



*OLD VALUES - NEW HORIZONS*  
**COMMUNITY DEVELOPMENT**

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**Planning Board Meeting**  
**October 27, 2010**

**Roll Call Planning Board:**

Phil LoChiatto, Chairman – Present	Rick Okerman, Member – Arrived at 7:00
Nancy Prendergast – Vice Chair- Excused	Ruth-Ellen Post, Member – Arrived at 8:20
Kristi St. Laurent, Member –Arrived at 8:20	Sy Wrenn, Alternate – Excused
Pam Skinner, Member - Present	Bruce Breton, Selectman Member – Present
Louis Hersch, Alternate - Present	Lee Maloney – Alternate – Arrived at 7:10
Bruce Richardson – Alternate –Present	Ross McLeod, Selectmen Alternate Member – Excused

**Staff:**

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

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

The meeting was called to order by Chair LoChiatto 6:00 pm, followed by the Pledge of Allegiance.

Bruce Richardson is seated for Vice Chair Nancy Prendergast and Louis Hersch is seated for Kristi St. Laurent.

**Excavation Regulations and Section 707 of the Zoning Ordinance**

Mr. Steve Keach of Keach Nordstrom and Associates addressed the Board noting that his goal in writing the new regulations is to standardize the Excavation Regulations. He said the Town is currently regulating excavation in a default mode through Section 707 of the Towns' current zoning excavations.

Mr. Keach reviewed the draft of the regulations and saying the starting point of each section was based on RSA 155-E:11, which was used to amend Section 707 of the Windham Zoning Ordinance. Mr. Keach noted that he expanded the document based on input from the October 6<sup>th</sup> Planning Board meeting to include Sections VIII through XV, which focus on administrative and procedural matters, and are necessary for this draft to be properly viewed as full and complete.

In addition, Mr. Keach said the way the current ordinance is written, an applicant can apply for a special exceptions permit and perform an excavation as defined in Section 155-E. There is ambiguous criteria contained in Section 707 of the zoning ordinance with no concrete local standards that clarify what the Town wants for Excavation Regulations. In his draft regulations, Mr. Keach said he outlines what constitutes an application, what materials the Town expects a proponent of an excavation project to provide, so the Town can make an intelligent decision on what the outcome will be on a particular application. Mr. Keach believes the regulation he is putting forth to the Board answers all of these questions.

Mr. Keach said in the text of the regulations, he included verbatim what the Board had requested.

Mr. Keach said that some Towns have an annual permit updating requirement but he did not include this in the proposal; however, he thought the Board could discuss this option and include it if they thought it was necessary. In his opinion, this is unnecessary as long as the town is monitoring the excavation for compliance as the excavation proceeds.

Mr. Keach said there is some overlap between the Excavation Regulations, which are a land use regulations and the Town's Zoning Ordinance. The Zoning Ordinance Section 707 presently is what the Town has locally for Land Use Regulations that deal with the topic of excavation. If the board decides to move forward with adopting the new regulations, then Section 707 will need to be deleted and adopted to use language similar to what he provided at the bottom of his memo dated October 21, 2010, which reads:

707. Excavation of Earth Materials

Unless otherwise exempted by the provisions of RSA 155-E:2, no property owner shall permit the Excavation of Earth on his/her premises without first obtaining an Excavation Permit from the Windham Planning Board pursuant to the requirements of the Town of Windham's Excavation Regulations.

Mr. Keach believes that having a requirement for a permit in the Zoning Ordinance from a violation and enforcement perspective allows the Town to pursue remedy for a particular violation.

Mr. Okerman arrived at 7:00PM

In addition, Mr. Keach said since Section 200 of the Zoning Ordinance, entitled "Definitions" does not currently provide definitions for the words "Excavation" and "Earth", he recommends the Ordinance should be amended to expand Section 200 to specifically define these two operative words verbatim to definitions of the same provided in Section II of the draft Excavation Regulations.

The Board directed questions and clarified some of the sections of the proposed ordinance with Mr. Keach with regard to commercial and residential land development projects.

Chair LoChiatto opened the Excavation Regulations and Section 707 of the Zoning Ordinance discussion to the public and hearing no comment closed the public discussion.

Chair LoChiatto discussed with Mr. Keach that these new regulations can be posted but will ultimately need to be adopted as a stand-alone regulations, and having a new Section 707 in the Zoning Ordinance.

**The Board motioned to move the Excavation Regulations and 707 of the Zoning Ordinance as amended to public hearing on November 17<sup>th</sup> by Mr. Breton. Second by Ms. Skinner. Motion passed 7-0.**

Ms. Maloney Lee arrived at 7:10.

