



*OLD VALUES - NEW HORIZONS*  
**PLANNING AND DEVELOPMENT**

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**Planning Board Meeting Minutes  
January 6, 2010**

**Roll Call:**

Phil LoChiatto, Chairman – Present	Rick Okerman, Vice Chairman – Excused
Nancy Prendergast, Member – Present	Walter Kolodziej – Present
Ruth-Ellen Post, Member – Arrived 7:04 PM	Pam Skinner, Member – Excused
Louis Hersch, Alternate – Excused	Kristi St. Laurent, Alternate – Present
Sy Wrenn, Alternate – Present	Bruce Breton, Selectmen Member – Present
Ross McLeod, Selectman Alternate – Excused	

**Staff:**

Elizabeth Wood, Community Planner – Present  
Paula Wrenn, Planning Board Assistant - 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 and Ms. St. Laurent was seated for Ms. Skinner.

**Public Hearing on Section 609 Aquifer District Protection District Map.**

The purpose is to update the data source that is used to generate the Town's Aquifer map. The current ordinance utilizes data published in 1968, titled "Groundwater Resources of the Lower Merrimack River Valley, South Central New Hampshire", Hydrologic Investigations Atlas HA-277." The proposed ordinance would use the most recent data source available, a report generated in 1992, titled "USGS Water-Resource Investigations Report 91-4025 Geohydrology and Water Quality of Stratified-Drift Aquifers in the Lower Merrimack and Coastal River Basins, Southeastern New Hampshire".

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

Ms. Prendergast asked Ms. Wood how the date of 12/15/09 on the Aquifer Map was established. Mr. Wrenn reminded the Board that the date was agreed on at the December 15<sup>th</sup> meeting in order to reference the map as previously there was no date on the map.

Ms. Prendergast suggested that the wording on the Aquifer Map read "Developed by the Rockingham Planning Commission and dated December 15, 2009".

Mr. LoChiatto opened for public discussion.

No comments from the public.

Motion by Mr. Breton to move Section 609 Aquifer Protection District and Associated Map to Town Warrant. Second by Ms. Post. The motion passed 7-0

**Section 608 Historic District.** Citizen's Petition to amend the Town Zoning and Land Use Regulations, Section 608 Historic District. The intent of the proposal is to restructure the layout of the ordinance, eliminate language which is detailed in statute, amend certain section titles to better indicate the intent of the sections, and to further define the allowed uses within a Historic District.

Mr. LoChiatto read Section 608 Historic District into the record.

Mr. LoChiatto opened for public discussion.

Ms. Betty Dunn said she assisted on the wording for this Citizen's Petition and there were no substantive changes.

Mr. LoChiatto asked under Section III, B., 10. "In addition to the aforementioned powers the Historic Commission may conduct surveys of buildings for the purposes of determining those of historic and/or architectural significance..." what areas in the Town did it apply to.

Mr. Jerry Parsons, an alternate on the Historic District Committee, explained that the suggested changes are only for the Historic District.

Ms. Betty Dunn advised the Board the properties that are within the Historic Districts are mostly owned by the Town of Windham with the exception of Union Hall.

Mr. Parsons advised the Board that there were no major changes and most of the changes were advised by Attorney Campbell.

Ms. Prendergast asked Mr. Parsons why they removed a Selectmen representative from the ordinance.

Ms. Carolyn Weber explained that the omission of the Selectmen from this Citizen's Petition was not intentional.

Ms. Carol Pynn says that she believes that it would be good for a Selectman to sit on the Historic District Committee. She said it is very informative when there is a Selectman present at their meetings.

Mr. Parsons said the petition was put forward because the Historic District Ordinance had not been redone since 1980.

Mr. Kolodziej made motion for the Planning Board to recommend the Citizen Petition in the Historic District on the Town Warrant. Ms. Post seconded the motion. The motion passed 7-0.

**Property Rezoning.** Citizen's Petition to Rezone a portion of Lots 18-L-300, 18-L-450, 18-L-400, and 18-L-480 from Professional Business and Technology District to Business Commercial District "A." The proposed zoning will keep existing 100' Residence "A" buffer from lots 18-L-475, 18-L-380, 18-L-383, 18-L-384, 18-L-102, 18-L-103, 18-L-104, and 18-L-105. The remainders of the lots are proposed to be changed to Business Commercial District "A".

Mr. LoChiatto read the Citizen's Petition for Property Rezoning into the record.

Ms. St. Laurent had concerns with the map presented and the wording in the Citizens Petition. There were no citizen representatives present to give an explanation.

