



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

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Planning Board Minutes  
2/17/10

**Roll Call:**

Phil LoChiatto, Chairman - Arrived @ 8:08	Rick Okerman, Vice Chairman - Present
Nancy Prendergast - Present	Walter Kolodziej, Member- Arrived at 7:20
Ruth-Ellen Post, Member - Present	Pam Skinner, Member - Present
Kristi St. Laurent, Alternate - Present	Sy Wrenn, Alternate - Arrived at 7:08
Bruce Breton, Selectman Member - Present	Louis Hersch, Alternate - Excused
Ross McLeod, Selectmen Alternate Member - Excused	

Ms. St. Laurent is seated for Mr. Kolodziej. Mr. Wrenn is seated for Mr. LoChiatto.

**Staff:**

Laura Scott, Community Development Director - Present  
Tracey Mulder, Planning Assistant - Present

**Call to Order/Attendance/Pledge of Allegiance**

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

**Sign Permit Application**

Bella Vino Specialty Wines and Gourmet, 4 Cobbetts Pond Road (21-D-107).

Ms. Scott noted for the Board the sign for the wine shop will be burgundy wine and olive green. The sign meets the Town Zoning Ordinance requirements. The Building Inspector and Town planner have signed off on the permit. Ms. Scott noted that this permit is in front of the Board as part of the Site Plan for this complex and the requirement is that the Board must approve all signs for this development.

Mr. Okerman asked the Board for questions. The Board reviewed the sign application and picture of the sign. Mr. Okerman asked if the sign was consistent with the raised PVC lettering requirements as with the other signs within the complex. Ms. Scott responded that the sign is consistent with the other signs in the complex.

Mr. Breton made a motion to approve the sign for 4 Cobbetts Pond Road, lot 21-D-107, Bella Vino Specialty Wines and Gourmet. Second by Ms. Prendergast.

**Motion passed 6-0.**

**PB Meeting Minutes Review and Approve**

Ms. Scott noted that Ms. Wood made the changes the Board had requested for the 1/6/10 minutes.

Motion by Mr. Breton to approve all minutes. Motion withdrawn to approve all the minutes simultaneously.

Motion to approve the Jan 6, 2010, minutes as printed by Mr. Breton. Second by Ms. Prendergast. **Motion passed 5-0-2.** Ms. Skinner and Mr. Okerman abstained.

Motion to approve the Jan 19, 2010, minutes by Mr. Breton. Second by Mr. Wrenn. **Motion passed 6-0-1.** Ms. Skinner abstained.

Motion to approve the Feb 2, 2010 minutes by Ms. Post. Second by Ms. Skinner. **Motion passed 6-0-1.** Ms. Prendergast abstained.

**Planner’s Report**

The Board reviewed the Planners report and had no questions.

Mr. Kolodziej was seated @ 7:20PM and Ms. St. Laurent stepped down.

**Miscellaneous**

Ms. Scott noted she provided for the Board the revised proactive work list from the last meeting and correspondence from Chris and Andrew Lane. The Lane’s had requested the Planning Board receive copies of an email letter sent to David Sullivan, Town Administrator.

Ms. Post asked for clarification regarding the CIP update on the work list. Ms. Scott responded that it was referencing the appointment of the committee and Board members to the CIP and the annual update.

Ms. Prendergast said since she missed the meeting when this was proactive work list was discussed she asked Ms. Scott for clarification on the items listed. Ms. Scott responded that this was the master list and that these were items the Board could work on during the year as time permitted. There is no official schedule for working on these items yet, but the list of items is noted as needing attention during 2010.

Ms. Prendergast asked about the 2011 Town Meeting Zoning Ordinance Amendments with regard to the Village Center District. Ms. Scott went on to say that one of the items in her Strategic Plan is to be involved in the Village Center District, commercial zoning and revision of the site plan regulations. Ms. Scott indicated that items are on the list to be reviewed, but does not necessarily mean anything will be changed, the items are on the list so they won’t be forgotten.

**Cobbetts Pond Watershed Protection Overlay District**  
John Alosso 32 Turtle Rock Road – **Withdrawn**

**Ordinance Implementation**

Ms. Scott reminded the Board that at the February 3<sup>rd</sup> meeting she was asked to bring a list of questions back to the Planning Board looking for guidance in order to implement the Ordinance, which is necessary due to the way the Ordinance is written.

Ms. Scott confirmed that when any zoning ordinance is posted for public hearing, that ordinance is treated as if it is in effect. Ms. Scott went on to say that the Cobbetts Pond Ordinance was posted for public hearing on December 24, 2009, and since that time any application that has come to the Department for Planning Board, Zoning Board or Building Permits has had to adhere to the provisions of the Citizen’s Petition Ordinance.

