



OLD VALUES - NEW HORIZONS
PLANNING AND DEVELOPMENT

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**Planning Board Meeting Minutes
December 30, 2009**

Roll Call:

Phil LoChiatto, Chairman - Present
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 – Excused
Walter Kolodziej, Member - Present
Pam Skinner, Member - Present
Kristi St. Laurent, Alternate - Present
Bruce Breton, Selectman Member - Present

Staff:

Laura Scott, Community Development Director – Present
Paula Wrenn – Minute Taker – Present

Call to Order/Attendance/Pledge of Allegiance

Mr. LoChiatto opened the meeting at 7:00PM, followed by the Pledge of Allegiance.

Mr. Wrenn was seated for Mr. Okerman.

Public Hearing - 2010 Town Meeting Zoning Amendments

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 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.

Mr. LoChiatto read Workforce Housing Overlay District into the record.

Mr. LoChiatto said this meeting is a continuation of the December 30th meeting based on the changes that were made at that meeting.

Mr. Breton motioned to open for Public Hearing. Second by Mr. Kolodziej. Motion passed 7-0.

Ms. Prendergast gave a Workforce Housing Power Point presentation to the Board and Public.

Mr. Tom Gelinas, Town resident, said he would like a better understanding of the Workforce Housing ordinance. He asked about how recent the data that was used to compile the Power Point Presentation as real estate has been depreciating for the past couple of years.

Ms. Prendergast explained that the data that was used in her presentation is the most current data available which is from 2009. She received the information from the NH Housing and Finance Authority, HUD, and Town of Windham Assessor's Office.

Mr. LoChiatto said that the Town Assessor's Office updates all their numbers every April. He also said the Town needs to provide the 'opportunity' to build Workforce Housing not necessarily build it.

Ms. Bev Donovan said that \$256,000 (median Workforce Housing cost per unit) is based on what is affordable (includes principal, interests and taxes).

Mr. Albert Aeed owns the property at 130 Range Road, Austin Place. He spoke about Residential A being removed from the Ordinance at the December 16th meeting as he feels it was directly related to his project which is Workforce Housing. Mr. Aeed said there is 6 1/3 acres on his site. He is not going to tear down the historic home on that property; however, he is going to preserve and restore the home with 5 units within the home and preserving a common area for the public.

Mr. Aeed said that he believes the most valid concerns with Workforce Housing are the density and environmental impact.

Mr. Aeed said Workforce Housing does not provide additional homes if the density is not there. The density in his development is less than what is on Cobbetts Pond. He said if there are concerns with tear-downs then restrict what can be torn down rather than eliminating the Residential A district. He would like the Board to reconsider Residential A with Workforce Housing and take a look at the specifics such as the type of housing to be proposed in Residential A. He said the letter from Legal Counsel dated December 18th expresses concern about Residence B and C zoned land and may not be sufficient to meet the quota of the State. He said removing Residential A says "not in my backyard".

Ms. Betty Dunn said she reviewed the draft. She is concerned about adding the Village Center District in the Ordinance. She said it does not address historic resources.

Ms. Dunn spoke about the Historic Demolition Delay Ordinance which is only a 30-day delay.

Ms. Post said the operative word in the Historic Demolition Delay Ordinance is 'delay'. There is nothing in the ordinance that says you cannot demolish a historic building, you can only delay by 30-days.

Mr. LoChiatto said that the State established that anything built prior to the early 1940's would be considered historic.

Ms. Scott said the Heritage Commission in the Town of Windham does maintain the Historic Resource Inventory list. She gave a brief explanation of what the Heritage Commission does in other towns. Ms. Scott said there is a copy of this list in the Community Development Office.

Mrs. Dunn said there are two (2) lists online that delineate historic structures and archaeological structures.

Ms. Dunn requested additional wording to the ordinance:

- Section 616.5.3.3.3 adding (f) "that the development minimizes the loss of historic structures as listed in the Town of Windham's Historic Resource Inventory".

