ordinance lists brooks/streams where they could be. The proposed Ordinance defines where “they are”. The proposed draft looks for 'what is' not 'what may be' – very important from an administration and communication standpoint.
- Section 601.8.2 is the criteria for the issuance of a Conditional Use Permit. Mr. Keach read A, B, C to the public. Within the WWPD there are resources that include water bodies, streams, flood plains, vegetations, and hydric soils. They each require a slightly different level of protection. He said not all WWPD's are created equal and traditional zoning treats everything the same.

Mr. Keach said the poor water quality of Cobbetts Pond is not from the development watershed but rather the urbanization around the pond and the fact that the Pond is exempt from the WWPD.

Mr. Lane spoke about Section 601.4.2 B. with regard to the ruling of Heron Cove by the Supreme Court. He said Attorney Campbell's wording is not correct.

Mr. Morris said the 12% Slope provision should be kept so we are protected until a slope ordinance is proposed.

Mr. Keach proposed adding a new section under 601.4.1 (E) with wording “the WWPD shall be increased by 100' when that 100' has an upward slope of 12% or more and a minimum width of 100'.”

Mr. Okerman closed the public hearing.

Ms. St. Laurent asked Mr. Keach, referring to the definition Brook/Stream, are there Brooks/Stream in Windham that would not fall into 'within the jurisdiction of the NHDES...'
Mr. Keach said 'no' and explained that surface waters in the State have to have scour and flowing water perennially or intermittently for a period of 30 days (not necessarily consecutive).

Ms. Post spoke on the following:

- Attorney Campbell's language regarding how the WWPD supersedes the underlining zoning; adds a lot of clarity. She wants that included in the proposed Ordinance.
- protecting a brook/stream through a culvert, Ms. Post would like that to be made very clear in the proposed Ordinance
- criteria for Conditional Use Permit; would like the language tightened up. She would like the Planning Board be required to state its factual basis in granting a permit under this section.
- would like more explanation on 'connectivity'
- concerns with the WWPD proposed Ordinance and the proposed ordinance by the Cobbetts Pond Association (Citizens Petition) for watershed are both on the Ballot. Ms. Post wants more coordination and synergy extended to the Conservation Commission and the two lake Associations in Town.

Ms. Scott clarified that it was not Mr. Keach who choose not to coordinate and do outreach to the Conservation Commission and other committees in Town in rewriting the WWPD.

Ms. Scott advised the Board that a notice needs to be posted tonight if there is to be another Public Hearing on Section 601 Wetland and Watershed Protection District for 12/30. She outlined the changes:

- Mr. Keach's proposed wording based on Legal Counsel's comments
- the 12% slope addition

Ms. Post said she thought there would be a few changes made in the existing Ordinance not a complete rewrite.

Mr. Breton said that Legal Counsel suggested a complete rewrite, as stated in Legal's December 7th letter. He said the scope of work that Planning Board gave Mr. Keach, was to go into a vacuum and make proposed changes. Mr. Breton said they had 3-4 work sessions and no one was there. The Conservation Commission did know in advance that this Ordinance was going to be worked on, as they were asked in writing to contribute to the hiring of Keach & Nordstrom, which they declined.

Ms. Scott said that the Conservation Commission had been provided the same information as the public and the Chair often received specific emails about meetings and language as he had requested.

Mr. Roulliard responded to Mr. Breton's comment. He said there were only two meetings that Conservation Commission new about; one was in the beginning of November and tonight's meeting.

Mr. Okerman asked if we should move to Public Hearing for next year.

- Ms. Prendergast suggested we defer to next year and get the Conservation Commission involved.
- Mr. St. Laurent wants to defer to next year
- Ms. Post wants to defer to next year
- Mr. Breton takes Counsel's recommendation. Would like one more posting with proposed changes
- Ms. Skinner said not move forward
- Mr. Wrenn said he cannot move forward. He was disappointed with the Public in showing up at the last minute with their input and not during the work sessions.
- Mr. Okerman said not move forward

Mr. LoChiatto addressed the Board and the public on the intent of this Ordinance. The Board has been working on this Ordinance for a long time. He said the intent is to give the Town's Administration a clear understanding what the WWPD is and for the Community Development Department to be able to make clear decisions when an applicant comes before them. He said the intent of the Board was to make this Ordinance better not weaker.