Ms. Scott went on to say that she has approximately ten building permit applications that cannot be processed due to requirements in the Ordinance and she anticipates this number to increase. Ms. Scott indicated that the Community Development Department is in an awkward position of not being able to provide a clear answer to residents as to how to proceed under this ordinance. Per the Board’s request, Ms. Scott reviewed the Ordinance in detail and listed questions for the Board to consider.

Ms. Scott reminded the Board that they asked her to come back to the 2/17/10 Planning Board meeting with specific questions regarding the Ordinance. Ms. Scott went on to say that even though citizens have done their due diligence and would like to meet the provisions of the ordinance, she is unable to tell them how to proceed to meet the provisions of the ordinance. In order to facilitate ironing out some of these issues Ms. Scott provided the Board with the questions she needs answered in two parts. One part is to provide the Board with a list of questions about the Ordinance for which the Board is directly responsible, and the second part is to look at the four communities she was told that the Windham Ordinance is modeled. Ms. Scott commented that the Windham ordinance is modeled after bits and pieces of other town’s ordinances. Most of the other towns the ordinance that this is modeled after do not have the Planning Board as their sole authority, but rather staff has the authority to review and approve. Ms. Scott went on to say this puts the Windham Planning Board in a new position because they have never been asked to create forms and processes to review these types of developments.

Ms. Prendergast asked Mr. Okerman for clarification as to exactly how he thought the Board should provide guidance to Ms. Scott. Ms. Prendergast wondered if it was guidance for the interim until the March 9<sup>th</sup> Town vote and if this ordinance is implemented would the Board provide new regulations in the site plan and subdivision regulations. Mr. Okerman thought it would take more than one meeting to resolve

these issues. Mr. Okerman noted for Ms. Scott that if the ordinance passes at Town vote and is implemented, the Board will need more than just tonight for a permanent solution to the overlay district. Mr. Okerman asked Ms. Scott that as of tonight as the Board answers her questions if this would be an interim solution with respect to the current citizen petition. Ms. Scott said she is at a standstill until the Board provides direction. Ms. Scott hoped the Board would answer the questions tonight and she could draft the necessary forms for further review by the Board.

Ms. Prendergast said a lot of details goes into the site plan and subdivision regulations and it is hard for her to imagine coming to a conclusion at tonight's meeting by providing Ms. Scott with answers to the questions. Ms. Prendergast thought for now, applications could be reviewed on a case by case basis. Ms. Scott answered that nine out of ten applications are not site plans or subdivisions rather they are building permits. Ms. Scott went on to explain that this is a completely different process than the Board as seen before and if this ordinance passes the Board will see septic systems, sheds etc. Ms. Scott said that if the applicant is going through site plan or subdivision process then the process to meet this ordinance can be rolled in to that existing process; however, there still needs to be a stand alone procedure that can be used for applications that come before the Board.

Ms. Post had some concerns regarding the process of this ordinance and the time line regarding the questions that Ms. Scott is asking. She went on to say that this ordinance went to public hearing on Jan 6, 2010, and at that time the Board reviewed the ordinance and was asked to recommend or not recommend the ordinance to the public. Ms. Post believes that at the time the Board was reviewing this ordinance, they should have been alerted to the questions and issues that existed and received answers to those questions or voted accordingly, yet and none these issues were raised at the time the Board was examining the Citizen's Petition. Ms. Post said it troubles her, in light of the urgency that is now involved, that this was not brought to the Boards attention when they could have addressed the issues at a more pivotal time, especially since she learned the ordinance goes into effect immediately after being posted for public hearing. She thought during the public hearing, petitioners could have offered some solutions and suggestions that would have been valuable. Ms. Post thought that it was unfortunate that these issues were not brought up at the public hearing because the petitioners were not provided an opportunity to respond to these issues either.

Ms. Post went on to say at this late date, after the Board has already voted, and unanimously approved this ordinance, it does not seem conducive to genuine problem solving and she does not think the delay the Board has experienced is a way to get a productive resolution for the Town, applicants and petitioners. Ms. Post said although she participated in drafting this ordinance, she was not the sole drafter; she and the others that worked on this ordinance were surprised with these questions at the last meeting and with no notice they were completely unprepared. Ms. Post said along with

the four towns that were used to write this ordinance, after checking her files, she indicated there were other towns as well that were used. Ms. Post thought that the staff and the Board should read the Deering Lake ordinance as they have a Watershed Protection Overlay Ordinance. In addition, she believes that may have been used more closely to write this ordinance. She suggested contacting the Planning Director in Deering Lake as it is so similar to Windham's Ordinance.