Ms. Dunn also mentioned the ordinance could be more general by not referring to the historic list and say "that the development minimizes the loss of historic structures."

Ms. Scott summarized Ms. Dunn's presentation for the Board stating 'Ms. Dunn thought that Workforce Housing developments were receiving benefits that other developers were not receiving; such as waiving certain requirements (no impact fees, greater density, no buffers if you are in the interior of the development). In other words, the perception is that developers of Workforce Housing are getting more benefits than other developers.'

Ms. Scott explained the Demolition Delay Ordinance cannot be waived through the Conditional Use Permit.

Ms. St. Laurent questioned if there is an existing structure on the lot does it affect the total number of bedrooms you can get on a lot vs. tearing it down. Mr. LoChiato explained it does not as the lot sizing density is down by the perimeter of the lot, not what's on the lot.

Ms. Dunn would like to see the following changes:

- Section 616.1 remove the wording 'for the' so it will read "...the purpose of this ordinance is to provide reasonable and realistic opportunities..."
- Section 616.3 Conditional Use Permit (CUP) remove 'as required' so it will read "otherwise not be allowed on a particular site under the Zoning Ordinance..."
- Section 616.5.3.3.2 add the following wording "A CUP may not be granted by the Planning Board to relieve the applicant from the provisions of..."
- Section 616.5.3.3.3 and under Conditional Use Permit: change wording of Historic District Demolition Delay Ordinance to "Historic Demolition Delay Ordinance".
- Section 616.7.1.2 add a period at the end.
- Section 616.8 change the wording to read "...which have a substantial adverse effect..."

Mr. Karl Dubay said he agrees with Ms. Dunn's suggestions with regard to historic structures. He would like the Board to add verbiage to the Ordinance on protecting historic structures.

Mr. Dubay also spoke on Section 616.3.3 that he would like the wording scaled back. He would like to add Residential A back into the Ordinance with single-family detached housing; and take out duplex units in the Rural district.

Attorney Michael Rosen, representing Joe Farro, said Workforce Housing is about finding a way to develop housing for low to middle income families that blends into the character of the community. He did an individual study on available residential land in Windham. In Residential A there is 8% vacant residential land available for development. By removing Residential A from the Ordinance, there is still 92% vacant residential land available for reasonable and realistic opportunities. Mr. Rosen would strongly suggest to the Town that they do not include Residential A in the Workforce Housing Ordinance. He would like the Board to take a closer

look at their numbers as it is only for single-family homes and does not believe that rental units are included as you cannot get that from the Assessor's records.

Mr. Alan Carpenter congratulated the Planning Board on the rewriting of the Workforce Housing. He does agree with Mr. Dubay's comments with regard to Residential A single-family detached housing. Mr. Carpenter spoke on Impact Fees for the schools. He does not want Workforce Housing to be excluded from Impact Fees.

Ms. Andrea Mills wanted to clarify that Residential A does include low-income, elderly housing with over 4 1/2 acres in addition to single-family. Mr. LoChiatto said that is written in the Elderly Housing Ordinance Overlay.

Mr. Christopher Nickerson would like the Board to consider multi-family housing in the Rural District for some of the following reasons.

- be able to provide better architecture and aesthetics
- be able to use better building materials (brick vs. vinyl, columns, slate vs. asphalt roofing)
- be able to provide buffers from adjacent uses
- community spaces (soccer fields for public use, public space, recreation facilities)
- be able to preserve the view-sheds (open fields, large trees)

Mr. Nickerson said you would not be able to maintain the high quality of standards if all single-family or duplex homes were built. If you do single-family/duplex units you will possibly get a cookie-cutter look to the development with backyards all fenced in for privacy. He strongly urges the Board to have more flexibility with Residential A and include multi-family housing.

Mr. Matthew Bowers, Town resident, is concerned on the soils based lot-sizing density. He is concerned about the incentives being given to developers. He would like to see the drive for Workforce Housing be market driven and not incentive based. He cautioned the Board to be careful with their wording.

