



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

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**Planning Board Minutes**  
**November 7, 2012**

**Board Members:**

Margaret Crisler, Chairman – Present  
Ruth-Ellen Post, Vice Chairman – Present  
Pam Skinner, Member – Present  
Kristi St. Laurent, Member – Present  
Jonathan Sycamore, Member – Excused  
Lee Maloney, Alternate Member – Present

Carolyn Webber, Member – Present  
Ross McLeod, Selectman Alternate – Excused  
Kathleen DiFruscia, Selectman, Member – Present  
Sy Wrenn, Alternate Member – Arrived at 7:08 pm  
Vanessa Nysten, Alternate Member – Present

**Conservation Commission**

Wayne Morris, Chairman – Present  
Jim Finn, Vice Chairman – Present  
Lisa Ferrisi – Present  
Bernie Rouillard, Alternate – Arrived at 7:30 pm

**Staff:**

Laura Scott, Community Development Director  
Nancy Prendergast, ZBA/Code Enforcement Administrator  
Elizabeth Wood, Community Planner  
Cathy Pinette, Planning Board Minute Taker

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

Chair Crisler called the meeting to order at 7:02 pm, followed by the Pledge of Allegiance and attendance. The Chair read the agenda for the evening, and noted that a storm was expected this evening.

- The Chair appointed Ms. Nysten to sit for Mr. Sycamore.

**2013 Town Meeting Workshop with Conservation Commission**

**Aquifer Protection District Ordinance (Section 609)**

- Ms. Scott stated that the Planning Board and Conservation Commission has a copy of her memo dated 10/30. This meeting was put on the agenda per a request from the Conservation Commission. They have asked for information about the changes to the Aquifer Protection District at the 2010 Town Meeting. The language that was removed under permitted uses said “all

uses permitted in the underlying districts if serviced by the Town water and sewer systems, otherwise at fifty (50) percent of the underlying district (i.e. double the acreage requirements of the underlying district)...” The Planning Board at the time felt that it would be better to limit the amount of impervious surface, as opposed to doubling the size of the lot. The language that was proposed and ultimately adopted by the voters and is now currently in the Zoning Ordinance is “Recharge Requirements: impervious within the Aquifer Protection District shall be no more than 50% of the total parcel area within the District...”(609.4.2 in the Zoning Ordinance)

Mr. Wrenn arrived at 7:08 pm.

- Ms. Scott stated there were 2 Planning Board workshops on the proposed changes to the Aquifer Protection District and Map as well as three public hearings. Reading the minutes from those meetings there was no public comments given. A few of the current PB members were on the PB at that time. The Conservation Commission Chair was invited to one of those meetings but there is nothing in the minutes to reflect that anyone from Conservation attended or provided comments.
- The Chair asked Ms. Scott about the aquifer map. Ms. Scott said that the entire aquifer map was changed, and the new map was created by Regional Planning Commission using new data.
- Mr. Morris stated he has looked at the CC minutes and this slipped by the Commission. He found out about it while in conversation with an engineer. His concern is that they went from doubling the lot size in the Aquifer Protection District to allowing half of a lot to be paved over. He would like to match the percentage with the Cobbett’s Pond and Canobie percentages of at 30% or 20%. The Chair asked Mr. Morris if he had a chance to look at the new map. Mr. Morris stated he probably doesn’t have an issue with the map if it’s coming from the Rockingham Planning Commission.
- The Chair stated the ordinance does not say “usable” area so you could pave over all of the usable space. The Planning Board would like to change this also.
- Mr. Morris stated that Mr. Rouillard had called Mr. Wilder today and asked about the purpose of doing this at the time, and Mr. Rouillard would be arriving shortly.
- Ms. DiFruscia asked if when the change was made if there were any consultations with environmental engineers or studies and what the ramifications were.
- Ms. Scott stated that mapping at the time was from 1968 and we are now using the 1992 mapping and there is a study for that. The Board looked at other towns and what they had in their ordinances, they spoke with the Rockingham County Planning Commission and counsel. There was no percentage before and the Board put in 50%. It was not science based and the Board thought 50% seemed reasonable at the time.

