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COMMUNITY DEVELOPMENT

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Planning Board Minutes 6/02/10

Roll Call:

Phil LoChiatto, Chairman – Present	Rick Okerman, Member – Excused
Nancy Prendergast – Vice Chair- Present	Ruth-Ellen Post, Member – Excused
Kristi St. Laurent, Member – Present	Sy Wrenn, Alternate – Present
Louis Hersch, Alternate – Excused	Bruce Breton, Selectman Member – Present
Pam Skinner, Member – Present	Lee Maloney – Alternate - Excused
Bruce Richardson – Alternate - Present	Ross McLeod, Selectmen Alternate Member – Excused

Staff:

Laura Scott, Community Development Director – Present
Elizabeth Wood, Town Planner - Present
Tracey Mulder, Planning Assistant – Present

Call to Order/Attendance/Pledge of Allegiance

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

Bruce Richardson is seated for Ruth-Ellen Post. Sy Wrenn is seated for Rick Okerman.

RPC Representative Appointment Reconsideration

Ms. Scott addressed the Board and said that at the May 5th Board meeting the Board voted to send a recommendation to the Board of Selectmen to recommend Mr. Carl Griffin as the Rockingham Planning Commission Representative. This recommendation has not yet been sent to the Board of Selectmen. There were two people interested in this position, Carl Griffin and Annette Stoller, who is the current RPC representative.

Ms. Scott went on to explain the reason this recommendation is being brought back to the Board for reconsideration is due to new information that the Board did not have at the time when this vote was taken. The new information is as follows:

1. Due to miscommunication on the part of Department Staff, Ms. Stoller was unaware that she needed to attend the May 5th meeting.
2. There is an Alternate position available with the RPC that the Board could make a recommendation to the Board of Selectmen to fill.

Ms. Scott went on to say she wanted to ensure the Board had all of the information prior to making a recommendation to the Board of Selectmen.

Ms. Prendergast said the reason she voted in the negative at the May 5th meeting is because she knew of this information.

Mr. Breton made a recommendation to interview the second candidate. The Board discussed the alternate position for the RPC.

Ms. Skinner made a motion to reconsider the appointment that was made on May 5, 2010, to reconsider the RPC recommendation of Carl Griffin to the RPC. Second by Ms. Prendergast. Motion passed 7-0.

Ms. Annette Stoller addressed the Board providing an overview of her position with the RCP indicating she has spent the last 11 years as the RPC representative. She also stated other numerous committees she has been on while serving on the RPC. In addition, she has worked on several projects and studies that have benefited Windham, such as the Rail Trail, CTAP, and has assisted with the Workforce Housing laws.

Ms. Stoller went on to explain that it has taken her years of service and participation in the RPC to become acclimated with the nuances of the committee and the acronyms associated with the RPC.

The Board asked Ms. Stoller questions regarding the executive positions within the RPC.

Mr. Carl Griffin addressed the Board and indicated he did not realize the depth of the position that Ms. Stoller currently holds with the RPC. He said it would be difficult to compete with Ms. Stoller's background; however, he is still interested in being a member of the RPC and is willing to take the Alternate position.

Ms. Prendergast noted since RPC Rep. Ms. Lee Maloney is an Alternate on the Planning Board *and* a member of the RPC, there may be more opportunity for Mr. Griffin to participate in the RPC as an Alternate if Ms. Maloney is in attendance at the Planning Board meeting since they often meet on the same nights.

Motion by Ms. St. Laurent to recommend to the Board of Selectmen to appoint Annette Stoller as the RPC Representative and to recommend Mr. Carl Griffin as an Alternate Member. Second by Ms. Skinner. Motion passed 6-0-1 with Mr. Breton abstaining.

Public Hearings

Case#2010-13 Minor Site Plan Application.

Vice Chair Prendergast read the case into the record.

An application for a Minor Site Plan has been submitted for Lot 2-A-995, (132 North Lowell Road), which is located in the Neighborhood Business District. The applicant, Carl M. Voas, on behalf of the owner, Jolley Associates, is proposing to locate a 10' high, 20 sq. ft, freestanding sign on the property to advertise the business located on the property.

Ms. Wood addressed the Board noting that applicant met all requirements of the sign ordinance.