Ms. Prendergast said the Planning Board did a lot of work on the density study.

Ms. Scott said there is a cap on the purchase price of Workforce Housing, if the price exceeds that cap, it will not qualify for Workforce Housing. The price has to be maintained for a 30-year period per the HUD standard rate for this region. Ms. Scott said the Town already has soils based lot sizing regulations; however, the Town's regulations are more restrictive than the State's. She said the Town is going to use the State's standard with Workforce Housing.

Mr. Tom Gelinas asked if developers could exceed the number of units that the State requires.

Mr. LoChiatto said that the 'land costs' does not change for Workforce Housing and Windham has some of the most expensive land costs in the State. He said there is not that much left in buildable land in Town. He also said that the cost to develop a piece of land is what the market dictates so it still needs to be affordable for the developer to do Workforce Housing. He is not that concerned as that has not happened with elderly housing.

Mr. Carpenter asked how you can have two (2) soils based lot sizing standards in Town (Town & State). He said it will be challenged by the developers. The Town's ordinance is more restrictive than the State's. He asked that the Board use only the Town's standard for soils based lot sizing as it is more restrictive. Mr. Carpenter said there was a reason why the Town

wrote it that way, 'it was to protect the quality of the water', as Windham has mostly well and septic systems. He recommended that the Board remove the first sentence in Section 616.7.1.1.

Mr. Aeed said that the Elderly Housing has no restrictions in zones with the Overlay Age Restricted Ordinance. He said that Workforce Housing should also include Residential A as there may not be enough buildable land in the other areas.

Mr. LoChiatto closed the hearing to the public.

Ms. Scott recapped the suggested changes:

- Exempting Impact Fees
- Soil based lot sizing - do you want to use State or Town standard
- Require or encourage historic resources to be preserved
- In Rural district only allowing single-family detached
- In Residential A only allowing single-family detached
- In Rural allowing multi-family
- Correcting the typos
- Remove Village Ctr. District from the Ordinance

Mr. LoChiatto said if they only make the typo corrections they can move to Town Warrant. If all or any of the suggested changes are made, it will have to go for a rehearing on January 19, 2010.

Ms. Scott said if we make any changes there will be a rehearing on January 19, 2010.

Mr. LoChiatto asked the Board about waiving or not waiving the Impact Fees.

Ms. Post said the Planning Board has made a lot of concessions and incentives in the Workforce Housing Ordinance. She spoke about the increased needs of the schools and town services that will be caused by Workforce Housing. By waiving impact fees for Workforce Housing, you are asking existing tax payers to subsidize additional capital cost that they have not caused. Ms. Post said by waiving the impact fees for Workforce Housing, it will jeopardize the passing of this Ordinance in March. She said the Planning Board needs to be very careful with the waiving of impact fees.

Mr. Kolodziej asked what the impact fee for a single-family detached is. Ms. Scott said it was approximately \$3,434.34 for the school; and Public Safety impact fee was approximately \$1,135.00. She said there will be a Public Hearing in January 2010 with regard to the Revised School Impact Fee Methodology. As it is presently written, it only applies to single-family detached homes (no multi-family, duplexes, triplexes, and condo).

Ms. Post motioned to exclude from the Ordinance Section 616.5.3.2 with regard to impact fees for Workforce Housing. Second by Ms. Prendergast. Motion failed 2-5. Opposed by Messrs. LoChiatto, Breton, Kolodziej, Wrenn and Ms. Skinner.

Mr. Kolodziej asked Ms. Scott about the two standards in Soils Base Lot Sizing. Ms. Scott said she does not see using the State standards a conflict as it is the standard the Town uses to get septic approved. Elderly Housing also uses a different standard.

Section 616.7.1.1 will be left as written per the Board.

Mr. LoChiatto read the two options that Ms. Dunn proposed to the Board about adding wording for historic resources in Section 616.5.3.3.3 (f).