Ms. Skinner made motion of not moving Section 601 Wetland and Watershed Protection District to Ballot. Ms. Prendergast second. Motion passed 7-0.

The Board thanked Mr. Keach for all his work.

The Board took a 5-minute break 9:40PM-9:45PM

Ms. Prendergast left at 9:50 PM.

Mr. LoChiatto replaced Mr. Okerman as Chair and Mr. Wrenn was seated for Ms. Prendergast

Workforce Housing Overlay District. Add a new Overlay District to allow for Workforce Housing, in accordance with NH RSA 674:58-674-61 and consistent with NH RSA 672:1(III-e), as an innovative land use ordinance under 674:21 and would be applicable in

the Rural, Residential A, B, and C, and Village Center Districts. The Ordinance lays out the applicable definitions used in the Ordinance, the procedure and requirements for Planning Board applications (conceptual, design review, and final), conditions of approval, development standards (density, dwelling units, frontage/setback/yard requirements, layout, roads, water and wastewater treatment systems), and how appeals are made. As part of the Ordinance, payment of impact fees are to be waived, the density is based on NH DES Env-Wq 1000, Conditional Use Permits are used by the Planning Board to authorize development that would otherwise not be allowed under a particular site per the Zoning Ordinance, Site Plan Review, or Subdivision regulations if certain criteria are met, a 30 year affordability requirement for Workforce Housing units is required, flexible setbacks within the development, and a minimum of 25% Workforce Housing units in a mixed income development.

Ms. Scott said included in the packet were

- Workforce Housing Overlay District Draft dated December 16, 2009
- Draft from Legal Counsel dated December 7, 2009
- Letter from Mr. Hohenberger

Mr. LoChiatto asked Ms. Scott to read the suggested changes from Legal Counsel:

- Bullet (1) did not make any changes in the 'Definitions' sections with regard to Roads
- Bullet (2) did not insert the additional language proposed by Legal
- Bullet (3) made change in ii(a) 'single family house'
- Bullet (4) made change to the reference to 'State law' as proposed
- Bullet (5) 'Final Application' Joint Meeting Procedures; Planning Board has provisions for 'Joint Meetings'; Ms. Scott to make sure that ZBA and Historic Commission add this provision to their Rules of Procedure in 2010.
- Bullet (6) 'Mixed income development' has been defined
- Bullet (7) did not change as the Fire Dept. signed off on the 'separation' by using distance
- Bullet (8) made change
- Bullet (9) made change
- Bullet (10) made change
- Bullet (11) made change

Mr. LoChiatto proposed that in the Workforce Housing Ordinance under Section 616.4 Definitions under 'Collector Roads' and 'Secondary Roads' that the wording be changed and refer to the Subdivision Regulations.

Ms. Scott reminded the Board that the State has mandated that all Towns be in compliance with the Workforce Housing Law by January 1, 2010. If not, the Superior Court will get involved on an expedited basis and will review and rule on the applications.

Mr. LoChiatto opened the Workforce Housing Overlay District to the Public.

Mr. Tom Case spoke on the following

- Section 616.3.2 change wording with regard to dwelling types
- Section 616.4 Definitions
 - 'Conditional Use Permit' insert wording 'just for these particular districts...'
 - Delete 'Duplex Dwelling Units'
 - Single Family (Attached) Dwelling Unit change wording 'but to no more than three other....'
- Section 616.5.3.3.1 add the word 'if' so it will read "The applicant must submit a list of requested conditional use permits (CUP) if needed,...."
- Section 616.5.3.3.3 a) Workforce Housing proposal should be affordable
- Section 616.5.3.4 asked for clarification. Ms. Scott clarified.
- Section 616.7.1.1 the section that addresses the 'unit density shall be determined by soil based lot sizing' is Chapter Env-Wq 1005.
- Section 616.7.3.1.1 would like the setbacks at 50'
- Section 616.7.3.2 how many feet between single family (attached) and multi-family (detached), it is not specified

Mr. Case would like a separate Warrant Article for Innovative Land Use adopting Section 674.21 for Workforce Housing.