Mr. LoChiatto opened discussion to the public

Ms. Weber said she has concerns of the rezoning of these lots from Professional Business and Technology District to Business Commercial District 'A' with the run-off into Canobie Lake. She feels it will have an impact on the lake.

Ms. Dunn said the Town's people spoke clearly last year that they did want to support this same Citizen's Petition. She gave some background to the Board on the zoning of these lots and explained how it got to be where it is. Ms. Dunn said the map is fairly accurate that the Petitioners have used. She believes the map was created in conjunction with the State and the Town's Master Plan; and at that time the State was in favor of rezoning this area from Business Commercial A to the Professional Business and Technology District so we would not recreate a traffic problem. Ms. Dunn asked that the Planning Board not recommend the Petition.

Mr. Carpenter said there are some flaws in the wording of this petition. He said if the zoning changes to Business Commercial A, the Town will probably end up in litigation. Mr. Carpenter said the reason for the original zoning was to keep it away from Canobie Lake. Mr. Carpenter said that the Planning Board should not recommend the Petition.

Mr. Arthur Klemm, owner of the land next to the proposed rezoning (Mobile on the Run), reminded the Board of all the meetings and studies (DOT, Planning Board, Master Plan Committee, I93 Bypass Public Hearings & Rt 111 Bypass Hearings) that have taken place over the last 10 years with regard to the traffic impact along the 111 corridor. There have been significant changes made because of these studies. He told the Board that Commercial A is the most intense traffic zone. Mr. Klemm asked the Planning Board not to recommend this petition on the Town Ballot.

Mr. McLeod said in the early 2000's, the Planning Board and Mr. Bill Cass from the State had a workshop on the rezoning of this area. He explained the reason for this was that the

State was going to reconstruct the I93 Corridor at Exit 3 and the Town wanted to make sure there was consistency with the rezoning the Town was working on in that Rt 111 corridor at the time. Because of the input from the Planning Board, the State did adjust their reconstruction plan. Mr. McLeod also said that the Professional Business and Technology District will provide a stronger tax base than Business Commercial District A. Mr. McLeod asked the Planning Board not to recommend this petition on the Town Ballot.

Ms. Donna Morgan, resident of Edgewood Road, said that this petition is not clear and asked the Planning Board not to recommend this petition on the Town Ballot.

Ms. St. Laurent made motion for the Planning Board not to recommend the Citizen's Petition for Rezoning the parcels along Range Road to Business Commercial District A on the Town Warrant. Second by Ms. Post. Motion passed 7-0.

**Cobbetts Pond Watershed Protection Overlay District.** Citizen's Petition to add a new Overlay District with the intent to prevent the further degradation of Cobbetts Pond's water quality through the regulation of land uses and development within the proposed Watershed Protection Overlay District. The boundaries of the Cobbetts Pond Watershed Protection Overlay District have been delineated by the New Hampshire Department of Environmental Services. The ordinance would apply to all development proposals and to potential contaminating activities within the Watershed Protection Overlay district. It requires that development applications meet a listed set of criteria including providing a hydrologic study and plan by a professional engineer or hydrologist licensed by the State of New Hampshire. A definitions section is included, as well as use regulations and review requirements. The ordinance details the administration of this ordinance, granting sole authority the Planning Board to administer the ordinance and adopt amendments to the ordinance. Enforcement of the ordinance is to be conducted by the Code Enforcement Officer. There will be no special exceptions to this ordinance unless included in the ordinance as written.

Mr. LoChiatto read Cobbetts Pond Watershed Protection Overlay District into the record.

Mr. John Pallari, President of the Cobbetts Pond Association, said that the Association has been working hard to restore the water quality to Cobbetts Pond. He would like the Board to take a holistic approach to this proposal. Mr. Pallari would like the Board to support this Citizen's Petition for the Cobbetts Pond Watershed Protection Overlay District.

Ms. Kathleen DiFruscia distributed a letter to the Board from the State of NH DES. She said the goal of this specific ordinance is to prevent the deprivation of the water quality of Cobbetts Pond. Cobbetts Pond has been classified by the Environmental Protection Agency as an impaired water body. The Cobbetts Pond Association received a grant of \$125,000 for their evaluation and restoration plan. Ms. DiFruscia explained how they raised an additional \$40,000 by taxing themselves in the Cobbetts Pond Village District for

this project. There has been no cost to the Town. The Association feels that Cobbetts Pond is a great resource to Windham's ecology, recreational use and significant to the Town's tax base. The Cobbetts Pond Village District contributes 9.25% to the tax base through the assessed homes in the District. She said that water quality affects the value of lake shore property and the enhanced property value is a reason for the Board to support this ordinance. This ordinance creates an overlay to the Zoning Ordinance. The proposed ordinance is to protect the pond, streams, tributaries and ground water from increased runoff and sediment for water quality.