- .1 "no demolition of historic *structures*";
- .2 "to minimize the loss of historic *structures*"

Ms. Prendergast and Ms. Post support the wording of "to minimize the loss of historic structures".

Ms. Scott wants to say 'historic resources' vs. 'historic structures' and reference the historic list or inventory of historic resources in Town.

Mr. Kolodziej questions if historic means that it stays there forever such as cellar holes. Ms. Dunn, as a former member of the Historic District Commission, said there is one cellar hole protected under the Historic District Ordinance which is owned by the Town. There are two lists maintained by the Historic District Commission/Heritage Commission; archaeological structures and historic buildings.

Ms. Scott and the Board had a lengthy discussion on the wording for Section 616.5.3.3.3 (f) with regard to the Historic Demolition Delay Ordinance and the wording of "minimize".

Ms. Post said the purpose of the Demolition Delay Ordinance is to give the Historic Commission an opportunity for an educational process with the builder. The wording of 'minimize' gives some flexibility.

Mr. LoChiatto said the Demolition Delay Ordinance also gives the Historic Commission time to document. He does not like the wording 'minimize'.

Ms. Prendergast motioned to include the language under Section 616.5.3.3.3 (f) "to minimize the loss of historic structures". Second by Ms. Post.

Ms. St. Laurent said the developer should consider if it's feasible to reuse, maintain and keep the historic building. She would like the applicant to be realistic and reasonable with possibly salvaging the building and incorporate some such wording into the ordinance vs. 'minimizing the loss'.

Ms. Prendergast motioned to add and include the following language in Section 616.5.3.3.3 (f)
'realistic and reasonable measures shall be given to preserve those historic resources as defined in Section 719.2.3 of the Historic Demolition Delay Ordinance'.

Second Ms. Post. Motion passed 4-3 (Messrs. Kolodziej, Breton, LoChiatto opposed)

Mr. LoChiatto said he will combine the discussion on dwelling types allowed in the Rural District (single-family and multi-housing).

Mr. LoChiatto read Section 616.3.3.

Mr. Breton motioned to add '*Rural*' to Section 616.3.2 and to strike Section 616.3.3. Second by Mr. Kolodziej. Motion passed 5-1-1. Ms. Post opposed and Ms. Prendergast abstained.

Mr. LoChiatto said there was discussion on Residential A being single-family detached.

Ms. Prendergast said she would be agreeable to include Residential A in the ordinance.

Mr. Wrenn reminded the Board that previous discussion on Residential A was to prevent the tearing down of a structure and putting in multiple Workforce Housing Units based on soil density.

Mr. Breton reminded the Board to refer to Attorney Campbell's letter of December 18th referring to Residential A Workforce Housing.

Ms. Post motioned to reinstate 616.3.3 "dwelling types allowed in Rural Workforce Housing District and Residential A Workforce Housing District will be single-family detached"; and add Residence A (single-family detached) to Section 616.3.1.

Ms. Prendergast motioned that Workforce Housing Section 616.3 to 'include Residential A as single-family detached or attached'. Second by Ms. Post. Mr. Kolodziej can only support detached.

Ms. Prendergast motioned that Workforce Housing Section 616.3 to 'include Residential A as single-family detached'. Second by Ms. Post. Motion passed 7-0.

Ms. Post motioned to add Residence A to Section 616.3.1. Second by Ms. Prendergast. Motion passed 7-0.

Mr. LoChiatto asked the Board if they wanted to take action on removing the Workforce Housing Overlay District in the Village Center District. The Board agrees that Section 616.3 would stay as currently written with regard to Village Center Districts.

Mr. Kolodziej made motion to move the Workforce Housing Overlay District as amended to the January 19, 2010 meeting. Second by Ms. Post. Motion passed 7-0.

The Board took a 5-minute break from 10:00PM-10:05PM.

