



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

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**Planning Board Minutes**  
**December 12, 2012**

**Board Members:**

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

Carolyn Webber, Member – Excused  
Ross McLeod, Selectman Alternate – Present  
Kathleen DiFruscia, Selectman, Member – Excused  
Sy Wrenn, Alternate Member – arrived at 7:10 pm  
Vanessa Nysten, Alternate Member – Present

**Staff:**

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

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

Vice Chair Post called the meeting to order at 7:05 pm, followed by the Pledge of Allegiance and attendance. The Vice Chair thanked the Board for last weeks late hour meeting and their commitment. The Vice Chair read the agenda for the evening.

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

Ms. Nysten read Case # 2012-13 / WWPD Special Permit into the record.

**Case # 2012-13 / WWPD Special Permit**

A Wetland and Watershed Protection District (WWPD) Special Permit Application has been submitted for Lot 24-F-198 (79 Heritage Hill Road) located in the Rural District and Wetland and Watershed Protection District (WWPD). The applicant, Meisner Brem Corporation on behalf of the property owners James and Ruth-Anne Calandra, is proposing to construct a cabana, and a portion of an in-ground swimming pool, patio, and lawn within the WWPD. The applicant is also proposing to relocate a portion of an existing stone wall on the property and within the WWPD.

- Ms. Prendergast stated that the applicant is proposing to construct a portion of an inground swimming pool and its surrounding patio, lawn area and a retaining wall within the WWPB. The applicant has received a variance from the ZBA with conditions and they have gone through the TRC process.

The Vice Chair entertained a motion to accept Case # 2012-13 / WWPD Special Permit for public hearing.

**Mr. McLeod motion to accept Case # 2012-13 / WWPD Special Permit for public hearing, seconded by Ms. Nysten. Motion passed 4 – 0.**

- Ms. Prendergast stated that the plans look good and her recommendations are to change note 1 to state “the purpose of this plan is to accompany a WWPD special permit application to construct a portion of an inground swimming pool and its surrounding patio, lawn area, and a retaining wall within the WWPP thereby removing any reference to the cabana. Also change note 8 to remove reference to the cabana.

Mr. Wrenn arrived at 7:10 PM and was seated on the Board for Ms. Webber.

- Mr. Robert Ballquest, Meisner Brem Corporation, representing the applicant addressed the Board. He stated they are proposing to construct a portion of an inground swimming pool and its surrounding patio, lawn area, and a retaining wall within the WWPD. He handed the Board photos of the area that is being impacted. He stated the property was located on a cul-de-sac, it is 2.8 acres, a brook bisects the property, they are very limited in where they could put the pool, and there proposing to move the retaining wall. They are impacting 40 feet into the WWPD where 100 feet is required and they received a variance for this from the ZBA. The pool is impacting 324 sq ft, patio will be impacting 574 sq ft., and lawn will be impacting 1314 sq ft. In the variance application for the Zoning Board he had propose putting it in the WWPD but now they are moving outside the WWPD. All construction will be protected with silt fencing for erosion control. He is also proposing to fill in with plantings around the pool area which include blueberry bushes and white saplings seedlings. The area that will be impacted is mostly wooded, and they are only impacting near the existing retaining wall. No major clearing will take place.
- Ms. St. Laurent asked what type of drainage control will be provided for the impervious surfaces. Mr. Ballquest stated that the surrounding proposed lawn should be sufficient. 15 feet is the width of the surrounding the patio.
- Mr. McLeod stated he was concerned with adding a pool into the WWPD. It is a nice addition to the lot but it is not needed and it's encroaching on the WWPD. Mr. Ballquest stated he thinks the new trees will help. They are only impacting 40 feet at its greatest into the WWPD and 20 feet at the least. Mr. McLeod asked why they would not dig up and move the basketball court and put the pool there? He stated flipping the court to the other side of the house would work and not impact the WWPD. Mr. Ballquest feels that the basketball court would have more runoff and that seems unnecessary to dig it up. Mr. McLeod stated he has great concerns with this proposal.
- Ms. Nysten stated there is a drainage easement on the left side and asked if it was for this property. Mr. Ballquest stated there are catch basins on Heritage Hill Road and the easement is for the drainage pipe. The easement is not for this lot. Ms. Nysten asked if this pool would need

to be drained. Mr. Ballquest stated yes there was a condition of the variance that they don't empty the pool into the drainage easement.