- Ms. Post stated she was on the Board at the time when the decision was made. She remembers referring to similar provisions in other towns and the Board was happy they put a limit as to prior to that there was no limit. She stated this was a good opportunity to revisit and possibly change it.
- Mr. Morris stated, regarding no limits, there have never been any issues with this. He stated when an applicant comes in and has discussions with the Planning Board and Conservation that they all come up with a reasonable percentage. He stated he thinks this is a good discussion to have with an engineer. Ms. DiFruscia agreed with Mr. Morris.
- The Chair asked the Board if they wanted to change the Ordinance for this coming Town Meeting or the next.
- Ms. DiFruscia stated she would like to change the percentage to make it more consistent with Cobbett's Pond Ordinance percentage.
- Ms. St. Laurent stated she would like more discussion in a more informed manner. If the Board is going to start changing numbers they need to know what other protections would be in place. She questioned what a suitable requirement for an Aquifer Protection District parcel is. Ms. Skinner, Ms. Webber and Ms. Post agree.
- Ms. Maloney stated she agreed with Ms. DiFruscia and would like to see it more consistent with Cobbett's Pond.
- Mr. Wrenn agreed with Ms. St. Laurent. He also stated he agreed with Ms. Post that the Board had looked at other towns that they modeled after and did not just pick a number.
- Mr. Morris stated he agreed with Ms. St. Laurent that this needs more research. There has to be some rational.
- Ms. DiFruscia stated it's very important to protect our water supply, a lot of study as gone into the Cobbett's Pond / Canobie Lake Ordinance.
- Ms. St. Laurent stated when applications in the Aquifer Protection District come in the Board can look at them closely and get more specific guidance on what's appropriate.
  - After reading the exact language of 609.4.2, Ms. Nysten agrees with Ms. DiFruscia.
- The Chair stated the Board would work together with Conservation and possibly Mr. Wilder for the 2014 Warrant.

Mr. Rouillard arrived at 7:30 pm.

- Ms. Scott stated she will be meeting with the Southern NH Planning Commission and will add this to her list of items to work on with them.

## **Open Space Residential Overlay District Ordinance (Section 611)**

- Ms. Wood stated she had provided the Board with an email from Chief Lewis with his comments. She stated that last year the Board didn't want to do any major changes they just wanted to work on the Yield Plan and Road regulations and make sure they were congruent with our Subdivision Regulations. She has provided edits to the Board from her meetings with Julie LaBranche. Because yield plans are more expensive they looked at providing incentives for builders to do open space. Comments were provided to the Board from Highway, Police and Fire. The comments did not want reductions in road width due to safety and maintenance. Ms. LaBranche had some questions to the Board regarding Section 611.6.3 and 611.6.6 that were given to the Board asking about whether minimum road width applies to public and private roads as well a question regarding impervious surface vs. building coverage (Ms. LaBranche's 10/16 e-mail).
- Mr. Rouillard stated yield plans were something the Conservation Commission ~~was~~ always intended would be done. They prefer road widths to be narrower. Wider road widths encourage speeding and unsafe driving.
- Ms. Post stated that a minimum of 18' does not seem to be a problem. There are a lot of comments from Highway, Police and Fire on the 18' but the proposed language states a minimum of 18'.
- Mr. Wrenn stated that a developer would look at the minimum and that is what he would build. He stated Mr. McCartney has a lot of comments based on 18' as well as Chief Lewis.
- The Chair stated that wider road widths help with pedestrians as Windham does not have a lot of sidewalks.
- Ms. Maloney stated that 22' should be adequate and that anything less would not be good.

The Chair opened the Hearing to the public at 7:45 pm.

- Mr. John Cronin addressed the Board. He stated that Concord has done very well with their narrow roads and their regulations state that the Planning Board can request more. In regards to the lot coverage issue, he stated that he felt that having a rigid number in the Ordinance for the open space development might be a little hard and something the Board should consider.
- Ms. Wood stated that 40% is the proposed incentives and the current is 20%. The Board had a workshop and that is the number they approved.

The public portion was closed.

- The Chair stated that private and public roads should be held to the same standards.