Ms. Wood included the following items for the Board's review:

1. 5/10/10 letter of intent from the applicant
2. Diagram of the Sign Panel and Base
3. A Site Diagram showing the location of the sign

Chairman LoChiatto noted this was before them because of the change in the sign ordinance requiring site plan review for newly proposed freestanding signs on properties with an existing site plan.

A motion was made by Mr. Breton to accept the application as a Minor Site Plan. Second by Mr. Wrenn. Motion passed 7-0.

Mr. Carl Voas, the applicant, addressed the Board noting the reason for the sign is to offer a better view of the regular gasoline pricing and business name to passing motorists.

Ms. Prendergast said that she would prefer the color of the sign be changed to have a dark background with light letters to reduce the brightness. Mr. Voas responded the proposed sign is the logo for Irving Gas and the internally illuminated light does not shine that bright.

Ms. Prendergast said that the zoning ordinance recommends the background of signs be dark with light lettering. Staff noted that particular zoning ordinance applies to the Village Center district only and Ms. Prendergast said she would still like to see the coloring changed.

Chair LoChiatto opened the Minor Site Plan Application hearing to the public.

Robert Jacobellis, 130 North Lowell Road, addressed the Board about his concern with the awning over the gas pumps and asked the Board if the awning was considered a freestanding sign. The Board responded that no, the awning does not qualify as a freestanding sign because it is part of a structure.

Mr. Albert Aeed addressed the Board and pointed out that since Irving Gas Station is a chain, and Mr. Voas is a franchise owner, often the franchise owners do not have say in changing the signage.

Mr. John Mangan, 1 Depot Road, addressed the Board and he said he drives by the gas station all the time and can read the prices as they are currently displayed from the road just fine. Mr. Mangan, said that the ordinance says one free-standing sign and he considers the awning already a free standing sign and the additional signage the applicant is requesting would make it two free standing signs.

The Board reiterated the canopy is a structure and considered an awning sign and not a freestanding sign.

Chair LoChiatto closed the Minor Site Plan Application hearing to the public.

Ms. Prendergast said a neighborhood business is an area where we should be very cautious with signage.

The Board discussed the options of postponing the sign approval or approving it with changes.

Mr. Carl Voes addressed the Board stating the sign on the canopy is a different color sign noting it has a darker background. He went on to say he is willing to go to the owner to see if they are willing to approve a sign change that is more in character with the neighborhood.

A motion was made by Mr. Breton to continue the Minor Site Plan Application to the June 16th meeting. Seconded by Ms. Prendergast. Motion passed 7-0.

Preliminary Site Plan Review & Subdivision Design Review Application.
Vice Chair Prendergast read the case into the record.

A Preliminary Site Plan Review and Subdivision Design Review application has been submitted for Lot 17-L-42 (130 Range Road) in the Residential A Zoning District. The applicant, Karl Dubay of The Dubay Group, Inc., on behalf of E.A. Trust, is proposing an affordable/fair share housing project, to construct 25 detached condos and rehabilitate the existing Austin Barn Manor into 5 condos and a common area. The project proposes a new private drive, common areas, play yards and exercise courts, and will be designed to LEED standards.

Ms. Scott noted to the Board the following material was included in their packet:

- 5/27/10 memo from Ms. Scott
- 5/18/10 email from Bernie Campbell (portion)
- 5/19/10 & 5/29/10 emails to/from Laura Scott & Albert Aeed
- Artform Home Plans for Austin Place
- Preliminary Site Plans/Subdivision Plans

Ms. Scott reiterated that this application was noticed as an Affordable Housing Fair Share Site Plan Subdivision not a workforce Housing Application. Ms. Scott went on to say the applicant was in front of the Planning Board in October 2009 and at that time, the Board did not hear the application due to the fact that the application was submitted prior to the Workforce Housing RSA going into effect (January 1, 2010).

Ms. Scott went on to explain the applicant took the Town of Windham to court due to the Board's refusal to hear the application. The court ruled that the Town should have heard the case based on the common law entitlement to propose such housing as established under the Britton vs. Chester law decision. The Town filed a Motion for Reconsideration/Clarification to better understand if the current application is to be treated as Workforce Housing (RSA 647:59) application or a fair share/affordable housing application. The court denied the request for reconsideration because the Judge thought the Motion to Clarify was unnecessary but did state that the application should be heard under the ordinances that existed at the time and referenced the case of Britton vs. Chester. This means this application is exempt from any changes that occurred at Town meeting in March and the Work Force Housing RSA and its provisions.

