



OLD VALUES - NEW HORIZONS
COMMUNITY DEVELOPMENT

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Planning Board Minutes
December 28, 2011

Roll Call:

Ruth-Ellen Post, Chairwoman-Present
Margaret Crisler, Vice-Chair-Present
Pam Skinner, Member-Present
Carolyn Webber, Member-Present
Jonathan Sycamore, Member-Excused
Kristi St. Laurent, Member-Present

Ross McLeod, Selectman Member, Excused
Kathleen DiFruscia, Selectman Alternate, Present
Lee Maloney, Alternate- Excused
Vanessa Nysten, Alternate-Present
Sy Wrenn, Alternate-Present

Staff:

Laura Scott, Director of Community Development
Elizabeth Wood, Town Planner
Mimi Kolodziej, Planning Assistant

Call to Order/Attendance/Pledge of Allegiance:

Chairwoman Post called the meeting to order at 7:05 p.m. followed by attendance and the Pledge of Allegiance.

Mr. Wrenn was appointed to be seated for Mr. Sycamore.

Public Hearing – 2012 Town Meeting Zoning Amendments

Building Code

To authorize the Town of Windham to adopt and enforce the NH Building Code, as adopted by the State of NH, in accordance with RSA 155-A, subject to the following revisions:

- International Residential Code Sections R101.1, R105.2, R108.5, R301.2(1) and R302.5.1;
- International Building Code Sections 101.1, 1612.3, and 3412.2;
- International Plumbing Code Sections 101.1, 106.6.2, 106.6.3, 108.4, and 108.5;
- International Mechanical Code Sections 101.1, 106.5.2, 108.4, and 108.5; and
- International Energy Conservation Code Sections 101.1, 107.5, and 108.4

In addition, adopt language about validity, affect on ongoing legal proceedings, and effective date; to repeal the 2003 edition of the International Residential Building Code adopted at 2005 Town Meeting; to authorize the Building Inspector, as designated by the Selectmen, to enforce the State Building Code as authorized under RSA 155-A:1(III), with the enforcement powers as provided in RSA 676 for enforcement of local land use ordinances; and have the Zoning Board of Adjustment act as the Building Code Board of Appeals as authorized under NH RSA 673:1(V).

Vice-Chair Crisler read the notice into the minutes.

Ms. Scott explained that the language changes have already been approved and moved to Warrant. There have been three previous Public Hearings regarding 3 separate items in question, and the purpose of tonight's meeting is to combine them into one question for the Warrant.

Chairwoman Post opened discussion to the Public. Hearing none, she closed discussion to the Public.

Vice-Chair Crisler motioned to move the amendments to the Warrant as was previously read. Seconded by Ms. Skinner. Motion passed: 7-0.

Reformatting Commercial B District; Reformatting Gateway Commercial District & Revising Purpose Section.

- Move/renumber the Commercial B District from Section 605 and Section 605.2 to Section 617;
- Move/renumber Gateway Commercial District from Section 605 & Section 605.3 to Section 618;
- Include the provisions from Section 605.4 into both the moved/reformatted Commercial B District Section 617 and Gateway Commercial District Section 618;
- Delete the list of purposes in the Gateway Commercial District and replace it with (1) Provide for an area of commercial development, including mixed use of retail, service, and professional offices, all of which are designed to reflect its proximity to the I-93 interchange, (2) Ensure that the entrance of the Town reflects and/or complements the architectural style of New England, maintains the historical character of Windham, & will be of architectural merit, & (3) Minimize sprawl, promote pedestrian-friendly design and maintain efficient traffic circulation and safety.

Vice-Chair Crisler read the notice into the minutes.

Ms. Scott noted that there have already been Public Hearings on both the reformatting and new purpose sections. The Board had previously decided to make these into one question for the Warrant and tonight's meeting is to approve that change. The language changes had been previously approved.

Vice-Chair Crisler noted a typo to be corrected.

Chairwoman Post opened discussion to the Public. Hearing none, she closed discussion to the Public.

Vice-Chair Crisler motioned to move the reformatting of Commercial B District, Gateway District and revising the purpose section to the Town Warrant as previously read. Seconded by Ms. DiFruscial Motion passed: 7-0.

Multi-Zoned Parcel Rezoning

1. To Amend the Windham Zoning Map by rezoning Lot 8-B-3001 (Rockingham Road), which is multi-zoned Neighborhood Business District & Rural District to all Rural District:
2. To Amend the Windham Zoning Map by rezoning Lot 8-B-3900 (Rockingham Road), which is multi-zoned Residence District B & Rural District to all Rural District:

Vice-Chair Crisler read the notice into the minutes.

