



OLD VALUES - NEW HORIZONS
COMMUNITY DEVELOPMENT

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Planning Board Minutes
May 25, 2011

Roll Call:

Ruth-Ellen Post, Chairwoman – Present	Ross McLeod, Selectman Member-Arrived 6:30 p.m.
Margaret Crisler, Vice-chair – Present	Kathleen DiFruscia, Selectman Alternate - Present
Pam Skinner, Member – Arrived 6:45 p.m.	Lee Malone, Arrived 7:30 p.m.
Kristi St. Laurent, Member – Present	Sy Wrenn, Alternate - Present
Jonathan Sycamore, Member- Arrived 6:24 p.m.	Vanessa Nysten, Alternate - Present
Carolyn Webber, Member - Present	Rob Folan, Alternate – Present

Staff:

Laura Scott, Community Development Director – Present
Mimi Kolodziej, Assistant Planner - Present

Call to Order/Attendance/Pledge of Allegiance:

Chairwoman Post called the meeting to order at 6:03 p.m. followed by roll call, attendance, and the Pledge of Allegiance.

Chairwoman Post appointed Mr. Wrenn to be seated for Ms. Skinner and Ms. Nysten to be seated for Mr. Sycamore. Ms. DiFruscia is seated for Mr. McLeod.

Chairwoman Post took a count of the public in the audience who had specifically come to attend the Design Review Workshop. Seeing that a majority of the audience was there for the workshop, she decided not to alter the order of the posted agenda. She announced that Town's legal counsel would be joining the Board at 9 p.m. for a non-public session to discuss a recently received correspondence.

Design Review Guidelines Workshop - Neighborhood Business District, Gateway District, and Professional, Business, & Technology District:

Ms. Karen Fitzgerald of FitzDesign introduced herself and her company. After a brief overview of the planning process and where design guidelines fit in, she proceeded through her PowerPoint Presentation.

The Chair opened up the presentation for discussion from the Board.

Ms. Webber brought up the subject of landscape maintenance of Town properties. Vice-chair Crisler suggested this topic, which is in need of attention, be brought up to the Board of Selectman.

The Board discussed the various processes the Planning Board might go through to determine and enact design guidelines.

Chairwoman Post opened the Workshop discussion to the Public.

Mr. Tom Case of Lamplighter Village mentioned that the current Design Guidelines work well with the exception of drive-throughs. He would like to know what the Board thinks is broken and why they are working on this.

Ms. Webber feels that development in Town is helter skelter; Vice-chair Crisler thinks we need to develop the guidelines we have to provide more “teeth” to deal with applicants through the planning process; Mr. Sycamore thinks the pace of development is accelerating and the Town needs more tools to deal with this; Ms. DiFruscia would like to see more specific design regulations; and Chairwoman Post reminded the Board that the Public’s comments expressed concerned visual design and aesthetics

Mr. Jim Soumma, a recent Windham resident, thinks we need tasteful guidelines which support aesthetics that help to maintain everyone’s property values.

Mr. Jerry Parsons of 21 Duston Rd. thinks the guidelines need to be very specific and consistent. Enforcement is an issue that needs to be considered and landscaping needs to be a concern the Town addresses.

Mr. Sycamore was seated at 6:24 p.m.

Ms. Betty Dunn thinks the guidelines need to be fair to all parties; tightly structured and enforceable. She would like to see the opportunity for flexibility and creativity within the guidelines. She thinks the parking-in-the-front strip mall design, if it continues, will deflate property values.

Mr. McLeod was seated at 6:30 p.m.

John Mangon of Windham Depot would like to see clarity of the definition of what a Neighborhood Business District is. His concern is that is that the Business part might overtake the Neighborhood.

Chairwoman Post read a letter from Mr. Ralph Valentine of the Windham Economic Development Committee (WEDC) in which the WEDC is offering to assist the Planning Board with the Design Guidelines and listed its members’ various backgrounds.