- Ms. Wood stated there is a typo in 611.6.3 that will be corrected.
- The Chair stated the Board wanted a yield plan change. She asked the Board what should be done about the roads.
- Ms. Post suggested changing 611.6.3 to reflect a minimum pavement width of 22' in light of the comments received from Highway, Police and Fire.
- Ms. Wood stated at the last workshop she provided the board with a chart. By sticking to the existing Sub Division Regulations the width would be 22'.
- Mr. Rouillard stated regarding the 40% maximum building coverage that he thinks 20% more than satisfies building requirements. Ms. Nysten agreed with Mr. Rouillard.
- Ms. Wood stated as proposed, if it's an open space subdivision 65% of the subdivision needs to be set aside as open space, and 60% of each lot could not have building coverage.
- Ms. DiFruscia stated she agrees with the 22 ft. road width rather than 18 ft. but disagrees with the 40% building coverage.
- Ms. Nysten asked if the language mentions private roads as was asked about by Ms. LaBranche. Ms. Wood said that it applies to private and public roads.

The Chair entertained a motion.

**Ms. Post motioned to retain the language regarding yield plans as proposed, eliminate the proposed language in section 611.6.3 because the subject is covered in the Subdivision Regulations, and adopt the proposed lot coverage language in section 611.6.6, seconded by Ms. DiFruscia. Motion passed 4 – 3 Ms. DiFruscia, Ms. Skinner and Ms. Nysten opposed.**

The Chair entertained a motion.

**Ms. Post motioned to move to Public hearing, seconded by Ms. St. Laurent. Motion passed 6 – 1. Ms. Nysten opposed.**

The public Hearing will be November 28<sup>th</sup>.

### **Cobbett's Pond and Canobie Lake Watershed Protection Ordinance (Section 616)**

- Ms. Prendergast stated she had some suggested modifications to the Cobbett's Pond and Canobie Lake Watershed Protection Ordinance. The Board was provided a copy of her letter dated November 2, 2012 with the suggestions. There is no intent to change the Ordinance she would

like to make it more understandable for the public. The proposal attempts to identify the 3 different watershed applicants that apply, Major, Minor, and Site Plan/Subdivision, and to clarify the requirements for each. Along with the clarified language she also moved language and intent of Section 616.10 Site Construction to Section 616.6.1 General and Section 616.6.4. Section 616.6 pages 4 and 5 have proposed language changes, Section 616.10 page 8 is proposed to be deleted, and Section 616.12.3 has a minor language change.

- She stated subdivisions and site plans require a hydrology study and plans submitted in accordance with section 616.7. This Section addresses impervious surface, runoff control and watershed protection measures. She does not think a separate storm water management and erosion control plan is needed. This does require submittal of a Site Plan/Watershed application (see proposed section 616.6.2).
- Development that is new home construction, additions, or rebuilds that will also render the lot with greater than 20% or 2,500 sq. ft. impervious surface (whichever is greater) will require the submittal of a storm management and erosion control plan as part of a Major Watershed Application (see proposed Section 616.3).
- Development which does not meet 1 or 2 of the above requires submittal of a Minor Watershed Application for review and approval (see proposed Section 616.6.1.2 and 616.6.3.1).
- Mr. Rouillard questioned page 4 of 9, Section 616.6.3 and asked if an addition would be included. Ms. Prendergast stated yes. Mr. Rouillard asked how this tied into Shoreline Protection. Ms. Prendergast stated the applicant has to submit plans to the State for permits. Mr. Rouillard asked if there was anything that referenced the Shoreline Protection Act. Ms. DiFruscia stated they have looked at the Shoreline Protection Act and made sure there were no inconsistencies. Ms. Post stated that State law trumps local laws.
- Ms. DiFruscia stated Ms. Prendergast's additions were excellent. She asked Ms. Prendergast why "new home construction applications" were taken out of the section. Ms. Prendergast stated that was not what the form was for. Ms. DiFruscia questioned "acceptable<sup>22</sup> to the Town Engineer". She would like to discuss this further with Ms. Prendergast and add that back in.
- Ms. St. Laurent stated they had several conversations with an engineer. If they are acceptable to DES and the Town's engineer that was how they came up with the wording. Ms. DiFruscia stated that usually DES only does a cursory review and she would like to keep the original language in the Ordinance. She also stated there was a sentence in Sections 616.1.2 and 616.10.3 and she would like to discuss this further with Ms. Prendergast.