## 2011 Town Meeting Workshop

### *Fences, Section 710*

Ms. Wood provided the Board with an overview of the Ordinance and noted she collaborated with Mr. Okerman and Fences Unlimited on the draft version. Ms. Wood further noted that at the October 20<sup>th</sup> workshop, the goal was to clarify how to regulate fence height and at the first workshop on September 29<sup>th</sup>, the Board asked for diagrams to provide visualization as to how fence height would be regulated along front yards versus being regulated according to front yard lines. Included in the Board's packet for discussion were four diagrams indicating how fence height would be regulated with the following:

- Displays height of fences if regulated according to front yard
- Displays height of fences if regulated according to the front lot line
- Displays height fences on properties abutting water bodies, if regulated according to front yard
- Displays height of fences on properties abutting water bodies, if regulated according to front lot line.

Chair LoChiatto thought it would be best to discuss the ordinance in its totality and Ms. Wood said she agreed and would walk the Board through all the changes. She began by saying that it was recommended by the public and Board to have the requirement that all fences have a permit and a definition section was added because there were questions as to how a front yard, side yard was defined. In addition, she noted the change in the height of the fences for the side lot and front yard lot.

Chair LoChiatto read Section 710 of the Ordinance as it is currently written and compared it with the diagrams provided by Ms. Wood and said that what the current ordinance attempted to accomplish was to make an arbitrary front yard by lowering the elevation of the fence toward the front lot line. Mr. Richardson said that he would like to see the fence ordinance changed to 6' on side lot lines and 4' along lot line parallel to shore, lake or pond (considered second front yard). Chair LoChiatto said he is concerned with obstructing views of the neighbors if the side fence height is too high with homes around water bodies. The Board decided to get the opinion of the Cobbetts Pond Association.

Ms. Wood and Chair LoChiatto thought the language in Section 710.2.3 could be changed to read 'these fences could be a maximum of 20' in height and require Planning Board approval. The Board agreed.

Chair LoChiatto opened the Fence Ordinance to the public.

Sheldon Wolf, addressed the Board and said that from personal experiences installing a fence and obstructing the view of neighbors cannot be stopped even though the neighbors may find it objectionable. However, he recommends referring to the Town's attorney for clarification. He thinks that identification needs to be put on an electric fence ensuring public awareness that a fence is electric. Ms. Wood said that she would check with the state regulations.

Chair LoChiatto closed the fence workshop to the public.

The Board had further discussion regarding Section 710.2.1 and the definition of front yard as it relates to waterfront property. Mr. LoChiatto asked the Board how they would like to proceed with addressing

the issue with the side fences and thinks it would be easy to amend the language changing the fence height to have a 6' fence up to the waterline or limit the length of the fence not to obscure the view of neighbors.

The Board decided to change the language in 7.2.6.1 to allow the side yard fence height all the way to the lakeshore at 6' and 4' along the shore (front yard).

The Board decided put the remaining discussion for the Fence Ordinance and the meeting minutes on hold, move the meeting to the public hearings portion, and will revisit these agenda items after the public hearings.

### **Meeting Minutes Review and Approve**

The October 6 and October 13 meeting minutes were postponed to the November 3, 2010 meeting.

### **Public Hearings:**

**Mr. Richardson read the hearing into the record.**

### **Case#2010-31 WWPD Special Permit Application-postponed from October 20<sup>th</sup>**

A Wetlands and Watershed Protection District (WWPD) Special Permit Application has been submitted for Lot 7-A-680 (81 Searles Road), zoned Rural and located in the WWPD. The applicant, Heidi Heath is proposing to locate an in-ground pool, sized 18' X36', at her residence in the WWPD for a total impact of 648 sq. ft.

Ms. Wood addressed the Board saying that Ms. Heath submitted proposal to the TRC and she noted that a letter from Conservation Commission is in their packet. The applicant will minimize the impact to the WWPD and Ms. Heath provided the setback information between the existing porch and proposed pool. In addition, a memo from James Finn, Chairman of the Conservation Commission was provided to the Board stating the impact to the WWPD has been minimized as much as possible and backwashing of the filter system has been eliminated reducing contamination of the WWPD.

**Motion by Ms. Skinner to accept Case #2010-31 WWPD Special Permit Application to public hearing. Second by Mr. Breton. Motion carries 7-0.**

Ms. Heidi Heath addressed the Board providing a brief introduction regarding her application indicating that the wetland in her backyard is a brook and for only two weeks in March there is water retention which constitutes the wetland. The construction of the pool requires the back of the pool to end 43' from the homes foundation. Ms. Heath said that to minimize impact on the WWPD, she will take the following steps:

- Place silt fencing and hay bails
- The pool will be build with a 'free-standing edge'. Meaning the outer wall will be built thicker with reinforced bars and cement and no additional fill will be required to hold the pool into the land.
- No rear patio behind the pool
- DC Cartridge filter will be installed. This filter does not require back washing; therefore, no water will be put in the WWPD.