Ms. Scott went on to say that per previous emails from Mr. Aeed, he understood that this application would be noticed as a fairshare/affordable housing proposal. However, on 5/27/10, an email was received by Mr. Aeed and seems to no longer be the case and the material submitted still reverences this application as a Workforce Housing proposal and references the RSA. Ms. Scott reiterated this has not been noticed as a Workforce Housing proposal but is exempt from any changes to zoning ordinance that happened at Town meeting, specifically the Cobbetts Pond Watershed Protection Overlay Ordinance. It is Staffs understanding from the Judge's ruling it also should not be considered a Workforce Housing Proposal under the statute that went into affect as of January 1, 2010 but is a fair share housing application under Britton v. Chester.

Since this application is a Preliminary Site Plan Review & Subdivision Design Review Application, it has not yet been sent to the Town consulting engineer or had a thorough review by Department Staff for compliance with Zoning, Site Plan, or Subdivision Regulations. These will be completed after the Preliminary/Design Review Phase when a Final Application has been submitted.

Chairman LoChiatto noted for the Board the reason Attorney Campbell is present is because this is a previous court case and he wants to ensure that everything happens tonight within the correct framework.

Attorney Bernard Campbell, Town Counsel, addressed the Board, concurred with Ms. Scott's comments, and thought they were an accurate representation of where the proposal stands today.

Mr. Campbell said the decision that was reached regarding the reconsideration/clarification that was filed, and the order that was issued, is that whether or not the Board discusses this as a Workforce Housing Application or it is called a housing opportunity for workforce type housing – he said the only difference is how appeals are handled, which are in the statute that do not apply to this particular application because this application predates the statute.

Attorney Campbell went on to say the Workforce Housing Statute that went into effect in January is an attempt to enshrine and to make statutory many of the common law principals established in Britton vs. Chester having to do with the nature of zoning ordinances in communities that cannot operate in an exclusionary manner to prevent both persons who wish to live and builders who wish to build, housing that serves a regional need for medium and low income individuals and Windham had this obligation before January 1, 2010 and whether this is a Workforce Housing Application in the statutory sense or a Workforce Housing Application in the common law sense. Attorney Campbell said the Board needs to keep in mind this is a pre-application discussion and falls under the statutory category under conceptual discussion.

Attorney Campbell went on to say the applicant has the right, under State Law, to proceed with a conceptual application and at this stage, there are two different levels of conceptual application and the applicant is now at the second phase that grants the applicant certain vesting rights as a result of submitting the proposal prior to last March. However, this is still a pre-application discussion. He thinks the Board should entertain the application and determine whether the application falls under the statutory or the common law.

Attorney Campbell suggested that as a pre-application discussion, the Board may want to provide the applicant guidance on points and issues. At the end of the discussion, the applicant can incorporate the Board's recommendation into their application. In addition, Attorney Campbell noted that there would most likely be discussion about areas where the application will not fall under the existing provisions of the zoning ordinance and would need to obtain the necessary variances for the project.

Attorney Campbell stated the abutters have received notice as the law requires, and he thinks the Board should entertain the proposal and give appropriate guidance to the applicants.

Ms. Prendergast asked about clarification regarding vesting. Mr. Campbell said the entire purpose of filing the level of conceptual review that the applicant filed is to ensure they were not subject to any subsequently adopted zoning amendments at the March Town Meeting.

Mr. LoChiato asked about the definition of income levels the duration of affordability. Attorney Campbell said this was an issue in terms of the remedy and the duration of how long the property would remain affordable. Attorney Campbell shared the Britton vs. Chester decision with the Board reading the decision into the record regarding realistic opportunities.

Ms. Scott noted in her memo this proposal went through the TRC process last fall but it is still her understanding that the Heritage Commission would be interested in further review of the proposal as it moves forward. In addition, since this application is a Preliminary site Plan review & Subdivision Design Review Application, it has not been sent to the Town's Consulting Engineer nor had a thorough review by Department staff for compliance with Zoning, Site Plan, or Subdivision Regulations. These will be done after this Preliminary/Design Review Phase.