Motion to accept new business after 10:00 PM by Mr. Kolodziej. Second by Ms. Skinner. Motion passed 7-0.

Section 719 Small Wind Energy Systems. Create a new ordinance for the regulation of small wind energy systems in accordance with NH RSA 674:62-66. Develop a Purpose Section, as outlined in NH RSA 672:1-II-a; a Definitions Section of applicable terms; detail the procedures for review for non-residential use and residential use of small wind energy systems; develop the standards for review; what to do if the structures are abandoned; as well as sections on violations and penalties.

Mr. LoChiatto read Section 719 Small Wind Energy Systems into the record.

Ms. Scott referred the Board to the documents she provided:

1. Revised draft of Section 719 Small Wind Energy Systems Ordinance
2. December 15, 2009 letter from Legal Counsel

3. December 21, 2009 email from Eric Steltzer, Energy Policy Analyst for NH Office of Energy and Planning, addressed to Ms. Scott.

Ms. Scott addressed the abutter notification process with regard to building mounted wind turbines that was raised at the last meeting. Legal Counsel advised that you would have to follow the abutter notification process of the Town. Mr. Steltzer from the Office of Energy suggested just to remove it from the ordinance and treat the installation of building mounted wind turbines just as you would an antenna installation through the building permit process.

Ms. Prendergast and Mr. LoChiatto recommend removing the language from the Ordinance.

Mr. Breton motioned to open for Public Hearing. Second by Ms. Post. Motion passed 7-0.

Ms. Post questions the lack of history regarding the technology and also the safety issues by allowing roof-top mounted wind turbines.

Mr. Breton asked that the Board reference Mr. Steltzer's email dated December 21, 2009.

Public made no comments.

Mr. Breton made motion to strike any reference to building mounted small wind energy systems in Section 719 Small Wind Energy Systems Ordinance on the advise of the NH Office of Energy Planning, as building mounted wind turbines were generally not considered in the development of RSA 674:62-266. Ms. Prendergast seconded. Motion passed 7-0.

Mr. Breton motioned to move Small Wind Energy Systems to the January 19, 2009 Planning Board Meeting. Second by Mr. Kolodziej. Motion passed 7-0.

Ms. Prendergast and Mr. Breton had discussion on Mr. Campbell's comment in his December 15th letter with regard to the State OEP Technical Memorandum. They both felt that some sort of standard should be referenced in the ordinance to OEP.

Mr. LoChiatto asked Ms. Dunn if she could summarize the purpose of the OEP for the Board. Ms. Dunn said that the reason for this provision would be to require specific models of wind generators as those bodies have looked at those models and said they are effective. On the other hand, what happens if a new technology comes along and has yet to be approved?

Mr. LoChiatto asked the Board if they want to add any language about the OEP. Ms. Scott said the language for OEP will be added to the building permit process.

Section 609 Aquifer Protection District. Amend Section 609.2 Definitions to clarify that wastes from subsurface disposal systems is "Leachable Wastes", define "Solid Waste" using NH RSA 149-M:4,XXII, delete the word "Toxic" and define "Hazardous Waste" as NH RSA 147-A:2,VII, and delete "Minimum Lot Size", "Dwelling Unit", "Non-Municipal Well", "Sludge", "Structure"; delete Section 609.4.1 Permitted Uses; amend Section 609.4.12 Prohibited Uses to define solid waste per NH RSA 149-M:4,XXII, define hazardous waste per NH RSA 147-A:2,VII and not allow its processing or recycling, clarify that the storage of leachable wastes is prohibited, clarify that the subsurface storage or refined petroleum products and chemicals is prohibited, state that non-contact cooling water discharge is permitted, that the outdoor, open, and/or uncovered storage of road salt, salt/sand mixtures, and other chemical deicing materials

is prohibited; amend Section 609.4.3 Recharge Requirements that no more than 50% of the total parcel area within the District may be impervious surfaces and that paving requirements may be waived by the Planning Board and under what conditions; deleted the title for 609.5.1; delete 609.5.1.3 and replace with language regulating excavations permitted under RSA 155-E; added 609.5.5 to reduce the use of salt on parking areas, storage of road salt and its use in the district, and amend 609.6 to allow a non-conforming use to continue unless the Code Enforcement Officer and Health Officer find it to be a hazard.