- Mr. Wrenn asked if they had a variance for the cabana and were also adding a shed. Mr. Ballquest stated yes they were adding a shed. Mr. Wrenn asked how high the retaining wall would be. Mr. Ballquest stated it would be the same size. Mr. Wrenn and Ms. St. Laurent both stated this land slopes and questioned the height of the retaining wall. Mr. Wrenn stated there would be a lot of fill going in the area. He questioned as did Mr. McLeod, why they would not move the basketball court to keep everything else out of the WWPD. Mr. Ballquest stated he is not sure there is an area to do that. There is also an electrical line underground. That is the owners design for their pool so they could walk out of their house and go right to the pool.
- Ms. St. Laurent stated that the quantity of impact into the WWPD is significant and asked if the corners could be rounded to help reduce the impervious surface. She is also concerned about the height of the retaining wall. She stated the height would be in excess of 10 feet because of the sloping and she questioned if the applicant would be adding a fence. Mr. Ballquest stated they could do that if required.
- The Vice Chair reminded the Board that the applicant has a variance for those items and she directed the Board to Section 601.4.8.3 regarding WWPD special permit approval stating that the applicant shall submit evidence. She stated she thinks the Board's concerns they expressed can be addressed as conditions of approval.
- Mr. McLeod stated they shall submit evidence of that what they are proposing is in the spirit and intent. He stated there are no plans for the 2300 sq ft of lawn area sloped away from the pool and questioned where the mitigation was to keep drainage from the WWPD.
- Ms. Nysten asked what type of patio material they would be using. Mr. Ballquest stated he wasn't sure if it was poured concrete block.

The Vice Chair open hearing to the public at 7:32 PM, hearing no comment, the public portion was closed

- Ms. Prendergast stated that the variance was granted to allow work into the WWPD and the Board can impose restrictions. She stated Mr. Bellquest was given a recommendation on the pool filtration system and the Board can add a condition of approval for that.
- Mr. Wrenn asked what the justification was from the ZBA to give this variance. Ms. Prendergast stated hardship, utility line location, well location and lay of the land.
- Mr. McLeod stated the use has been granted by the ZBA but it's up to the Planning Board whether to grant the special permit. He would like to see more information on the pool filtration system, plan for plantings, he is not happy with blueberry bushes and small white pines, and he would like to see mitigation for the WWPD impact and a plan for fertilizer and pool chemicals.

- The Vice Chair stated she agrees with Mr. McLeod and would also like clear details about erosion control. Mr. Wrenn stated they pretty much maximized their intrusion into the WWPD. He asked Mr. Ballquest what the size of the patio would be. Mr. Ballquest stated 8 feet with 15 feet of lawn area around the pool. Mr. Wrenn question why 15 feet instead of 5 or 10 feet to minimize impact on the WWPD.
- The Vice Chair is concerned of the degree of intrusion into the WWPD and stated the applicant needed to reduce that.
- Ms. Nysten asked if the homeowners have considered doing less of the patio on the WWPD side and question whether brick was good to use. Mr. Ballquest stated porous pavers could be used. The Board consensus was that was a consideration for condition.
- Ms. St. Laurent's asked if it was a saltwater or chlorinated pool. Mr. Ballquest stated he did not know.

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The Vice Chair entertained a motion.

**Mr. McLeod motioned to continue the hearing to January 16, 2013 to allow the applicant to address the issues the Board is concerned with regarding moving the basketball court and the pool location, intrusion into the WWPD, porous pavers, rounding corners to reduce impervious surface, the size of the patio, erosion control methods, and the height of the retaining wall, seconded by Ms. Nysten. Motion passed 5 – 0.**

- Ms. Prendergast stated she will work with Mr. Ballquest to address these issues.

Ms. Nysten read the hearing notice for the Cobbett's Pond and Canobie lake Watershed Protection Ordinance, Section 616 into the record.

**Cobbett's Pond and Canobie lake Watershed Protection Ordinance, Section 616**

Amend Section 616.4 to include gravel driveway and parking areas in the definition of Impervious Surface; amend Section 616.6 to identify the 3 different watershed applications that apply to development within the Cobbett's Pond and Canobie Lake watersheds (Site Plan/Subdivision, Major, and Minor), and to clarify the requirements for each; delete Section 616.10 and include the language and intent of this Section in Section 616.6; renumber Section 616.11, 616.12 and 616.13 as 616.10, 616.11, and 616.12; delete the language "as listed in Section 616.13.4" from the new Section 616.12.3.

- Ms. Prendergast stated the Board has had discussions on this and went through the whole intent and she has provided everyone with the ordinance. The Board also has in their packages comments from Attorney Campbell. Ms. Pendergrass recommended the following additions to the ordinance. Add to Section 61 6.6.1.2 " major watershed applications are reviewed and approved by the Planning Board", add to Section 61 6.6.1.3" minor watershed applications are reviewed

and approved by the code enforcement administrator and/or the building inspector", and add a definition to Section 616.4 for redevelopment stating " redevelopment - " any development that results in a net change in the amount of impervious surface". She stated the additions would provide clarification and there is a question on what the word " redevelopment" means and it was originally in Section 616.10 and now it is relocated into Section 616.6.4.2. Attorney Campbell was concerned that the Board wanting to require someone to decrease impervious surface if they are just doing a septic system.