Ms. Nysten recused herself from the discussion.

Ms. Wood brought to the Board's attention a map alteration that the Board may not have noticed previously regarding Lot 8-B-3001 and 8-B-3900. Vice-Chair Crisler noted that because both lots are Town owned Conservation Land, there is no significant impact.

Chairwoman Post opened discussion to the Public noting that in changing Lot #8-B-3001, the Board is also changing Lot #8-B-3900 as they had been combined. Hearing none, she closed discussion to the Public.

Vice-Chair Crisler motioned to move to the Town Warrant the rezoning of Lot #8-B-3001 from mixed use to Rural District which would also include Lot #8-B-3900. Seconded by Ms. DiFruscia. Motion passed: 7-0.

3. To Amend the Windham Zoning Map by rezoning Lot 13-B-101 (36 Harris Road) and Lot 13-B-102 (38 Harris Road), which are multi-zoned Commercial Business A & Rural District to all Rural District:

Vice-Chair Crisler read the notice into the minutes.

Ms. Wood explained that she had no comments, and no owners or abutters had stepped forward.

Vice-Chair Crisler made a motion to move to Town Warrant the rezoning of Lots #13-B-101 and Lot #13-B-102 from multi-zone to all Rural District. Seconded by Ms. Skinner. Motion passed: 7-0.

4. To Amend the Windham Zoning Map by rezoning Lot 13-A-100 (16 Roulston Road), which is multi-zoned Limited Industrial District & Rural District to all Limited Industrial District:

Vice-Chair Crisler read the notice into the minutes.

Chairwoman Post explained that she had taken a position on a variance that affected this lot about 1 year ago and does not think it causes any bias on her part. She provided an opportunity for the Board and Public to comment. No one commented, so Chairwoman Post remained seated.

Ms. DiFruscia asked if the property owner had expressed support or opposition for this request.

Ms. Wood explained that, at the time of the workshop, the property owner was the State. It is currently in transaction from the State to the ownership of Mr. Nickerson and knows of no objections.

Chairwoman Post opened discussion to the Public.

Mr. Chris Burke of 16 Stonehedge Rd. thinks this parcel falls into a Residential neighborhood. His 3 boys ride their bikes to the Bike Trail using the roads by this land. Re-zoning would eliminate this opportunity. Zoning it Limited Industrial would bring the Industrial zone closer to the Neighborhood, rather than creating a transitional area. Across the street, the Limited Industrial lots are situated on a much higher topography; whereas this lot is lower and acts as a transitional lot between the Limited Industrial and the Neighborhood.

Chairwoman Post asked Mr. Burke if he would suggest another preferred zoning. Mr. Burke suggested Residential A or B would be more appropriate.

Ms. Lynn Doucette of 22 Stonehedge Rd agrees with Mr. Burke and also allows her children to ride to the Bike Trail past the property in question. She would prefer to keep the land zoned Residential; it is across from 26 acres abutting her property and does not want it to be zoned Industrial.

Mr. Chris Nickerson representing Cordell Development stated that his client had purchased the property as of the last week in November. He supports the Planning Board's recommendation for the re-zoning of this lot. His company has plans to use this land to its highest and best use. The neighborhood is changing; Medicus, a 30,000K sq ft business abuts this property and is substantially larger than any use the owner has for the property in question. The property is surrounded on four sides by Limited Industrial

properties. The owner is considering a low-traffic generating office use. The client could be persuaded to put in a paved path to the rail trail.

Board comments/questions included:

- What is the acreage on this parcel; Mr. Nickerson recalls it to be 1.3 acres; Ms. Wood stated it is 1.6 acres.
- The Board does not recall the Medicus applicant offering to make parking available for the Trail.
- How close is the nearest Residential property; Mr. Nickerson stated less than 100 feet. The property has right-of-ways around it separating it from the Veterinarians and Thompson Septic with the front of the property bordering Commercial uses, Elliot Hospital and the Coop Kindergarten. The residential properties are behind the property in question.

Mr. Doucette agrees with his wife and Mr. Burke. Added traffic would create safety issues with the kids from Searles Road going to the Trail, plus for runners and bikers who use it a lot. He would like it to stay zoned the way it is and possibly have the owner build another home on it.

Chairwoman Post closed discussion to the Public.