Ms. Prendergast stated the next workshop would be November 28<sup>th</sup>.

## Zoning for Conservation Land Use

- Ms. Wood stated that the Board was given a memo from Dave Sullivan that addresses Ms. Wood's memo of 11/2 regarding Conservation Land Use. Ms. Wood and Ms. Skinner worked on this with advice from the Chair and Ms. Post. They wanted to look at the perceived challenges of Conservation Land Use. The Board wanted to look at this because of Zoning Map edits and Zoning Ordinance Edits. The problems/challenges are as follows:
  - Conservation is not listed as an allowed use in any of our current zoning districts
  - Public confusion - if development is allowed on a lot
  - Use clarification - what conservation uses are allowed
  - Location clarification – on zoning map can't tell where conservation exists
  - Strengthens the Guarantee of Perpetuity – there is concern if water and sewer become available and the political climate changes, conservation land could be changed to be used for purposes other than conservation.
- Ms. Wood stated the map that shows some of the land use is not clear, not user friendly and is not readily available to the public.
- There are arguments from Ms. Scott and Mr. Sullivan ~~about this~~ Ms. Wood read from a hand written memo from Ms. Scott in which Ms. Scott stated we have public confusion with other zoning districts and they can not list all the uses allowed and prohibited.
- Ms. Wood and Ms. Skinner both stated that anything in the deed supersedes the list and Ms. Wood added that language to her proposal. The map exists and Ms. Wood would like to work with Eric to make it a more user friendly, comprehensive land use map.
- Ms. Wood stated that Ms. Scott conveyed that there's no discussion of sewer and water right now. Ms. Wood told the Board that that could change.
- Ms. Wood stated Mr. Sullivan has lots of concerns about the proposed changes and she has captured them in her (Nov. 2<sup>nd</sup>) memo under her "Cons".
- The Chair stated Mr. Sullivan has similar concerns as Ms. Scott and he has suggested asking Town Counsel. Ms. Wood stated he has asked Town Counsel but has not heard back yet.
- Mr. Morris stated that concerns came from a request of the Planning Board to research this. He asked if there were any other towns that have this. The Chair stated that this (having a conservation zone) was also suggested by a resident. Ms Wood stated conservation zoning is for different purposes and stated the intent of another town's conservation is different than Windham, for instance, wetland protection vs. coastal protection.
- Mr. Rouillard asked why Windham doesn't list conservation as allowed in all districts. Ms. Wood stated that was something they considered but haven't gotten that far. Ms. Nysten stated that last

year when they worked on the Multi-Zone subcommittee they felt it would be better to have the conservation land on a map for developers to see where conservation land is.

- Mr. Morris stated they have submitted this information to the Board of Selectmen. It would be good to see where conservation land is on a map on the website. He questioned what difference it makes which zone it is in if it is conservation.
- Ms. Maloney stated the subcommittee was unaware there was a map and an inventory. Ms. Webber suggested one color on the map for conservation land.
- The Chair questioned if this takes away authority from the Conservation Commission or limits them as she does not see that in the Ordinance.
- Ms. DiFruscia stated she doesn't think we need a new zoning district and it would be taking it out of the Conservation Commission's hands.
- The Chair stated this is a good concept but looking at the details that is where the problems are. She thinks Open Space should be under Conservation.
- Ms. Nysten stated it is very helpful to show the Conservation lands on a map and if there is a map she would like it on the website. It would be very helpful for people to know if there is conservation land near their property. Windham has very little conservation land in comparison to many NH towns. She also suggested a different color on the map for conservation land. The Board suggested green.
- Ms. Scott stated that most towns have a conservation zoning district if it is for big areas. We also have some land use mapping in the Planning Board binder, The Board of Selectmen have all the land use maps, the open space and build out maps are on the website and you would need to know where to find them. They are working to get them all in one place and it is a work in progress.
- The Chair commended Ms. Wood and Ms. Skinner for their work and suggested that conservation is allowed in all districts and that open space be put under the purview of the Conservation Commission. We can add the open space being under Conservation Commission purview discussion to the warrant for 2014.
- Mr. Morris stated that not all open space has been deeded out yet.