- The Vice Chair stated Attorney Campbell questioned the numbers for impervious surfaces. Ms. Prendergast stated in one Section the Board had "including gravel driveways and parking areas".

The Vice Chair entertained a motion to open the public hearing.

**Mr. McLeod motioned to open the public hearing on the Cobbett's Pond and Canobie lake Watershed Protection Ordinance, Section 616, seconded by Mr. Wrenn. Motion passed 5 – 0.**

- The Vice Chair stated they were to propose substantial changes, one on impervious surface and one on the definition of redevelopment. The Vice Chair stated Ms. Pendergrass proposed "any development that makes changes to the existing impervious surface". Ms. Prendergast explained to the Board how it worked if they reduce impervious surface. She stated the Board noticed impervious surfaces in the hearing notice and they would only need a rehearing for redevelopment.
- Ms. Nysten questioned if someone makes a change but it still has the same impervious surface. Ms. Prendergast stated she interprets it to say if you change it and it stays the same it is fine. Ms. Prendergast stated that is why she's asking the Board what their intent is. She also stated they didn't have a definition for redevelopment.
- Ms. St. Laurent commented rather than worry about amounts, what if the wording said development regarding impervious surfaces.
- Mr. Wrenn asked Ms. Pendergrass about clarification of major and minor watershed applications and the percentages. Ms. Prendergast explained the difference and the Board discussed major and minor applications. Ms. Prendergast stated the descriptions were not clear on the applications.
- The Board discussed Section 616.6.1.2 and .3 and the suggestion of adding the words "or redevelopment". Ms. Prendergast stated she thinks development is more restrictive than redevelopment. Ms. St. Laurent spoke to Section 616.6.4.2 and redevelopment. Ms. Nysten stated if someone is replacing a septic system she doesn't think the Planning Board should be involved in that. Ms. Prendergast stated if you replace in-kind the Board doesn't need to know, the Community Development Office does. Ms. Prendergast stated that the most places you find the largest amount of impervious in the lake. Mr. Wrenn suggested " that makes an increase in this percentage of impervious surfaces". Ms. St. Laurent suggested in Section 616.6.4.2 adding " replacement in-kind of existing..."

The chair entertained a motion.

**Mr. McLeod motioned to add additional language in Section 61 6.6.4.2 regarding " replacement in-kind" and changing" redevelopment" to “development”, seconded by Mr. Wrenn motion passed 5 – 0.**

**Mr. Wrenn motioned to Add to Section 61 6.6.1.2 " major watershed applications are reviewed and approved by the Planning Board", add to Section 61 6.6.1.3" minor watershed applications are reviewed and approved by the code enforcement administrator and/or the building inspector, seconded by Mr. McLeod. Motion passed 5 – 0.**

- Ms. Nysten questioned if the Board included gravel driveways and parking areas as Attorney Campbell had recommended. Ms. Prendergast stated that was already in the Ordinance in Section 616.10 and we made a clear statement included in the definitions. The Vice Chair believes we are covered by that statement.
- Ms. Nysten stated in Section 616.6.3 it talks about Section 616.12. Ms. Prendergast stated that Section refers to emergency situations that the code enforcement officer and the building inspector go out to the field and approve.

The Vice Chair entertained a motion.

**Mr. McLeod motioned to send the proposed changes to town warrant with the exception of Section 616.6.4.2 which was already changed, with staff suggested changes that were noticed, seconded by Mr. Wrenn. Motion passed 5 – 0.**

**Mr. McLeod motioned to move to public hearing on Section 61 6.6.4.2 to include the language of" replacing in kind”, seconded by Mr. Wrenn. Motion passed 5 – 0.**

Ms. Nysten read the hearing notice for Zoning Ordinance Clarification, Section 302 into the record.

#### **Zoning Ordinance Clarification, Section 302**

Amend Section 302 to specify that the Workforce Housing Overlay District is “without actual physical boundaries”.

The Vice Chair entertained a motion.

**Mr. Wrenn motioned to open for public hearing Zoning Ordinance Clarification, Section 302, seconded by Mr. McLeod. Motion passed 5 -0.**

- Ms. Wood stated at the November 28th meeting the Planning Board reviewed minor edits to the Zoning Ordinance related to grammar and other inconsistencies. Per the advice of Town Council, the Board was advised to make an additional edit to Section 302 to specify that the Workforce

Housing Overlay District is without physical boundaries which are not defined by boundary lines on said map but are districts determined by criteria.