Attorney Campbell noted that the statute that the Board is operating under for this hearing is RSA 676:4. Mr. Campbell RSA 676:4 into the record noting that this application is in the preliminary design review phase. Because of this, the Board and applicant may be involved in non-binding discussions.

Attorney Sumner Kalman, representing the applicant, addressed the Board and provided a copy of Judge Nicolosi's decision. He also submitted a letter previously sent to the Planning Board dated 9/3/09. This letter outlines the applicants' intentions to the Planning Board at the time the original proposal was submitted.

Mr. Kalman reviewed the October 2009 Planning Board meeting noting that the Planning Board voted not to hear the proposal. Mr. Kalman said that the use of the word 'application' and the word 'proposal' are completely different from each other. He said that his client is a long way away from an 'application' and they are submitting a 'proposal' not an application. He then read the RSA 676:12(VI) into the record that the proposal falls under.

Mr. Kalman said they submitted the 'proposal', it was noticed, they have met the requirements of the statute to protect this proposal from subsequently proposed or adopted regulations. Mr. Kalman went on to say the operative date, of the hearing was October 7, 2009 and the WFH statute 674:59 did not go into affect Jan 1, 2010. However, Mr. Kalman wants to the Board to understand the statute they are relying on is RSA 874:59 where they submit an application for design review, which is a non-binding discussion process.

Mr. Kalman went on to explain to the Board, for this case, the applicable law on October 7, 2010 was Britton vs. Chester and on June 2, 2010, it is the same law. Until the application is filed, Britton v Chester is the only statute the Board has to work with and now the Board has the new Workforce Housing Statute.

Mr. Kalman said that per Attorney Campbell it is okay for the applicant to provide the Board with their Design Review process.

Mr. Kalman said there was a representation during the trial of the case concerning the need for variances from the ZBA and this was not a part of the litigation ; however, he said that a they get into the discussion further he may have more the say on this matter. The decision to go to

go before the Board of Adjustment is an option for the applicant not a requirement, and that is their position.

Mr. Albert Aeed, addressed the Board, apologized, and said if there was a misunderstanding as to whether or not they agreed with the applicability of the Workforce Housing Statute or disagreed. What he intended to say was his believe is that this hearing should be noticed and heard just as the aborted meeting in the fall of last year under the statute. He wants to emphasize the fact that he is not looking for anyone to approve or disapprove tonight's presentation, because it is a design review process for feedback.

Mr. Karl Dubay, from The Dubay Group, Inc., introduced Mr. Albert Aeed. Mr. Aeed gave a brief history of the house he grew up in at 130 Range Road. He said that one way to sustain the history of the home he grew up in and utilize the existing structure while funding the restoration is through Workforce Housing. Mr. Aeed went on to say he is particularly interested in WFH because he has middle class values and he would like to bring the affordability of cottage style single family homes in the way of Workforce Housing to Windham.

Mr. Karl Dubay addressed the Board and said when the plans were designed he was under the employment of MFH Designs. It was agreed by Mr. Montero, owner of MHF Designs, to allow Mr. Dubay to use these designs for the design review phase and subsequent plans would have the MFH logo removed. An email supporting this agreement was provided to Ms. Scott for her files.

Attorney Campbell addressed the Board and let the Board know that he does represent MFH designs in other matters and that he believes the designs were properly received and fully authorized.

Mr. Dubay introduced Wendy Welton, RA. Ms. Welton said she is looking for feedback from the community as she outlines her architectural plans for Austin Place. Many of the details in the plans were not usually included in workforce housing but they included them as to keep the plans in line with the architectural aesthetics of the community. Ms. Welton outlined her methodology behind the design of each home and who she believes the homes are engineered to house.

Ms. Welton noted that the reason these types of single-family homes are better than apartments or duplexes is that it provides a sense of ownership to the occupant and they will naturally want to take pride in their home. She noted that the first thing that would happen is that spec homes would be built to allow potential homeowners to see their options.