Mr. LoChiatto read Section 609 Aquifer Protection District into the record.

Ms. Scott referred the Board to the documents she provided:

- Revised draft of the Aquifer Protection District

Ms. Scott reviewed the Board's recommended changes from their December 16th meeting.

Mr. Breton motioned to open the Aquifer Protection District for Public Hearing. Second by Mr. Wrenn. Motion passed 7-0.

No comments from the public.

Mr. LoChiatto closed discussion to the public.

Mr. Kolodziej motioned to move the Aquifer Protection District to Town Warrant. Second by Ms. Skinner. Motion approved 7-0.

Section 702.5, 614.2.1, 612.3.1, and Appendix A-1Note #9 Buffers. Delete Sections 702.5, 614.2.1, and Note #9 from Appendix A-1 and replace it with language that requires a vegetative buffer or earthen berm 50' wide to be provided if a non-residential use (building, parking area, or driveway) is proposed closer than 100' from a residential zoning district. Amend Section 612.3.1 to clarify that the buffer is from abutting residential zoning districts.

Mr. LoChiatto read Section 702.5, 614.2.1, 612.3.1, and Appendix A-1Note #9 Buffers into the record.

Ms. Scott said there was no legal review. The changes that were made were based on Board and public input from the December 16, 2010 meeting.

Mr. Breton opened for Public Hearing Section 702.5, 614.2.1, 612.3.1, and Appendix A-1Note #9 Buffers. Second by Ms. Skinner. Motion approved 7-0.

No comments from the public.

Mr. LoChiatto closed discussion to the public.

Ms. Post motioned to move Section 702.5, 614.2.1, 612.3.1, and Appendix A-1Note #9 Buffers to Town Warrant. Second by Mr. Kolodziej. Motion passed 7-0.

Meeting Minutes – Review & Approve

Motion by Ms. Skinner to approve the December 2, 2009 minutes as written. Second by Mr. Kolodziej. Motion passed 5-0-2. Mr. Wrenn and Ms. Prendergast abstained.

Motion by Mr. Breton to approve the December 9, 2009 minutes as amended by making the change of Ms. Wrenn's title to Planning Board Support Staff. Second by Ms. Skinner. Motion passed 5-0-2, Ms. Prendergast and Ms. Post abstained.

Motion by Ms. Post to approve on December 15, 2009 minutes as amended. Second by Mr. Wrenn. Motion passed 6-0-1. Ms. Prendergast abstained.

Mr. Breton requested that the vote for the December 15th minutes be rescinded as additional wording needs to be added:

1. 7:00 PM Joint Meeting with Board of Selectmen and Planning Board
2. 8:30 PM Joint Meeting with Board of Selectmen and Planning Board recessed (insert before 2010 Town Meeting Proposed Amendment – Aquifer Protection District Map)

Ms. Skinner motioned to reconsider the motion to approve the minutes of December 15, 2009 with the additional wording added. Second by Ms. Post. Motion approved 6-0-1. Ms. Prendergast abstained.

Ms. Skinner motioned to approve the December 16, 2009 minutes. No Second. Motion failed.

The Board requested for additional time to review the December 16th minutes.

Ms. Scott outlined the Planning Board meetings for January 2010:

- January 6, 2010
- January 13, 2010
- January 19, 2010

Ms. Post requested that the Citizens Petitions be available for the Board at the January 6, 2010 meeting.

Adjournment

Motion to adjourn by Mr. Kolodziej. Second by Mr. Breton. Motion passed 7-0. Meeting adjourned at 10:45PM.

These minutes are respectfully submitted in draft by Paula Wrenn.