Ms. Scott noted for the Board that in formulating her questions she researched the Towns' that were presented in the minutes from January 6<sup>th</sup> based on the information provided by the petitioners. Ms. Scott also made note that the January 6 meeting is the only meeting that she did not attend since her employment last spring; however, at that meeting, legal council was present and raised these same questions regarding processes and procedures that Ms. Scott was raising tonight.

Ms. Scott went on to say that because she did not know how the Board would be voting on January 6<sup>th</sup>, and was not asked by the Board for input on any of the four Citizens' Petitions, it would not have been appropriate for her, as Community Development Director, to comment on this particular ordinance unless asked to do so by the Board. And, in asking these questions now, she is trying to be proactive and prepare for the passing of this ordinance. Ms. Post indicated that this information would have useful for the Board to understand and would have raised questions that could have been addressed much for effectively. Ms. Post went on to say that the Board does not look at Ms. Scott to tell them if they should vote for or against an ordinance but to provide information.

Mr. Kolodziej asked Ms. Scott to provide Attorney Campbell's legal opinion for the Board to review. Ms. Scott provided the Board with the Legal opinion from Attorney Campbell. In addition, Ms. Scott noted that she made sure that the Board was provided the December 19, 2009, memo from Attorney Campbell in their January 6, 2010, Planning Board packet to apprise them of any process and procedural issues associated with this ordinance.

Ms. Scott noted for the Board that she was asking for clarification from the Board tonight on how to implement the Ordinance.

Ms. Scott addressed the Board with her first observation with regard to the Ordinance beginning with Section 1.2(a). Ms. Scott explained some of the proposals that will be coming before the Board would be any changes in the physical character of the land including construction, change of use, external repair, land disturbing activity, grading, road building and pipe laying along with any potential contaminating activity. Ms. Scott went on to say that although these may fall under a Site Plan or Subdivision proposal, sometimes they will not and will need to be addressed individually.

Ms. Post said she read the questions from Ms. Scott and thought that most of the questions are about reviewing applications, primarily what should the Board review and how should they review it. Ms. Post believes that most of the issues raised need to be looked at using Section 1.6 Review Requirements for Development in the Watershed Protection Overlay District, as this section explains the guidelines for reviewing an application. Ms. Post believes that this is applicable to subdivision, site plan and new home construction applications. Ms. Post offered her interpretation of Section 1.6 by reading that part of the ordinance and said she did not see anything startlingly new in this Section with the possible exception of new home construction and that would involve building permits. She went onto say that another important part of the ordinance is Section 1.3 Administration. Section 1.3 Authorizes the Planning Board to adopt amendments and other regulations in order to further administer requirements of this Ordinance. Ms. Post did not think this was an issue because the Board amends site plan regulations, subdivision regulations with a public hearing. She went on to say that she thinks the process, in the broad sense, is already laid out for the Board. Ms. Post recapped her thoughts with two main points: 1) Wherever the topic is reviewing something it should be guided by Sections 1.6; and 2) In terms of the Board's authority to clarify issues on their own, section 1.3 empowers the Board to make changes to regulations.

Ms. Prendergast asked for clarification regarding individual homeowners and she remembers the public hearing and having examples of a garden or deck needing approval and inquired as to how the home owner was to proceed.

Mr. St. Laurent thought that Ms. Post's point was well taken and thought that her advice on how to proceed embraced the spirit and intent of the petition. In addition, she went on to read 1.6 (a) regarding applications for new home construction and additions and repairs of existing homes need not be accompanied by a hydrologic study but must meet other review requirements of this section. Ms. St. Laurent interpreted this to mean additions, decks or small additions and anything that would be outside the footprint of the home.

Ms. Scott thought a good way to think about this ordinance is the same as the WWPD Special Permit. There is a separate permit and a separate requirement list applicants need to meet along with a public hearing. Ms. Scott was coming before the Board and asking with regard to these standalone processes what do the public need to submit? Ms. Scott is asking for clarification as to a format suitable to the planning Board so she has information to guide the applicant.

Ms. Scott noted that she asked the questions because she was unsure as to exactly what the Board wanted and the Board asked Ms. Scott to provide questions. Ms. Prendergast asked Ms. Scott since she has the knowledge to draft processes if she could draft

processes based on this ordinance and come back before the Board with her suggestions.