Ms. DiFruscia outlined some of the requirements of the ordinance:

- Requires essential requirements to any development bordering Cobbetts Pond or within its watershed.
- Requires such developments to demonstrate that it would contribute no additional nutrient load to the pond
- New home construction would be required to provide a soil erosion plan.
- Other development would be required to put in place Best Management Practices to protect Cobbetts Pond and its tributaries from stone water runoff.
- The ordinance, in part, supplements the provisions of our Shoreland Protection Act, WWPD Ordinance and the Town's Zoning Regulations
- In the event there is a conflict between the requirements of this ordinance and other requirements by the Town's Zoning Regulations or State Law, the more stringent requirements would prevail
- The Windham Planning Board would have the sole and exclusive authority to administer the provisions of this ordinance and have the authority to adopt amendments to this ordinance.
- The Code Enforcement Officer would be responsible for enforcing the provisions and conditions of the ordinance.
- Requires that development applications meet the listed set of criteria requirements including providing a hydrologic study and plan by a PE or Hydrologist licensed by the State of NH
- A definition section is included as well as use regulations, review requirements for development, buffer requirements, septic systems, site construction, agriculture activities, forestry

Ms. DiFruscia said this Ordinance was formulated using similar models that have been adopted by the Town of Franklin, Webster Lake, Derry, Newbury, Newfound Lake Association, and New Durham.

Ms. DiFruscia introduced Mr. Hartzel, Sr. Water Resources Scientist from Geosyntec. Mr. Hartzel made a Power Presentation to the Board and public with regard to the Cobbetts Pond Watershed Protection Overlay District. Hard copies of the presentation were given to the Board.

Mr. Breton motioned to open to public hearing. Mr. Kolodziej seconded the motion. The motion passed 7-0.

Mr. Wrenn asked Mr. Hartzel how you determine the area of a watershed. Mr. Hartzel explained that it is topography driven. At any high point where a drop of rain flows downhill and works its way to the pond, that area is considered a watershed.

Ms. Post asked how residents will know if they are in the watershed district. Mr. Hartzel said that there will be maps available.

Mr. Breton suggested that Ms. DiFruscia receive a copy of Attorney Campbell's comments in his letter of December 18, 2009.

Attorney Bernie Campbell of Beaumont & Campbell addressed his comments of December 18, 2009 on the Cobbetts Pond Watershed Ordinance. One of his concerns is if the language is sufficiently clear for a citizen to determine if they are within the watershed. He also said that the map attached to the petition is not clear.

Mr. Hartzel spoke about the clarity of the map. He said the State does have a topographically defined watershed boundary map online.

Ms. DiFruscia that they could provide a colored enlarged map of the watershed district for the public to view on the day of elections.

Ms. DiFruscia said that if they had received Attorney Campbell's in advance of tonight's meeting, the Association would have been able to address them.

The Board addressed some of the comments from Attorney Campbell with Ms. DiFruscia and Mr. Hartzel.

Mr. LoChiatto said he would like to see the 'quantity/volume' of hazardous materials specified in Section 1.5.

Mr. LoChiatto asked how the Town was going to monitor the pumping of individuals septic systems every 3-year as specified in the ordinance (Section 1.6 (4)). Ms. DiFruscia said the Cobbetts Pond Association has sent a survey out to the Cobbetts Pond residences requesting information on their septic systems so they could provide to the Code Enforcement Officer to administer and monitor. Mr. LoChiatto says that he questions the administration of this.

Ms. Prendergast asked what happens to the residences that are not on the pond but in the watershed district are they subject to this ordinance. Ms. DiFruscia said they would be subject to this ordinance.

Ms. St. Laurent asked about the language of Section 1.8(b) with regard to the limit of 10% of all dry land for lawn. Mr. Hartzel said the language should be modified showing that.

Mr. LoChiatto opened discussion to the Public.

Mr. Albert Aeed said Cobbetts Pond should be protected even if it is in jeopardy or not. He thinks guidelines like this Citizens Petition is the best way to hold developers feet to the fire. He does not see this ordinance as anti-development. Mr. Aeed is in favor of the ordinance.

Ms. Carolyn Weber said she has seen the change in the lake over the years. She feels the lake needs help now and recommends that the Board support this ordinance.

Ms. Pynn has a concern with the 'salt' runoff into Cobbetts Pond.

Mr. Alan Carpenter said the pond is under distress and probably should have been dealt with 10 years ago. He would like the Board to support this ordinance.