- During winterization, we will have the water picked up by the water company instead releasing into the WWPD.

Ms. Maloney asked the applicant where the water flow from the brook ended and the applicant replied that the brook was only wet a few weeks a year and eventually dries up. Ms. Skinner said that when the brook was wet it would most likely flow to Mitchell Pond.

Chair LoChiatto opened the WWPD Special Permit Application hearing to the public and receiving no comment closed the hearing.

Mr. Richardson asked for clarification regarding a proposed well on the plans and the applicant replied that the site plan provided was an old site plan on record with the State and that is an existing well he is referencing.

Mr. Okerman asked if the applicant would need to come before the Board for a fence permit and Ms. Wood said that no she would not because when a fence is required for safety reasons it is exempt from the fence permit process.

**Motion by Mr. Breton to approve Case #2010-31 WWPD Special Permit Application for 81 Searles Road. Second by Mr. Richardson. Motion passed 7-0.**

#### **Case#2010-25 Minor Site Plan Application**

Mr. Richardson read the case into the record.

An application for a Minor Site plan has been submitted for Lot 13-B-75, (40 Rockingham Road/Route 28), which is located in the Commercial A Zoning District. Wilson's Tire and Auto and EMTS, a small manufacturing business, are located on the site. The applicant, Bruce W. Wilson, is proposing to revise the current off-street parking configuration and request a 25' wide access way to Harris Road.

Ms. Wood said the applicant is not proposing to make any physical changes to the actual site other than restriping the parking lot and adding signage for each handicap parking space. Ms. Wood said the reason this application is before the Board is because the applicant would like to have the Boards approval to have the 25' access right to Harris Road. In the past the applicant was denied access to this road but due to changing conditions the Police and Fire departments would like to have a secondary access provided to the property as it is beneficial for emergencies. The access is currently blocked off and if the Planning Board approves access then the blockage will be removed. The owner of the business was also required to apply for and receive a variance to have vehicles on the property that are unlicensed, which is necessary due to the nature of his auto repair business. The variance was granted with the condition upon Site Plan Approval that the Planning Board determines the number and placement of parking spaces on the property for all vehicles.

**Motion by Mr. Breton to accept Case # 2010-25 this as a Minor Site Plan Application at 40 Rockingham Road for lot 13-B-75 to include the letter dated October 20, 2010 from B & B Realty Trust referencing Sections 306.1 – 306.12 of the Town Zoning Ordinance. Second by Mr. Richardson. Motion passed 7-0.**

The applicant, Bruce Wilson, addressed the Board and reiterated that he is not changing anything on the site other than designating parking space and the back entrance (Harris Road) will have minimal use. Mr. Wilson outlined for the Board the way the parking will be arranged on the property. The parking area is a mixture of pavement and crushed stone. Ms. Wood noted for the Board that per the Town's regulations, businesses cannot park cars on unpaved surfaces unless there is Planning Board approval.

Ms. Wood noted that abutters were noticed and there were no objections to the access on Harris Road.

Mr. Breton said that Harris Road has changed dramatically in the last five years and so much has changed that he does not see it as an issue to open up Harris Road.

Mr. LoChiatto asked the applicant if there was a driveway permit for access on Harris Road and Mr. Wilson responded that the road is not paved therefore does not need a driveway permit.

The Board discussed the number of parking spaces on the property that were on crushed stone and how many were on pavement. Mr. LoChiatto asked why spaces 30-37 could not be on the pavement and Mr. Wilson said if they moved these parking spaces it would not allow enough room for other vehicles to enter. However, Mr. Wilson was amendable to paving the area where the parking spaces were located.

Mr. LoChiatto said that the Board has put other auto body workshops held to higher standards and this seems to be a variation from the norm.

Chair LoChiatto opened the hearing to public.

Mr. Karl Dubay, addressed the Board and said that Wilson's Tire and Auto is a reputable services, they are an honest company and do a great job. As a resident of the Town he would like to see this application approved.

Mr. Jay Yennaco, addressed the Board and said that Mr. Wilson is a responsible business owner and he appreciates Mr. Wilson's honesty and would like to see this application approved.

Mr. Wilson addressed the Board and said that the parking area was well lit due to previous burglaries and that all four corners of the building and the parking area have lights.

Chair LoChiatto closed the hearing to the public.

**Motion by Mr. Breton to approve Case # 2010-25, 40 Rockingham Road for lot 13-B-75 with the following conditions that the language on the variance be noted on the plans noting the Zoning Sections and where the snow removal will be located. Second by Mr. Hersch. Motion passed 7-0.**

The Board took a recess from 8:10 – 8:20

Ruth-Ellen Post and Kristi St. Laurent arrived and were seated at 8:20PM.