The Chair entertained a motion.

**Ms. Webber motioned to add wording to Zoning to allow conservation land to be allowed in all zones, seconded by Ms. DiFruscia. Motion passed 7 – 0.**

- Ms. Scott said that this will be added to 2014 Town Meeting file.



- Mr. Morris stated that under “purposes” in the State’s definition of Zoning, the one thing the towns leave out “is to assure proper use of natural resources”. He would like that statement from RSA 674.17 added to the Town’s zoning Section 100 - Purposes. Board members indicated they were in agreement with that. Ms. DiFruscia asked if this was something easily addressed. Ms. Scott said that it goes right into the next workshop - Zoning Ordinance and Zoning Map

The Joint Meeting with the Conservation Commission ended at 8:58 pm. The Board took a short recess and was back in session at 9:04 pm.

## **2013 Town Meeting Workshop**

### **Zoning Ordinance and Zoning Map Clean-Up/Clarification Items**

- Ms. Wood outlined in her memo of 10/26 there are some corrections that do not need action by the Board or Town Meeting such as:
- Some zoning districts are not properly listed. She is working with the IT/GIS Director to amend the map on the Town’s website which will include all zones appropriately as listed in Section 300 of the Zoning Ordinances and Land Use Regulations.
- 122 North Lowell Rd is displayed incorrectly on the Zoning Map. It is multizoned NBD and RD; however, on the map it is shown CDA. Staff will correct this.
- 9 Porcupine Road is displayed as RD however; it is zoned mixed use RD and RDA.
- Salem Rd (Lot 13-B-71) is displayed correctly on the map as a multizoned parcel, however, the Multizone Subcommittee is concerned the written description is incorrect.

The following issues require Planning Board and Town Meeting action.

- 52 Lowell Road – This lot is zoned Neighborhood Business District and is tied to an open space subdivision. The Chair requested staff look at the file and give the Board a memo on this parcel.
- Gateway Zone 117, 121, & 123 Indian Rock Road – These lots are zoned Gateway and they contain single family homes. The Chair stated this should be put on the list for 2014.
- Section 603.1.5 references Section 709 which is an unused section. It should reference 704.2.
- Business Commercial A Zone – all references in the Zoning Ordinances to “Commercial A” shall be changed to “Business Commercial A”.
- Gateway Zone – this ordinance states the overlay takes precedence if its requirements differ from requirements of base zoning district. This could be a problem if someone wants to locate a retail store selling sexual items in this district.
- Section 300 – needs to be updated to include the Workforce Housing Overlay District.
- Section 300 – Suggested that this section be reordered in the same order as they appear in zoning.

The Chair entertained a motion.

**Ms. Post motioned to move to public hearing the edits in Section 603.1.5, to change all references from “Commercial A” to “Business Commercial A” seconded by Ms. DiFruscia. Motion passed 7 – 0.**

- Ms. Post questioned regarding The Gateway Zone and retail stores selling sexual items in this zone, if it could possibly have unintended consequences. Ms. Scott stated ~~it~~ sexually oriented businesses is only allowed in a certain section of Commercial A. The Chair stated it is very clear. Section 605.1.11, page 21 “Sexually oriented businesses is not reflected as retail. Ms. Wood and the Chair suggested some language to be added. Ms. Nysten suggested a definition be added. Ms. Scott suggested asking Attorney Campbell because of the concerns Mr. Case brought up, should the Board change the Gateway District language?

**Ms. Post motioned to move Section 300 edits, to include the “Workforce Housing Overlay District” wording to public hearing, seconded by Ms. DiFruscia. Motion passed 7 – 0.**

- The edits in Section 300 regarding the section being reordered to be in the same order as they appear in zoning was tabled for 2014 discussions.
- Ms. Wood asked Ms. Scott if the Board voted to move adding Mr. Morris’ comments to public hearing or is that a workshop. Ms. Scott said no the Board voted on that. Ms. Wood said so it’s a public hearing. Ms. Wood said she wanted to make sure.