Mr. William Shroeder encourages the Board to endorse this Citizens Petition. He said the quality of water has deteriorated over the years due to the development in the watershed around Cobbetts Pond.

Mr. McLeod said that anything we can do to protect Cobbetts Pond, we need to do. He said this ordinance is endorsed by the NHDES and the NH Lakes Association. Mr. McLeod asks the Board for their full support with this ordinance.

Ms. Betty Dunn said that Cobbetts Pond is crucial to the town. Ms. Dunn recommends that the Board support this ordinance and hopes that a similar ordinance is adopted to protect the other lakes and ponds in Town.

Mr. Karl Dubay said we need to protect the pond. However, he's not sure the Board should recommend the petition the way it is written. He suggested that the Board look at a low pressure sewer system around the lake that Beaver Lake in Derry did. He believes it was paid for by grants.

All of the above citizens, with the exception of Mr. Dubay, would like the Board's support. They are aware of some of the flaws in the ordinance; however, said it can be tweaked over time.

Mr. LoChiatto closed discussion to the public.

Ms. Post reminded the Board that CPIA came to the Board asking for their help months ago and the Board declined. She said the Citizens Petition by the CPIA has been thoroughly researched by professionals. She does not think the administration for the Town with this ordinance will be a big burden. Ms. Post recommends that the Board support this ordinance and revisit the ordinance in 2010.

Ms. Prendergast has concerns with the clarity of the map.

Mr. LoChiatto said the Board could not get involved with the CIPA when they requested because of the Board's schedule and case load. He said the ordinance takes the Gateway District out of existence. In the WWPDP as written today, brooks and streams are exempt around Cobbetts Pond and the CIPA supported that; however, this ordinance is in direct conflict with the existing WWPDP. He has concern of the undefined amount of stored hazardous material. He said the pond is one of the largest assets that the Town has.

Ms. St. Laurent said in regard to the map issue, the previous map is a good copy of an inaccurate map. The map provided for the Citizens Petition is a poor copy but an accurate map.

Mr. Wrenn said Attorney Campbell's comments should have been given to the CIPA so some of these concerns could have been addressed tonight. He also has concerns with the Town's administration of this ordinance.

Mr. Kolodziej made motion that we forward the Citizen Petitions for the CIPA Watershed with the Board's recommendation. Ms. Post seconded the motion. Motion passed 7-0.

The Board took a break from 10:05PM-10:14PM

A motion to accept new business after 10:00 PM was made by Mr. Breton. Seconded by Mr. Kolodziej. Motion passed 7-0.

**Workforce Housing Overlay District.** Citizen's Petition to 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). In addition it is intended as an "Inclusionary Zoning" provision, as defined in NH RSA 674:21 (I)(k) and 674:21 (IV)(a). The developments under this ordinance are allowed in the Residential B, Residential C, and Rural Districts. Dwelling Types allowed in the Rural District are single family (attached and detached), and duplexes. Dwelling types allowed in the Residential B, and Residential C Districts are single family (attached and detached), duplex, and multi-family units. A definitions section is provided. The procedures for development in this Overlay District are detailed. Applications must first have a conceptual consultation with the Planning Board, submit a design review application to the Planning board, and afterwards a final application must be submitted to the Planning Board. A list of Conditional Use Permits is given along with a list



of conditions for approval. Development Standards are detailed and include provisions on density, frontage, setbacks and yard regulations, layout, and roads. Appeals may be made to the Superior Court under NH RSA 674:61.

Mr. LoChiatto read the Citizen's Petition for Workforce Housing Overlay District into the record.

Attorney Michael Rosen presented a map showing Residences A, B, C, Rural and Village Center District. He also spoke about the watershed areas in Residence A. He said you do not have to put Workforce Housing in every district. He would like the majority of Workforce Housing be in Residential B and C and have Residential A removed from the Town Ordinance. Attorney Rosen spoke about the Citizen's Petition and how they cannot amend it to include some of the positive comments that came forth in the Board's December 16<sup>th</sup> and 30<sup>th</sup> meetings. Attorney Rosen said he would file a Protest Petition if Residence A was not excluded from the proposed Town Ordinance. He also suggested that the Board remove Residence A from the Town ordinance and repost it for final public hearing on January 19<sup>th</sup> along with a second warrant including Residence A. He said the Citizen's Petition mirrored the Board's December 2, 2009 proposed ordinance.

Mr. Breton motioned to move to Public Hearing. Seconded by Ms. Prendergast. Motion passed 7-0.