Mr. Dubay provided the Board with a PowerPoint slideshow and noting that there have been soil surveys completed to NH DES standards and he provided a 13-page document noting

everything has been approved by GOVE Environmental services. The property does not have wetlands, ledge, WWPD, streams, and it is not in Aquifer or Flood District.

The Barn Manor house will be fully saved and restored. In addition, Mr. Dubay discussed the porous pavement, materials that will be used to build the homes, the landscaping including the use of indigenous plants, and underground utilities.

In addition, Mr. Dubay discussed the road plans noting the road meets all the regulations including the cul-de-sac area. In addition, bio-retention areas will be in the landscaping for water retention.

Mr. Dubay included LEED design criteria for the subdivision.

Mr. Richardson asked Mr. Dubay what the density would be if this were an open space subdivision and wondered if there would be less or more units and Mr. Dubay said significantly less. However, if you compare this to the elderly ordinance density it would be about the same.

Ms. Prendergast asked about the Best Management Practices shown on the plans and if these were just expamples or if these were to eb used in the development. Mr. Dubay indicated that what was shown on the plans is what is being used in the development.

Ms. St. Laurent asked about the affordability of the development and options a buyer can do to the home. Ms. Welton answered that homeowners cannot change the house too much because they will not get their money out of it.

Chairman LoChiatto opened the proposal hearing discussion to the public.

Chairman LoChiatto closed the hearing to the public.

There was further discussion between Chairman LoChiatto, Mr. Dubay and Ms. Scott regarding what ordinances were applicable to the proposal, specifically the Cobbetts Pond Watershed Protection Overlay Ordinance. This application, though it may meet the criteria of the Cobbetts Watershed Protection Ordinance, it is not required because it is grandfathered because the proposal was submitted prior to the posting of the proposed Cobbetts Pond Ordinance. Ms. Scott thought what the Chair was really asking was if an applicant is grandfathered from one new ordinance adopted at Town Meeting why does the applicant get the density bonus of the Town's new adopted Workforce Housing Soil Based Lot Sizing.

Mr. Dubay said he is not asking to be grandfathered and this project has nothing to do with the Town soil standards, which happens to be the State's standards as well.

Chair LoChiatto asked about LEED criteria and how Mr. Dubay plans to implement sidewalks. Mr. Dubay said they decided to put in vegetation because sidewalks are not needed into this community. Ms. Welton explained the rationale not having sidewalks. Mr. Breton commented that there is access to Cobbetts Pond and a sidewalk may be useful. Chairman LoChiatto said that visitors would have to park on the street leaving no place for people to walk and no room for emergency vehicles.

In addition, the Board asked about site lighting and how it would be controlled. Mr. Dubay said they will be look into this and at the same time, they will look into snow storage.

Chairman LoChiatto asked about the porous pavement, roof recharge systems and wondered if it factored into septic calculation and Mr. Dubay said it was reviewed under the existing conditions. Chairman LoChiatto wondered with all the water reabsorbing back into the ground, if this was factored in the overall septic design. Mr. Dubay said it was integrated into the total calculations.

Mr. LoChiatto asked about the separation of buildings and Mr. Dubay said they meet the National Fire Protection Associate (NFPA) Standards; however, Ms. Welton indicated that they fall under the 2009 International Residential Code (IRC).

Mr. Breton would like to see plans indicating where the fire hydrants or cisterns will be placed.

Chairman LoChiatto noted the proposed buildings and the scales on the plans don't seem to be in line with the existing house. Mr. Dubay said they were showing a maximum footprint that includes well, utilities and septic while still meeting the criteria.

Ms. Prendergast is interested in a site walk and the Board concurred. Ms. Scott said the site walk would be publically noticed, with minutes taken, and open to the public.

- Ms. Scott also itemized the follow up items that the Board asked for further information on:
- Ensure that site is in compliance with NFPA.
- Confirm that the turn radius of the cul-de-sac sufficient for emergency vehicles.
- Show how snow removal and storage will be handled.
- Address the concern about guest parking.
- Are additional lights to be provided for the site or is the only lighting from the individual homes?
- Research whether or not sidewalks would be appropriate in the development and/or along Range Road to Griffin Park.
- List what variances will be needed prior to a Final application being submitted to the Planning Board.

- How will the affordability of the units be maintained and what is the affordability figure?