Ms. Ginny Campiolla of West Shore Rd. expressed concern about the lake water. She would like to see a map of what her neighbourhood will look like after the completion of the Rte 93 construction. Her concern is that there will develop a large parcel of land on which a mall may be considered and run-off from this development will negatively affect Canobie Lake water quality.

Ms. DiFruscia assured her she would look closely at the Watershed Guidelines for this area which is a major interest of hers. Ms. Scott informed Ms. Campiolla that there are several parcels of land on the Canobie Lake side of the PBT District which are included in the Cobbetts Pond Watershed Overlay Protection District; and the currently available map of the future 93 configuration, which is displayed on the NHDOT Website and on the wall of the meeting room. It is a state provided map.

Ms. Brenda Bailey of Jackman Ridge Rd. would like to see more walkability in Town; especially, in the retail district.

Ms. Skinner was seated at 6:45 p.m.

Mr. Bill Schroeder of Woodview Rd. expressed concern about protecting the watershed. He offered that stormwater run-off is a major contributor to water quality degradation. He would like to see the Town's Design Guidelines include best practices to control stormwater run-off, which the DES has developed. He advised the Board that it is much cheaper to prevent problems than fix them later.

Mr. Al Gabor, a representative of the Town Commons Plaza, asked about a previous proposal that would re-route Route 111 behind his plaza. Ms. Scott assured him that this discussion was a long-term, what-if proposal that most likely will never become a reality without the cooperation of the property owners.

Mr. McLeod suggested that the guidelines could be called "Windham Design Regulations". He recalls a legal case which allows for a municipality to zone for aesthetics. The Town needs to use this power and not be hesitant to enforce Town design review guidelines. He suggested a sliding scale of design guidelines differently appropriate for each zoned District in Town; tighter for the Neighborhood District and possibly less so for the Gateway or Limited Industrial zones. He recommended using the design review regulations in conjunction with our zoning process with all requests coming before the Board at first to gain necessary experience and then the Board could create the committee.

Ms. Carol Pynn thinks there is currently no continuity of design in Town, and the Town does need design regulations. She is concerned about what is going to occur with development between now and 2012 when the design guidelines are accepted. She assumed that the Historic Committee was not represented on the WEDC committee chaired by Mr. Valentine. She expressed concern about the final outcome of the alterations to the semi-conductor building next to Delahunty's.

Ms. Scott explained that for the design regulations to have "teeth" they would best be placed in the zoning regulations and need to go to Town Warrant. However, the Planning Board could make them part of the site plan regulations; in which case, they would need a Public Hearing and adoption by the Board. The semi-conductor building on Range Road is placing architectural features on the façade and adding windows to make it more aesthetically pleasing. Right now, any requests coming before the Board must follow the current regulations.

Ms. Fitzgerald, before she leaves today, will need to know from the Board if it wants to make the design regulations a zoning issue needing town meeting approval or part of the site plan regulations; and do they want a design review committee so that she may get to work with some directions.

Mr. Valentine, as WEDC chairman, explained that one of the WEDC members is already involved with Historic. He thinks the design guidelines should offer subjectivity, flexibility, and range. He thinks guidelines offer more flexibility than regulations; and that a committee is another layer which adds time which is money.

Mr. Nysten of Edgewood Road agreed with Mr. Valentine's comment regarding subjectivity and flexibility, and thinks it can be successful within regulations as opposed to guidelines. His land planning background informs him that you cannot overly restrain developers. The towns of Meredith, NH and Andover, MA all have architectural ordinances, which have helped to create value and an environment of success for business tenants. Guidelines are unenforceable. He strongly suggests that the Town consider architectural ordinances.

Ms. Nysten, directing her question to Ms. Scott, asked if the Planning Board is able to do something in the meantime while they wait to adopt a design review process at Town Meeting. Ms. Scott explained that there is no interim step available to the Board because either option takes the same amount of time as determining an intermediate plan.

Chairwoman Post highlighted the decisions the Board needs to make before moving on.

Chairwoman Post closed the discussion to the public.