Board comments/questions included:

- Is the old Roulston Rd discontinued, can it be used for business or a driveway; Chairwoman Post answered it is discontinued and is not a thru-way. It is a triangular shaped lot with roadway on 3 sides, not on the fourth discontinued side.
- How will the discontinued road be used if it becomes zoned Limited Industrial; Ms. Wood answered the owner would have the current accesses available and would need to go through an approval process to change the status of the fourth, discontinued side. Ms. Scott clarified that if the Town discontinued the road, then the Selectman would need to re-classify it as a Class 5 roadway in order to open it up for access.
- The Board asked for clarification on the percentage of the two zones involved; Ms. Wood said the Limited Industrial is the smaller portion, about 15%-20% of the eastern section, with Rural being the majority.
- Mr. Wrenn, as a member of the sub-committee, said the committee looked at the parcel surrounded on 3 sides by roads and decided it would not be logical to zone it Rural. It abuts Industrial on 3 sides and thought that the side that abuts Residential will continue to abut Residential.
- A member of the Public asked when the lot changed from 3 zones to 2 zones; Ms. Wood stated that after studying the maps, she saw no indication that it had been 3 zones. Chairwoman Post clarified that it was the applicant, not the Town, who declared it was 3 zones at a past ZBA meeting.
- Ms. St. Laurent noted that as the Board works to clarify the purposes of the districts, one of the concerns, when clarifying the Industrial zone, was the transitional nature between abutting uses. Where this is such a small lot, this effort may not be effectively done if it were zoned Limited Industrial. How could it also accommodate a transitional effect to local and abutting residential homes with the re-routing of traffic? The long-standing residential homes are feeling the Industrial creep.
- Ms. DiFruscia noted that the location of this particular property raises transitional concerns and moving it to Limited Industrial offers no buffer to the local residents.
- Chairwoman Post highlighted her concerns saying that this property is a transitional location close to a residential neighborhood, across from an Industrial Park and near to the Rail Trail. She suggested perhaps zoning it Neighborhood Business District and that the Board may want to address this at another time in a broader manner, rather than just as a clean-up.

Vice-Chair Crisler motioned to delete this amendment to the zoning map for Lot #13-A-100 and to not move it to the Town Warrant. Ms. St. Laurent seconded. Motion passed: 6-1. Mr. Wrenn opposed.

Section 616: Cobbetts Pond & Canobie Lake Watershed Protection Ordinance.

To amend Section 616 to include Canobie Lake and its watershed and tributaries as part of the Ordinance, with specific amendments to the title of this Ordinance, as well as to Sections 616.1.1, 616.7.2, 616.8.1, 616.8.4.6, 616.11.1, 616.11.2, 616.11.3, and 616.11.4 for that purpose; to amend Section 616.2.1 to add “and Canobie Lake Watershed Overlay District Parcel Map dated 11/15/11”; and adopt the boundaries of the Canobie Lake Watershed Overlay District Parcel Map dated 11/15/11.

Vice-Chair Crisler read the notice into the minutes.

Board comments/questions included:

- Chairwoman Post clarified that the Board is being asked to approve only the underlined language, all other language is pre-existing. The new language consists primarily of the addition of the phrase, “and Canobie Lake.” The Board has received 3 letters of support; one from the Commissioner of the DES, the president of the NH Lakes Association, and the Director of Public Works of the Salem DPW Department. An identical Citizens’ Petition has been filed as a back-up in case the Planning Board’s proposal does not go forward.
- Ms. Scott noted that the Board had been given a report from staff informing them of the number and types of variances, minor and major, that had been processed under the Cobbetts Pond Ordinance. The Board must decide if they want two identical ballot questions, or does the Board want to withdraw theirs and allow the Citizen’s Petitions to stand.
- Ms. DiFruscia noted that some changes were made to the Cobbetts Pond Ordinance last year and has heard no complaints. Ms. Scott stated that some homeowners have expressed concerns about the extra processes that they were not aware of. It is the homeowners away from the waterfront, outer bounded property, that are surprised they need a drainage study and erosion control plan prior to a home addition.
- Ms. DiFruscia thinks the number of cases, on the whole, is pretty small.
- Ms. Nysten recused herself from the discussion.
- Mr. Wren said that he thought it unfair that a property with only 5-10 % of its area in the Watershed, should be considered the same as a lot 100% in the Watershed. Maybe the Board would like to look at this at a later date.

Chairwoman Post opened discussion to the Public.

Mr. David Riese of 2 Lakewood Rd owns property within the Canobie Lake Watershed. He thinks that protecting the body of water is very important and favors protecting Canobie Lake to the extent it is feasible.