Attorney Campbell noted the Board has the option of leaving the proposal open for continued preliminary review or if they would like to see a formal application. Mr. Breton thought it should be continued. Mr. Kalman said that if the Board believes they have heard enough or if the Board wants the applicant to come back for continued preliminary review they can set a date and they won't have to re-notice. The Board decided to hear another preliminary review on July 21, 2010 with a site walk on July 21st at 5:00 pm.

Motion by Ms. Skinner to continue the Preliminary Site Plan and Subdivision Review Proposal to July 21, 2010. Second by Mr. Wrenn. Motion passed 7-0.

Mr. Dubay said that they will stake out the site to show the centerline of the road for the site walk.

Motion to have a site walk at 5:00 July 21st by Ms. Skinner. Second by Ms. St. Laurent. Motion passed 7-0.

Motion to waive bylaws by Ms. Skinner to hear new business after 10:00PM. Second by Ms. St. Laurent. Motion passed 6-0-1 with Ms. Prendergast opposed.

Approved Site Plan Discussion-Windham Restaurant

Ms. Scott addressed the board and noted at the June 3, 2009 Planning Board meeting, the Board voted to approve a Site Plan Application for the Windham Restaurant to enclose the existing deck on the front of the building to make it usable year round and to construct an open deck above it on the second floor. The changes to the site were completed this month and it was noticed by Department staff that there are lights in the 2nd floor deck railing on top of the posts that are not shown on the approved Site Plan.

Ms. Scott said in speaking with the owner, he explained that the previous ground floor deck had lights inside the deck railing posts and it had always been his intention to have lighting on the new deck. It was his assumption that it was shown on the plans submitted and was not made aware of this omission until the final site inspection for his Certificate of Occupancy.

The Town Building Inspector believes the lights add a valuable safety component to the 2nd floor deck that does not interfere with the overall aesthetics of the site.

Mr. Breton believes it does not warrant a minor site plan application.

Mr. Breton made a motion that the change in lighting does not warrant a minor site plan application. Second by Ms. Skinner. Motion passed 7-0

Financial Guarantees

Spruce Pond II, Phase II & III -

Motion to accept Letter of Credit for \$92,808 for phase II and to accept Letter of Credit for \$10,800.

Mr. Breton addressed the Letter of Credit for Phase III and said that he is concerned that there is not enough money for a cistern and he would like a true number so it could get bonded properly. Ms. Prendergast would like to have the Town Road Agent and Fire Department sign off on the cistern prior to accepting the Letters of Credit.

The Board decided to wait and approve the Letter of Credit for \$92,888 for Phase II and the Letter of Credit for 10,888 for phase III until the Fire Department reviews the figures for the cistern on Phase III and the Highway Agent can review and sign off on both letters of credit..

Haffner Fuel Site (Lot 20-E-252)

A financial guarantee was established in January 2007 by Haffner's Service Stations, Inc. for \$1,325 for loam and hydroseeding. The site has been stable for three years and staff feels that it is necessary to hold these funds any longer.

Chair LoChiatto said the abutter is not happy with the site and they feel it violates the site plan for hours of operation and the landscaping. Although this has no bearing on this financial release, Chair LoChiatto suggested code enforcement look into this.

Motion by Ms. Prendergast to release \$1,325.00, plus any interest, to Haffner's because they have met their requirements for loam and hydro-seeding. Second by Mr. Wrenn. Motion passed 7-0.

Bear Hill Extension & Westchester Road

One year ago a maintenance bond was put in place for \$30,500. Ms. Scott provided the Board with a list of concerns from the Fire Department regarding Westchester and Bear Hill cistern testing/inspection. The Board decided to wait and release this bond until the work has been completed by the owner, Dean Smith and a letter received by the Fire Department that their concerns have been addressed.

Meeting Minutes-Review and Approve

5/12/10 - postponed until June 16th meeting.

5/19/10 - postponed until June 16th meeting.

Community Planner's Report-postponed until June 16th meeting.

Community Development Director's Report-postponed until June 16th meeting.

Adjournment

Motion by Ms. Skinner to adjourn at 10:46PM. Second Mr. Wrenn. Motion passed 7-0.

These minutes are respectfully submitted by Tracey Mulder.