#### **Appendix A-1**

- Ms. Scott stated that she has revised the document based on the 10/23 Planning Board workshop and gave the Board a copy. The Board wanted her to check with Attorney Campbell on Note 2 on page 2 regarding using frontage on private roads to satisfy frontage requirements, wanted clarification on the document referenced on page 4 and they asked how the discrepancies in the soils table occurred.
- Ms. Scott summarized Atty Campbell’s comments to the Board. Ms. Scott said Atty Campbell says to remove the second sentence on Note 2 and remove the phrase “in Residence B” at end of sentence that starts “Private roads may be allowed to satisfy frontage requirements...” Ms. Scott passed out Atty. Campbell’s comments (11/7/12 e-mail and 11/5/12 memo) to the Board.
  - The Board and Ms. Scott discussed Atty. Campbell’s comments regarding Note 2, page 2 about using frontage on private roads to satisfy frontage requirements. Ms. Post, The Chair and Ms. Nysten don’t agree with Ms. Scott’s interpretation of Atty. Campbell’s comments and asked that Attorney Campbell supply the Board with the exact language that should be used.
- Ms. Scott said that the document referenced on page 4 of proposed Appendix A-1 is to be used as a reference for those trying to understand soil types. It is not where the soil table came from nor does it state that in Appendix A-1. The document referenced was provided by the Rockingham

Planning Commission and is on file on the planning library in the Community Development office.

- Ms. Scott said that Tom Case sent an email to the Community Development office stating there are some inaccuracies in our Existing soils table and they should be corrected. She doesn't know what Mr. Case is basing his information on. (This is a separate issue from the errors on the Proposed Appendix A-1 Soils Chart).
- The Chair received a copy of Mr. Case's e-mail from Ms. Scott, but the rest of the Board did not. Ms. Post stated she would like to see copies of written comments from citizens when they come in and she would like them to be passed out to all the Board members. She thinks the soil types should be looked at later when someone who understands those numbers is there to discuss. Ms. Scott stated they will be looked at for 2014.
- Ms. Nysten asked if a weblink could be added to page 4 of the Proposed Appendix A-1 for the High Intensity Soil Maps for NH Standards document referenced. She stated it also appears the ordinance references a different soil type chart and did not want to reference a different soils chart than the one listed in the Ordinance. Ms. Scott stated it was a reference for interpreting soil types. The Chair suggested language, and Ms. Scott will add "for interpreting soils types".
- Ms. Scott stated that she confirmed that Ms. Nysten was correct, and there were seven incorrect soil types listed on the Proposed Appendix A-1 Soils Chart. The Chair asked Ms. Scott if she found out why. Ms. Scott indicated that she did not.
- There was new language (definitions) moved from Appendix A-1 and added to Section 601.2.
- Ms. Nysten stated on page 2, number 8, that it was suggested by Ms. Prendergast that the Board add language to look at Sections 610, 611, and 619, and Ms. Nysten would also like added, "in addition to the information in the Appendix" they should also refer to Sections 610, 611, and 619. This previously requested change was supposed to be made for this draft but wasn't.
- Ms. Nysten questioned the location of Note 8. Ms. Scott suggested leaving it where it is. ~~She~~ Ms. Nysten suggested adding to the top of every page in the document "Appendix A-1". The Chair agreed.

The Chair entertained a motion.

**Ms. DiFruscia motioned to move this to public hearing with Mr. Campbell's suggested wording to be incorporated as well as all the changes that were made tonight. Seconded by Ms. Post. Motion passed 7 – 0.**

**Meeting Minutes Review and Approve**

- September 26<sup>th</sup>

- October 3<sup>rd</sup>
- October 17<sup>th</sup>
- October 23<sup>rd</sup>

Minutes were postponed to a later date.

### **Liaison Reports**

- There were no Liaison reports.

### **Adjournment**

The Chair entertained a motion.

**Ms. DiFruscia motioned to adjourn, seconded by Ms. Skinner. Motion passed 7 – 0.**

Meeting adjourned at 9:55 pm.

These minutes were approved 1/2/13 with edits and respectfully submitted by Cathy Pinette, Planning Board Minute Taker.