Mr. Jim Tierney is questioning the criteria for the Conditional Use Permits. Mr. Tierney said the Town has never adopted a policy for Conditional Uses. He said in the WWPD Ordinance, Conditional Use is well laid out; in the Workforce Housing ordinance it is not well laid out and in the Home Occupation ordinance it is laid out poorly. He said the way the Workforce Housing is being proposed is not Conditional Use but 'Planned Unit Development' which is allowed through Section 674.21. He asked if the Board knows how much Workforce Housing there is in Windham.

Mr. LoChiatto said the RPC did a study that was backed-up by additional studies, and Windham is 1,000-1,500 units short in Workforce Housing units. Ms. Prendergast has all the data.

Mr. Alan Carpenter said he would like to limit Workforce Housing to Residential Districts B & C for the Town Ballot in 2010 and expand the districts at a later date if warranted. He wants the impact fees to be imposed on Workforce Housing.

Mr. Murray said we do not have RSA 675:1.2 Conditional Use Permit. Mr. Murray has concerns with the Conditional Use Permits and how it will affect pre-existing residential homes. He talked about the underlying district overlays and his concerns. He does not

want Workforce Housing in Residential A. Mr. Murray said there is a lot more work that needs to be done on the Workforce Housing Ordinance before it goes to Town Ballot. He said Attorney Campbell does not have the wording right with the Conditional Use Permits.

Ms. Scott said she will ask Attorney Campbell about the need for a separate warrant article to allow Innovate Land Use Controls.

Mr. Murray said he will provide a list of the underlying district overlays that he has concerns with to the Planning Board.

Attorney Michael Rosen, representing Joe Farro, talked about what is available in Residential Districts B and C. He said this is not just a raw land by-law. These are a tear-down and rebuild by-law. Attorney Rosen talked about the one premature application already that puts 30 single family units in the middle of a Residential A district with tearing down an existing single family home. He talked about the use of density in all districts and incorporating the use of density into the Ordinance. Attorney Rosen said there needs to be an Ordinance in place by January 1st or the Superior Court will get involved on an expedited basis and will review and rule on the applications. He said limit the bylaw to B & C to begin with and readdress next year.

Ms. Betty Dunn said the language in Section 616.7.3.1.1 and 616.7.3.1.2 needs to be made clearer.

Mr. LoChiatto proposed changing the wording in 616.7.3.1.1 to read "Building lots and proposed dwelling units within the project on existing public roads shall have the frontages and front yard setbacks of the underlying district".

Mr. Wrenn proposed changing the wording in 616.7.3.1.2 to read "Proposed dwelling units shall have the required building setbacks for the underlying zoning district along the abutting property lines".

Mr. Karl Dubay said the Conditional Use Permit criteria is written into the Ordinance. He said with good planning you can have quality Workforce Housing which will coincide with Residential A. He does not want Workforce Housing targeted to certain districts.

Mr. Wayne Morris is concerned with the waiving of the impact fee on Workforce Housing especially with a proposal already in Town for 30 residential homes on 6 acres and the impact that will have on the schools.

Mr. LoChiatto read Mr. Roger Hohenberger's letter into the record.

Mr. Joe Farro said the Ordinance needs to promote responsible development and that good planning includes not only individual lots but abutting lots. He would like the Planning Board to adopt an Ordinance that is acceptable to the entire Town so State will not mandate Workforce Housing.

Mr. LoChiatto closed the public hearing.

Mr. Breton proposed that Workforce Housing be allowed in the Village Center District, Residential B and C.

Mr. LoChiatto read RSA 674.59 “regulations shall allow Workforce Housing to be located in a majority but not necessarily all land areas that are zoned to permit residential uses”. He does not know if we meet the criteria if we limit to just Residential B and C and Village Center District.

Ms. Scott said the original proposed criteria for where Workforce Housing would be allowed is in the majority of residential districts. Rural would only allow single-family and duplex not multi-family. Ms. Scott concern is that if proposing only Residential B and C and excluding rural that we would not meet the criteria.