Vice-chair Crisler voiced her favor of a hybrid approach; ordinance change through Town Meeting along with site plan regulations and combine these with visual examples.

Ms. Fitzgerald suggested that the Ordinance direct the design to the Design Review Committee. The ordinance itself would not spell out specifics. The specific criteria will go in the site-plan review, or a supplemental document, or refer to in the site plan review documents. Ms. Fitzgerald clarified that the Ordinance establishes the process; while the site plan review regulations determines the specific guidelines. Most developers are familiar with the design review process. Most towns going through this kind of growth have an appointed committee which actually streamlines the process and avoids the Board from getting into the middle.

Ms Scott clarified the available options: The Board may have a stand-alone Design Guidelines document adopted by the Planning Board; or these may also be incorporated into the site plan regulations. The Board may also choose to place a requirement in each zoned district language which requires the applicant to go through the design review process and follow the regulations for that specific district.

Most towns do not place design review guidelines in zoning. The ballot would be voluminous, and you would be asking the voters to vote on cornices, lighting fixtures, shrubs and flowers. The question is: Does the Board want a review committee or does the Board want to do it all. Another option is that the Town could have an outside firm reviewing design guidelines established by the Board.

Ms. Fitzgerald at the next meeting will present to the Board standards that might apply to each District and samples of the processes that are used in various communities that are similar and fit with Windham. Ms. Scott will work with Ms. Fitzgerald and ensure the Board receives these samples prior to the next meeting.

Mr. Wrenn would like to see some flexibility and rigidity. He likes the State Specific Criteria Check List Review methodology of the four methods represented in the presentation. Graphics with text would be very helpful.

The Board decided they would like samples of various management and enforcement processes from towns with similar demographics. They determined that they would focus on the Gateway District to start. Ms. Scott recommended that Ms. Fitzgerald provide design guidelines for the Gateway district one week prior to the June 29th meeting.

Ms. Maloney was seated at 7:30 p.m.

Vice-chair Crisler researched NH RSA 674.44 and believes the regulation should be placed there.

The Planning Board recessed for 5 minutes and reconvened at 7:32 p.m.

Chairwoman Post announced that an agenda item would be taken out of order out of consideration for the people involved.

Public Hearing – Continued from May 18, 2011:

Case#2010-46 Workforce Housing Site Plan/Subdivision Application

An application for Site Plan/Subdivision has been submitted for Lot 19-A-300 (66 Mammoth Road), which is located in the Rural and Aquifer Protection Districts. The applicant, Peter Zohdi of Edward N. Herbert Assoc. Inc, on behalf of Sun Coast Properties LLC, is proposing a 10-unit residential condominium development, consisting of 5 duplex buildings with 4 units to be Workforce Housing, per NH RSA 674:58-61.

Chairwoman Post announced that Attorney Cronin had presented a legal communication regarding the concerned application which would be addressed in a later, non-public session with Town Council. The applicant is asking the Planning Board to make a determination this evening whether they will hear the application or not. Chairwoman Post refreshed the Board about the applicant's attempt to get a variance which was denied; and that a re-hearing is currently being requested. Chairwoman Post asked the Board's wishes in this case.

Ms. DiFruscia, based on Town Council's guidance, made a motion to deny the application due to it being incomplete because it does not meet the zoning requirements of Section 602.1.2 of the Town of Windham zoning ordinance. Seconded by Ms. Webber.

Ms. St. Laurent has not had her opinion altered by Council's advice and has been following Work Force Housing for the past few years. She believes that it is the intent of the State for the Town and Developers to work together and benefit in terms of saving time and money and; thereby getting the process going. There is a distinction between this Workforce Housing application and the previous one. She thinks the applicant is showing good faith by working with the Town to secure the necessary variance and the Town's role should not be to put up roadblocks.

Vice-chair Crisler expressed her regrets to not move forward with the application; but when Town Counsel advises you, it would be foolish to ignore.

Ms. DiFruscia wants the applicant to know that she supports Workforce Housing, but the denial is in accordance with the guidance given and the Board needs to be consistent and the process needs follow through with ZBA.