The Board reviewed the questions Ms. Scott provided beginning with **Section 1.2(a)** which reads "In addition, all such proposals and activities will be required to demonstrate that they will "do no harm" to Cobbetts Pond." Ms. Scott wants to know how the Planning Boards wants the applicant to demonstrate that the proposals and activities will 'do no harm'?

Mr. Wrenn said that his expectation was that upon reviewing the other ordinances that the Board was not recreating the wheel and he wondered why there were so many questions. Mr. Wrenn thought the 'do no harm' is a question that has already been addressed by other communities.

Mr. Kolodziej said he suspected under existing rules and regulations this question has already been answered. Ms. Scott asked how an applicant can 'demonstrate' they will do no harm in order to meet the requirement of this Ordinance.

Ms. Prendergast noted under Section 1.5 (b) Use Regulations it lists items that are specifically not allowed and she thinks this information could be used as the basis.

Ms. St. Laurent commented with the question as to how the Board will decide if an applicant is doing no harm and thought this meant no untreated runoff draining beyond the property line. However, she went on to say that if you read the criteria under 1.6 (a) for subdivision and site plan an applicant will need a hydrologic study and the hydrologic study indicates that the land development would provide the same or greater degree of water quality protection as existed on the site at the time the application is made. To her this means 'doing no harm' because it is the same or better than the preexisting condition meaning that site plan or subdivision will do no harm. In addition, she went on to say that new home construction applicants must provide a soil erosion plan and there are stipulations associated with the soil erosion plan. In addition, she said leaves the smaller development issues that could cause damage to the pond and some of the answers seem hidden in the ordinance. She noted that if an applicant is doing subdivision or site plan they need to follow the requirements, which includes the hydrologic study and if the applicant is doing, new home constructions, modifications, additions and repairs then a soil erosion plan is also needed.

Ms. Post thought that Ms. St. Laurent was accurate in her explanation of how to answer some of these questions. Ms. Post thought that there is a hierarchy involved for example for large scale development requires more stringent regulations and smaller scale development can have less demanding criteria.

Mr. LoChiatto was seated at 8:08. Mr. Okerman stepped down as Chair and Mr. Wrenn stepped down in Mr. LoChiatto's place.

Ms. Prendergast thought it would be good to get input and guidance from the people who wrote the ordinance who were sitting in the audience.

Mr. LoChiatto wants to take away from the meeting exactly how to define how each item will be addressed.

Ms. DiFruscia, legal advisor to CPIA, addressed the Board providing some history on formulating the ordinance and the expectation was not to file a citizen's petition but they wanted the opportunity to have the ordinance reviewed by Ms. Scott and the Planning Board. She went on to say that many ordinances throughout NH were looked including Deering Lake in Deering and Webster Lake in Franklin. Ms. DiFruscia spoke with the Planning Board and Planners in those towns, specifically she indicated that she spoke with Dick Louis from Webster Lake. In addition she said that the Planning Department in Deering and Franklin work very closely with their lake association in formulating their ordinances and both towns felt that these ordinances were important to protect their lakes. She went on the note that with respect to Webster Lake, there ordinance was adopted in 2004 and the Planning Board is responsible for enforcement and Webster Lake also has no public sewer and they experience many of the same issues as Cobbetts Pond. They have some problems with nutrient loading which this ordinance is primarily directed to address. Deering Lake and Franklin indicated to Ms. DiFruscia that neither has any problems with the implementation of their ordinances.

Ms. DiFruscia provided the Board with copies Deering Lakes' reduction of buffer requirements and septic tanks and drain fields to show how the town's adopted ordinances deal with the regulations. Ms. DiFruscia strongly encouraged the Board and Ms. Scott to speak with the Planning Department in Deering Lake and Franklin before moving forward in answering these questions because she believed they have been successful in the implementation of their ordinance and thought Windham could replicate what they have done since these towns have been working with, for the most part, an identical ordinance.

Mr. Peter Zohdi, of Edward Herbert Associates, addressed the Board with comments regarding emergency issues such as failing septic systems and he is concerned that by the time the Board addresses the issue, the contamination will have gone too far. Mr. Zohdi asked the Board if they need to see plans for repairs or replacement septic systems and the Board did not have a response. Mr. Zohdi said the Board needs to make a decision. Mr. Zohdi explained to the Board the different scenarios of what is ahead for them to review if they do not come up with a plan tonight and he needs to be able to tell his clients.



Mr. Joseph Maynard, Benchmark Engineering, addressed the Board and said he read though the ordinance a few times and thought it needed some tweaking. He questioned hydrological studies and he thinks the Board needs to provide some design criteria and direction on how to proceed. He agrees with Mr. Zohdi's comments and thinks that a lot of the redevelopment of homes will place extensive burden on the Planning Board not to mention excess expense to the homeowner. He went on to say that he has some applications sitting in limbo and needs to know how to proceed because he has clients he needs to advise.