Mr. Ralph Valentine, the WEDC representative and speaking on behalf of Mr. Bob Young, supports the Planning Board’s and/or Citizen’s Petitions and applauds the initiative to protect the Canobie Lake Watershed area. The WEDC is concerned with balancing the regulatory requirements with the protections afforded by the Ordinance. In collaboration with the Canobie Lake Protection Association, the WEDC may, at some time, monitor the actual impact of the Watershed Regulations on the property owners, and may, at a future date, suggest relief language be added to the Ordinance to prevent duplicate or overly burdensome regulations from impacting property owners.

Chairwoman Post asked if the WEDC had received an invitation to join with the Planning Board to meet quarterly. Mr. Valentine said the memo had been received and would be discussed at their next meeting. Dates would be forthcoming.

Mr. Karl Dubay supports the Citizen's Petition and Town's Warrant Article. He asked the Board to support quality development and asked the Board to work with developers as they bring quality development before the Board. He said that the 30% impervious is very difficult and cuts in half the allowed impervious from 70 to 30.

Mr. Bill Shroeder thanked Mr. Valentine and Mr. Dubay for their support. He looks forward to continued cooperation with the WEDC. He will post the proposed Ordinance on the Canobie Lake Website. He noted that he has concerns about some small infrequent errors regarding the Watershed boundary line. If there is a boundary line question and it can be supported, there may be a need for some additional language to allow for exemption. It may not need to be done right now. He left it to the Board and offered the proposed language addition to Section 616.2.1: "If a land parcel lies within the watershed according to the current Map, but it can be shown to the satisfaction of the NH DES that the boundary is in error and the parcel lies entirely outside the watershed and this is confirmed by NH DES in writing, then the parcel is exempt from the provisions of this Watershed Protection Ordinance."

Board comments/questions included:

- The Watershed boundary lines on the map, are not designed by the Board. The Board does not decide if it is correct or not. The DES is the determining body.
- Ms. Scott said there is time to repost this and move forward on to a Hearing on Jan 11; however, there will now be 2 questions on the ballot regarding the same Ordinance that are different. In the past, if property owners have questions about boundary lines, staff has dealt with it adopting the DES map by reference. It then becomes the applicant's responsibility to prove their case to the Zoning Board. There is current language in the Aquifer Protection Ordinance that already covers these type of situations. Without the language, right now, the Town would ask the applicant to apply for a variance and prove why the Ordinance should not apply to them.
- Ms. Scott further explained that according to the Aquifer Protection Ordinance, the Town has the right to change the map.

Chairwoman Post closed discussion to the Public.

Board comments/questions included:

- Because Mr. Shroeder's proposed language may cause confusion and the Town currently has a process in place, Ms. DiFruscia suggested not accepting the additional language. Ms. St. Laurent agreed and suggested the Board withdraw their proposed Ordinance.
- Mr. Wrenn said if both proposals are identical, what difference does it make. Ms. Scott offered that one may pass and one may fail. She suggested the Board withdraw theirs.

Vice-Chair Crisler motioned to withdraw the Planning Board's proposal for the Cobbetts Pond Watershed Protection Ordinance and to not send it forward to the ballot. Ms. St. Laurent seconded. Motion passed: 7-0.

Chairwoman Post called a recess. The meeting reconvened at 8:56 p.m.

Workforce Housing Section 619. Add a new Overlay District to allow for Workforce Housing, in accordance with NH RSA 674:58-674-61 and consistent with NH RSA 672:1(III-e), as an innovative land use ordinance under 674:21. This Ordinance would be applicable in the Rural, Residential B, Residential

C, and Village Center Districts. The Ordinance lays out the applicable definitions used in the Ordinance, the procedure and requirements for Planning Board applications (conceptual, design review, and final), the conditions of approval, the development standards (density, dwelling units, frontage/setback/yard requirements, layout, roads, water and wastewater treatment systems), when in the process Variances would need to be obtained, and how appeal are made. As part of the Ordinance, Conditional Use Permits are used by the Planning Board to authorize development that would otherwise not be allowed under a particular site per the Zoning Ordinance, Site Plan Review, or Subdivision regulations if certain criteria are met. Provisions for continued affordability (minimum of 30 years) and ongoing third party monitoring are outlined and a minimum of 50% Workforce Housing units are required in such a development.

Vice-Chair Crisler read the notice into the minutes.

Ms. Scott noted there were 2 minor points to address aside from the grammatical error on page 2:

- Attorney Campbell, referring to the 5 acre minimum, offered some suggested the Board should review and consider; and
- He further suggested the Board consider the Town's obligation for multi-family housing.

Attorney Campbell does encourage the Board to move the proposed Ordinance to the Warrant. Ms. Scott informed the Board that the numbering and reformatting corrections had been made.