Mr. Joe Farro said he was here for the December 16<sup>th</sup> meeting and not for the December 30<sup>th</sup> meeting. He presumed the motions taken on the 16<sup>th</sup> would not be undone on the 30<sup>th</sup>. He recommended to the Board that they only do Residences B, C, Village Center District and Rural and amend at a later date.

Mr. Albert Aeed spoke about why Residential A should remain in the Ordinance for Workforce Housing.

Ms. Betty Dunn spoke about the Protest Petition guidelines. She does not believe a Protest Petition would apply to the Town's ordinance. She said the Board needs to separate the Town ordinance from the Citizen's Petition ordinance and not focus on the protest.

Ms. Post said she has a problem with the Protest Petition being part of the Board's deliberation. She said there is always the possibility of a citizen's protest.

Mr. Carpenter wanted to know the difference between the two ordinances with 'applicability'. Mr. LoChiatto explained as follows:

Town Ordinance Workforce Housing	Citizen's Petition Workforce Housing
Workforce Housing allowed in Residential A, B, C, Rural & Village Center Districts	Workforce Housing allowed in Residential B, C & Rural Districts
Dwelling types allowed in the Rural, B, C and Village Center District are single family (attached or detached), duplex and multi-family units.	Dwelling types allowed in Rural District are single family (attached & detached), and duplex
Dwelling Types allowed in Residential A District is single-family (detached)	Dwelling types allowed in Residential B & C Districts are single family (attached & detached), duplex & multi-family

Mr. LoChiatto said the other difference is in mixed income development that the Town Ordinance specifies 25% of the dwellings must qualify for workforce housing and the Citizen's Petition specifies 45%.

Mr. Carpenter thanked the Board for all their work that was done on this Ordinance. He suggests that the Board put the Town Ordinance and the Citizen's Petition on the Town's Ballot or just the Citizen's Petition. He feels the Citizen's Petition is less restrictive.

Ms. Pynn is concerned with Village Center District being included in the Town's Workforce Housing Ordinance. She also has concerns with the Demolition Delay process with regard to taking down historic structures. Ms. Prendergast explained that the Planning Board addressed these concerns at their last meeting under Section 616.5.3.3.3 (d).

Mr. Breton suggests that we move the Citizen's Petition and the Town Ordinance removing Residence A from Workforce Housing to the January 19<sup>th</sup> meeting for public discussion.

Mr. Karl Dubay did a Power Point Presentation titled "Go Green" in regard to Residential A.

Mr. Bill Deluca, representing Cobbetts Pond Village District, says that he does not support Workforce Housing in Residential A especially in the watershed district. The Cobbetts

Pond Village District has spent in excess of \$200,000 in the last 5 years for the improvement of water quality. There are 632 land owners in the Cobbetts Pond Village District and they generate \$4,000,000 in tax revenue. He read an email from a realtor in Windham suggesting that a comprehensive housing study be done before jumping into Workforce Housing. Mr. Deluca would like the Board to support the Citizen's Petition.

Mr. Derrick Munson asked why Residential A was taken out of the ordinance at the December 16<sup>th</sup> meeting and put back in at the December 30<sup>th</sup> meeting. Ms. Prendergast explained that it was removed and put back in as the Board's discussions evolved. Mr. Munson would like the Board to support the Citizen's Petition.

Ms. Post spoke about the Citizen's Petition with regard to multi-family units.

Mr. LoChiatto said discussion on the Citizen's Petition was for public discussion tonight. He does not feel that it is fair to the citizens to do a posting for further discussion of the Town's Ordinance at the January 19<sup>th</sup> meeting as this was not for discussion at tonight's meeting.

Mr. Carpenter said the major issues between the two ordinances are Residential A and multi-family in Rural. He said if you put both warrants on the Town Ballot you will confuse the voters. Mr. Carpenter would like the Board to support the Citizens Petition.

Ms. Prendergast spoke about why the Board decided on the 30% of mixed income development.

Mr. LoChiatto recapped the differences with the Citizen's Petition vs. the Town Ordinance:

- No Village Center District
- No Residential A
- No multi in rural
- No Historic District demolition component
- Mixed Income is 45%

Mr. Breton suggests that we post the two Ordinances for discussion at the January 19<sup>th</sup> meeting.

Motion made by Mr. Kolodziej that the Board not recommend the Citizen's Petition for Workforce Housing Overlay District on the Town Ballot. Seconded by Ms. Prendergast. Motion passed 5-2. Opposed by Mr. Breton and Ms. Post.

### **Adjournment**

A motion to adjourn by Mr. Kolodziej. Seconded by Ms. Prendergast. The motion passed 7-0. Meeting adjourned at 11:35 PM.

These minutes are respectfully submitted in draft by Paula Wrenn.