**2011 Town Meeting Workshop**

## **Fence Ordinance – part II**

Chair LoChiatto brought the Fence Ordinance back to the Board to make a determination on how the Board would like to proceed with respect the fence height and length and to address some of the Board members concerns.

The board discussed changing the side lot fence height requirements with regard to properties on water bodies and whether or not a 6' fence would obstruct the view. Ms. Wood said that due to driveway line of site requirements that 4' is the maximum height for a side lot fence.

The Board decided to eliminate 60 ft requirement in the existing ordinance for side fence set back and not use the proposed yard approach and continue existing lot line approach. The Board is amendable to removing the 60' requirement language from the existing Ordinance as this will address the issues and concerns expressed by some of the Board members.

**Motion by Mr. Breton to move the Fence Ordinance as amended to public hearing. Second by Mr. Okerman. Motion passed 6-0.-2, Ms. St. Laurent and Mr. Richardson opposed.**

### *-Non-residential Zoning Map and Regulations*

Chair LoChiatto stated for the record that the Planning Board members were not provided the zoning maps required from the Town's IT/GIS staff personnel to make an informed decision. Mr. LoChiatto asked Mr. Breton to make this known to the Board of Selectman since Ms. Scott does not have the ability to print maps herself.

Mr. Breton asked Chair LoChiatto to write a letter on behalf of the Planning Board for the personnel file for the IT Director noting the Board's displeasure at not receiving the maps.

Ms. Scott asked the Board if they could start with the text changes of the Ordinance and then move on to the changes to the map. Ms. Scott said that she worked with two Planning Board members, two Economic Development members on the proposed changes. The proposed changes have been made to streamline the document, clarify the language, and to use the same verbiage throughout the document. Ms. Scott noted that one large change is proposing to delete the Commercial B District since there are only two parcels in Town currently zoned that way and the Town should not designate an entire district for just two parcels. This change is the only text that is linked directly to the map.

Ms. Scott went over the proposed changes to the Ordinance and the reasoning behind the changes noting that comprehensive reviews of the following sections were done:

- 200 Definitions;
- 602.1 Rural District Permitted Uses
- 604 Neighborhood Business District
- 605 Business commercial A and B and Gateway Commercial District
- 606 Limited Industrial District
- 612 Village Center District
- 614 Professional, Business, and Technology District



Chair LoChiatto said he appreciates the efforts of the task force and with all these changes there needs to be some way for him to understand what is allowed in each use and it seems that all the zones are becoming similar. Chair LoChiatto would like to see a chart outlining each zone and their allowed uses. Ms. Scott said this was doable but not for a few weeks due to other Town meeting items.

Ralph Valentine addressed the Board and asked if they could remove Section 604.1.4 and move all other up because it was already mentioned in Section 604.1.2.

Mr. Sheldon Wolf asked the Board if they could replace the word nursery school with school because the term 'nursery' is an antiquated term

Mr. Dennis Root addressed the Board discussing Section 605 and he is concerned because he has a friend who does this type of repair work at his home and would like to know how this would affect his friends work. Mr. LoChiatto said that the Ordinance can't list everything that would constitute a minor repair and this would be up to the Code Enforcement Officer for interpretation. Chair LoChiatto said this questions was difficult to answer because it was pertaining to a specific site and situation that the board did not have information on.

Mr. Jay Yennaco said in order to clarify the term 'minor repair' the Ordinance should say "not to exceed one business day".

**Motion by Mr. Breton to waive the bylaws and hear new business after 10PM. Second by Ms. St. Laurent. Motion passed 5-0-2, Mr. Richardson and Mr. Okerman opposed.**

Jonathan Sycamore, 15 Cobbetts Pond Road, addressed the Board noting that he finds it interesting that no one on the Planning Board is commenting on the Master Plan and how it ties to these proposed zoning changes and he is seeing departure from the Master Plan and the Gateway District. Chair LoChiatto explained to Mr. Sycamore that the reason the Board has workshops is to vet this information and provide the public and the Board the opportunity to fine tune the Ordinance and get input prior to Town Meeting. Mr. Sycamore said he thinks there is more a drive thru activity in Town and wants to make sure the Planning Board has the best interest of the Town in mind.

Mr. Sheldon Wolf addressed the Board and said the reason he is before the Board tonight is to discuss the Derry Route 28 Corridor Tax Increment Financing (TIF) District. Mr. Sheldon would like to know if Windham could mirror what Derry is trying to do with running water and sewer down Rt. 28, i.e. the Town line. In addition, Mr. Wolf addressed some of his zoning concerns and how he thinks zoning can be changed in the Town.

The Board thanked Mr. Wolf for his input and would take his comments into consideration.

Noting the late hour, the Board decided to continue discussion of the non-residential zoning district text and map changes to November 10<sup>th</sup>.

**Motion by Ms. Post to adjourn at 10:45PM Second by Ms. Skinner. Motion passed 7-0**