Attorney Cronin thanked the Board for taking this hearing out of order but had expected to be first on the agenda. He expressed serious concerns about procedure. He wanted to know voting members on tonight's Board. He recalled last week's issue with a pre-drafted motion which Mr. Sycamore had acknowledged drafting at his office prior to meeting.

Attorney Cronin asked to be refreshed to the language of the ordinance Section 602.1.2 which his applicant did not meet. If the Board denies jurisdiction it must be because the application is not complete according to the Town's regulations. He saw nothing in the regulations that said an applicant must have approval from ZBA in order to have a completed application. In which case, he thinks the Board should accept jurisdiction.

Attorney Cronin proceeded to ask the Chairwoman to please determine who the voting members are on tonight's Board; and he continued by asking Mr. Sycamore, for the record, to state if he had any assistance in the writing of his prepared motion from the previous week. Chairwoman Post clarified Section 602.1.2 and its intent.

Ms. Scott asked Ms. DiFruscia to repeat her motion.

Ms. DiFruscia made a motion to not accept the application because it was incomplete and did not meet the zoning requirements of Section 602.1.2 of the Town of Windham zoning regulations.

Chairwoman Post identified the current voting members.

Attorney Cronin asked Mr. Sycamore the history of his pre-drafted motion from the week before.

Mr. Sycamore stated that he had come in with an opinion and an open mind; he worked with the information provided by Attorney Campbell's memo; he has friends who are attorneys; and he spoke unclearly because he was nervous about making his first motion knowing that the Town had gone to court previously and he wanted to get it right. He was looking to hear that this case was in anyway different from the 4/6 case; and hearing nothing to that effect from staff or the applicant, he chose to read his motion. He further stated that his position was affirmed by Town Council's letter.

Attorney Cronin claimed that Mr. Sycamore's statement was non-responsive. Attorney Cronin asked Mr. Sycamore directly whether Mr. McLeod had helped him in any way drafting his motion. Mr. Sycamore replied that he had. Attorney Cronin asked how Mr. McLeod helped Mr. Sycamore. Mr. Sycamore replied that he knew what he wanted to say and needed help. Attorney Cronin asked Mr. Sycamore to recuse himself. Then Mr. Sycamore chose to recuse himself.

Chairwoman Post appointed Mr. Wrenn to sit for Mr. Sycamore.

Ms. Nysten wanted to assure the applicant that the Board was not attempting to postpone or delay this Public Hearing. She recalled from the previous meeting that it was determined that the agenda order would be decided by the number of people attending the workshop.

Chairwoman Post informed the Public that for two years in a row the Board had put forth a Workforce Housing statute on the ballot; and on both occasions it had been turned down by the voters. She wanted the Public to know, that the Planning Board had made a repeated and good faith effort to address this issue and to meet its obligations under the law.

Motion passed: 5-2 Ms. St. Laurent and Mr. Wrenn opposed.

Mr. McLeod pointed out to the Board that he frequently comes to Planning Board meetings with notes and comments he wants to make. Commendably so, he feels Ms. Scott encourages this by handing out the meeting packet in advance for members to review and come prepared. He thinks it is important and a member's responsibility to come prepared; while however, maintaining an open mind.

Attorney Cronin reminded the Board that Mr. McLeod had previously recused himself from considering this case at the Zoning Board and believes Mr. McLeod should have nothing further to do with this case in any way

The Board discussed the current agenda and decided to re-schedule the 2012 Zoning Amendment Workshop.

Ms. Skinner made a motion to re-schedule the 2012 Zoning Amendment Workshop to the June 1, 2011 Planning Board meeting. Seconded by Ms. Webber. Motion passed: 7-0.

Adjournment:

Ms. Webber made motion to adjourn the meeting. Seconded by Ms. Skinner. Motion passed: 7-0.

Meeting adjourned at 8:28 p.m.

Minutes are respectfully submitted for your approval by Mimi Kolodziej.