Mr. LoChiatto said assuming that the ordinance goes forward and it is voted in by the Town, what level of authority does the Planning Board have in deciding how to proceed with regard to the various applications delineating between what can be handled administratively and what needs to come before the Board. Mr. Maynard said that the ordinance is written such that any alteration of land needs to come before the Planning Board. Ms. Scott said the decision now is to determine if an application can be considered a formality and just needs Board approval or as a public hearing. Mr. Maynard said that as it stands the Board will be reviewing applications such as planting gardens, septic systems and decks.

Ms. Post said that she takes exception to the idea that that if someone plants a garden they will come to the Planning Board and that is not what is contemplated in the Ordinance. Mr. LoChiatto and Mr. Maynard reminded Ms. Post that the Ordinance is written that way.

Ms. Post said she did not agree and that there was a hierarchy involved with the Ordinance and the writers of the ordinance were not requiring extraordinary measures for simple applications and that is not what the Ordinance contemplates. She would like to remind everyone of the review requirements in Section 1.6.

Ms. Post asked for clarification on the urgent matter of a failing septic system apart from this ordinance and Ms. Scott explained the current process of the DES, the Building Inspector and potentially the Board of Health.

Mr. LoChiatto discussed with the Board that they needed to decide how to proceed administratively with the ordinance. He went on to say that the Board needs to determine at what point does an application needs a public hearing and at what point an application can be handled administratively.

Mr. Wrenn read the part of the ordinance under Section 1.3 and explained that he thought an application is not required to have a public hearing now then it should not required having a public hearing under this ordinance. He thinks the Board should authorize staff to administer the rules and regulations aspects of the ordinance.

Ms. Post commented that the Board has the authority under Section 1.3 to enact regulations.

The Board discussed what the term 'preapproval' means and Ms. Post thought that it means Planning Board approval. Mr. Breton asked Ms. Scott what Attorney Campbell's interpretation of this term was and Ms. Scott indicated that his opinion was that all activities required Planning Board approval.

Derek Munson addressed the Board and asked for clarification with respect to how applicants can demonstrate they are doing 'no harm' to the pond. He believed the intent of the ordinance is to look at these issues as site specific. Ms. Scott equated the do 'no harm' to the WWPD ordinance which provides specific criteria and thought perhaps the Board could provide a list of criteria.

Mr. LoChiato responded that the goal tonight of the Board is to provide staff with defined criteria for the applicants. Mr. Munson asked the board to call Deering and find out how they handle the situation.

Mr. Breton said that to move forward the Board needs to look at the applications on a case by case basis.

Mr. LoChiato requested to hear from Mr. Maynard or other engineers in the audience about the hydrological study and to understand the intensity of the study and where the different levels fall. Mr. Zohdi said, after talking with Ms. DiFruscia it is his understanding that for this ordinance a hydrological study is a drainage study. He noted that for a subdivision or site plan, a hydrological study is required. For this ordinance the only concerned is with drainage with regard to runoff.

Mr. Munson explained to Ms. Scott how Deering Lake handled their hydrological study. Ms. Scott noted that the hydrological study is for site plan and subdivision and everything else falls under erosion control plan.

Ms. Scott asked about Section 1.7(b) and Mr. Munson said she could retrieve this information on a website and he will provide her with that information.

Ms. Scott asked the Board for clarification with regard to Section 1.14 (a) no special exceptions and noted that this is typically a Zoning Board authorized process and because special exceptions are not indicated anywhere in the Ms. Scott is assuming they mean 'waivers'? Mr. Munson said he was unsure as to what they mean in the ordinance and that it meant the applicant needed to go through the ZBA.

Ms. Scott said she will draft procedures for March 3, Planning Board meeting for the Board's review. Mr. LoChiato asked if fees could be discussed at that time. Ms. Scott

indicated that she would be providing fee information as well but there will be no new fee charges until the Board of Selectman approve the fees.

Mr. Wrenn asked about emergency septic system failures. Mr. LoChiatto asked to have some language to address this situation to expedite the septic system or other type of emergency and can be dealt with after the fact because it is a public safety concern.

Ms. Post made a suggestion that the concerns had to do with Section 1.3(a) indicating the board must administer all applications. Ms. Post thought one way to 'administer' is to delegate to a subcommittee or staff member.

**Adjournment**

Mr. Kolodziej motioned to adjourn at 9:30. Second by Mr. Breton. **Motion passed 7-0.**