Ms. Scott outlined the changes to be made to the Ordinance from tonight's meeting

- Section 616.4 talk to Legal about the need to do a separate Ordinance on Conditional Use Permits
- Section 616.3 change to 'single-family attached or detached'
- Section 616.4 Collector Road and Secondary Road eliminate definitions and reference back to Subdivision Regulations
- Section 616.4 single-family attached change to 'three other single family dwellings' from four
- Section 616.5.3.3.3 Section (e) to be added
- Section 616.7.3.1.1 & 616.7.3.1.2 clarify wording on setbacks & frontage
- Section 616.7.3.2 change duplex or single-family 20' between structures and single family (attached) and multi-family next to it 35' between structures

Ms. Post proposed wording in Section 616.5.3.3.3 that 'Conditional Use Permits may be granted by the Planning Board if all or the following criteria are met'.

Ms. Post motioned to move Section 616 Workforce Housing Overlay District and changing Section 616.3 to say “the developments under this Ordinance are allowed in the Residential B, Residential C, and Village Center District. The Rural district will allow single-family attached or detached” to the December 30, 2009 Planning Board Meeting. Mr. Wrenn seconded. Motion passed 5.2 Opposed by Mr. LoChiatto and Ms. St. Laurent.

Ms. St. Laurent proposed single-family attached or detached in Residential A.

Ms. Post motioned to incorporate Ms. Scott's proposed changes to the proposed Section 616 Workforce Housing Overlay District Ordinance as she described. Mr. Wrenn seconded. Motion passed 7-0.

Ms. Skinner motioned to waive the By-laws to hear new business after 10:00 PM. Seconded by Ms. St. Laurent. Motion passed 7-0.

Mr. Okerman left at 11:55pm

Section 904.1 Board of Adjustment. Amend Section 904.1 to allow a 7 day appeal period for building permits, as opposed to 5, and to require the posting of the issuance of such permits at the Community Development Department and in a local newspaper.

Mr. LoChiatto read Section 904.1 Board of Adjustment into the record.

Mr. Breton motioned to open the Public Hearing. Ms. Skinner seconded. Motion passed 6-0.

No questions from the public.

Mr. LoChiatto closed the public hearing.

Mr. Breton motioned to move Section 904.1 Board of Adjustment to Town Warrant. Ms. Skinner seconded. Motion passed 6-0.

Section 602.1.9 Accessory Apartments. Amend Section 602.1.9 to allow accessory apartments to share a common wall or floor with the main dwelling unit; increase the allowable size of an accessory apartment from 750 to 1,000 sq ft and remove the bedroom limitation; to clarify how the outside of the structure should appear; deleted language about foreclosure and other judicial sales; deleted language about common wall areas; added language about driveway design; clarified the septic and water supply requirements; added language about dedicated parking; added language about supplying copies of legal documents to the Town; and deleted language about Variances.

Mr. LoChiatto read Section 602.1.9 Accessory Apartments into the record.

Ms. Post made motion to open Section 602.1.9 Accessory Apartments for to Public Hearing. Mr. Breton seconded. Motion passed 6-0.

Mr. Jim Tierney said he would want to stay under the 1,000 sq ft for an accessory apartment. He explained that through Appendix A-1 when you maximize the 1,000 sq ft you create a 2-family dwelling.

Mr. LoChiatto closed the public hearing.

Mr. Breton said he agrees with Mr. Tierney's recommendation.

Ms. St. Laurent proposed using 950 sq ft for the maximum of accessory apartments.

Ms. Breton made motion to move Section 602.1.9 Accessory Apartments to Town Warrant with changing wherever it references 1000 sq ft maximum floor space be changed to 950 sq ft. Ms. Skinner seconded. Motion passed 6-0.

2010 Consulting Engineering Services

Ms. Scott said in the 2010 Budget she had a line item of \$5,000 for consulting services, which was removed due to budget restraints. There are funds remaining in the 2009 Community Development Department Budget and asked Selectmen if she could carry-over these monies into 2010 in order to retain Keach Nordstrom for the following:

- Excavation Ordinance
- Storm Water / Road Design for Subdivision Regulations

Ms. Scott said the Selectmen approved the request with the condition that Planning Board support the request.

Mr. Wrenn made motion to have Chairman LoChiatto write a letter to Selectmen that Planning Board approved the transfer of \$6,000 from the 2009 Budget to 2010 for the engineering services of KNA. Ms. Post seconded. Motion passed 5-0-1. Mr. Breton abstained.

Adjournment

Motion to adjourn made by Ms. St. Laurent. Seconded by Ms. Skinner. Meeting adjourned at 12:03 AM. Motion passed 6-0.