Board comments/questions included:

- Vice-Chair Crisler, as a member of the WFH subcommittee, reviewed some of the more significant points the committee had worked on;
- A question was raised regarding 619.7.1 and the reference to "this" ordinance, Appendix A-1. Appendix A-1 is not attached. **The language "of the Windham Zoning Ordinance" will be added after the phrase "Appendix A-1."** This is not a substantive change;
- Regarding Attorney Campbell's suggestion to reduce the 5 acre minimum to 2.5 or 3 acres; The Board decided to leave it at 5 acres;
- Ms. Nysten had a question about Section 619.3 and asked if the language meant that manufactured housing is not allowed in Residential C as a WFH project; Vice-Chair Crisler said it is allowed, if it is zoned appropriately with 7,500 sq ft lots
- Ms. Webber expressed concern about the term "Work Force Housing" and suggested the term "Affordable Housing;" The Board understood the perception concern and asked what the Board could do to encourage voters to vote for this Ordinance; The Board will address this at a later date;

Chairwoman Post opened discussion to the Public.

Mr. Karl Dubay under Section 619.5.2 it says what Condition Use Permits cannot be granted, but does not say what can be granted. He provided an example. Vice-Chair Crisler explained that anything not listed under this Section could be considered.

Ms. Nancy Pendergast, 35 Sharon Rd, referenced Attorney Campbell's memo where he addressed "realistic opportunities for multi-family homes." She asked the Board if they were satisfied that the Town offered that in Residential B, Residential C, and the Village Center District. She asked if the Board wanted to add language allowing WFH in the Rural District or did the Board want to go forward with the Conditional Use Permit.

Board comments/questions included:

- Vice-Chair Crisler explained that the sub-committee thought the Conditional Use Permit (CUP) would give that opportunity, without being explicit in the Ordinance;

- The Committee also considered ways in which to encourage multi-family development; they determined that they could only do it through zoning and possibly working on re-zoning in the future;
- Ms. Nysten stated that the proposed WFH Ordinance allows multi-family in the Res C. According to Ms. Scott, multi family is not allowed in Res C in our zoning Ordinance. Ms. Nysten noted Res B and Res C Districts on the zoning map. She also noted multi-zoned parcels containing Res B or Res C.
- Vice-Chair Crisler noted that she and Ms. Nysten had a difference opinion about Residential C and the language is not clear. The Vice-Chair clarified what development was allowed in each District and stated that Residential C does allow for multi-family; however, the intent was to allow for manufactured homes and that is why a 7500 sq ft per lot size required. She thinks the Board ought to spend some time next year clarifying the distinctions.
- **Ms. Scott has placed on the 2012 agenda the task to clarify the intent of Residential C.**
- Vice-Chair Crisler noted that much of Residential C has already been built out as single family and that's why there is not much Res C left.
- Ms. Pendergast stated that under this proposed Overlay District, it would allow for WFH projects and multi-family, regardless what the Town's zoning says.
- Ms. Scott, in response to Vice-Chair Crisler's understanding of the various building allowed in the District's, stated that she would not interpret the actual written language in the same way. She explained the numbering was a bit odd and concurred that Multi-family is not allowed in C; however, manufactured housing is allowed.
- Vice-Chair Crisler noted that the sub-committee made it clear in the WFH Ordinance that multi-family is allowed in Residential C District.

Chairwoman Post closed discussion to the Public.

Chairwoman Post highlighted the points of the WFH discussion:

- Attorney Campbell's concerns;
- The zoning problems separated from the WFH Ordinance;
- The Grammatical correction;
- The Board is OK with the 5 acre minimum.

Vice-Chair Crisler motioned to move to the Warrant the Work Force Housing Overlay District Ordinance as amended:

- **Changing the word "minimum" to "minimal;" and**
- **Adding the words, "of the Windham Zoning Ordinance" after "Appendix A-1."**

Seconded by Ms. Webber. Motion passed: 7-0.

Meeting Minutes Review & Approve – December 14, 2011

Ms. Webber motioned to approve the minutes of December 14, 2012 as amended. Seconded by Ms. DiFruscia. Motion passed: 6-0-1. Chairwoman Post abstained.

Member Binder Update – Table of Contents & 2012 Meeting Schedule (Tab #2)

Old/New Business –No new business

Adjournment

Vice-Chair Crisler motioned to adjourn and was seconded by Ms. Skinner. Motion passed: 7-0.

The meeting adjourned at 9:58 p.m.

These minutes are respectfully submitted for your review by Mimi Kolodziej.