The Vice Chair entertained a motion.

**Mr. McLeod moved to send Section 302 changes to town warrant, seconded by Mr. Wrenn. Motion passed 5 – 0.**

- Ms. Wood stated after the November 28th meeting she received an e-mail from citizen stating where all the districts were listed in the Ordinance it referenced Cobbett's Pond watershed when in fact it should say Cobbett's Pond/Canobie Lake Watershed. Ms. Dunn spoke at the meeting regarding this. It only applies to Section 616. For all intent it doesn't change the intent.

The Vice Chair entertained a motion.

**Mr. McLeod motion to amend Section 300.16 to include Canobie Lake and Section 302 to include Canobie Lake and to send to Town Warrant, seconded by Mr. Wrenn. Motion passed 5 – 0.**

The Board took a recess at 8:55 PM and was back in Section at 9:07 PM.

Ms. Nysten read the public hearing notice for Open Space Residential Overlay District, Section 611 into the record.

**Open Space Residential Overlay District, Section 611**

Amend Section 611.5.4.1 to clarify that submission of a yield plan (complying with zoning provisions governing lot design, wetland setbacks and all other applicable regulations) is a requirement for all open space subdivision proposals; amend Section 611.6 pertaining to Road Standards, making the road standards for open space subdivisions the same as those for regular subdivisions, and; to amend Section 611.6.5 permitting the maximum building coverage of a lot in an open space subdivision to be up to 40%.

The chair entertained a motion.

**Mr. Wrenn motioned to move to public hearing Open Space Residential Overlay District, Section 611, seconded by Mr. McLeod. Motion passed 5 – 0.**

- Ms. Wood stated the Board looked at this ordinance at public hearing on November 28th and also looked at Attorney Campbell's comments. Attorney Campbell's comments were added. The goals of this ordinance were to provide incentives for open space. The Board had asked staff to create a visual representation of existing building coverage allowances which is 20% versus possible scenarios for proposed building coverage allowances of 40% open space subdivisions. Ms. Wood gave a presentation to the Board showing the different building coverage allowances.

- Mr. Wrenn questioned what the Board was encouraging by changing the Open Space overlay district. Ms. Wood stated this year's proposal was to increase the building coverage from 20% to 40%. Also to possibly change the road standards as the open space subdivision road standards are more strict than traditional subdivision standards. The traditional road standards were changed but the open space standards were not changed. Edits also include amending Section 611.5.4.1 to clarify that submission of a yield plan is a requirement for all open space division proposals, amend Section 611.6 pertaining to road standards making the road standards for open space subdivisions the same as those for regular subdivisions, and amend Section 611.6.5 permitting the maximum building coverage of a lot in an open space subdivision to be up to 40%.
- Mr. McLeod likes the Open Space Ordinance but the key is to try to put an incentive and to make developers want to do them. He is concerned about raising building coverage to 40%. He thinks keeping it at 20% is good and staff can gather comments and information from developers over time to see what kinds of incentives they would like. Ms. Wood stated that other towns allow more lots and while working with Julie LaBranche, Senior Planner with the RPC, who also suggested that, Ms. Wood stated Windham does not want that, and the other incentive was the roads but the Fire Chief and the Police Chief did not want that. The only incentive they worked with was the building coverage.
- Ms. Nysten stated part of the incentive is to not have so much road. The Vice Chair stated she has heard from builders that there is an incentive with the road paving and costs. Ms. Wood stated she has been told in Windham that wasn't the case as in other towns because of infrastructure costs related to the roads.
- The St. Laurent spoke about the percentages in the house sizes with the 20% building coverage. Mr. McLeod and Mr. Wrenn both stated to change to anything beyond 20% was solving a problem that doesn't exist.
- Ms. Nysten asked what other towns were doing for incentives. Ms. Wood stated they are giving additional lots. Ms. Wood stated at the recent Law Lecture it was said some towns are fast tracking open space developments as incentives and they also spoke to reducing road coverage and building coverage. The Vice Chair stated that open space development is a way around wetlands and topography issues. They get the same number of lots and the wetlands become open space.
- Mr. Wrenn questioned the yield plans language. Ms. Wood said it means the same thing, but it's just clearer to applicants and the Board. Mr. Wrenn said the incentive was they couldn't get those lots because of wetlands and other issues and the open space subdivision allowed them to. The Board and Ms. Wood discussed yield plans and what they require.
- Ms. Nysten would like more information on bonus lots given out in other towns. She would like to send this to warrant as is, and then next year look at incentives.



- Ms. St. Laurent stated the fact is the yield plans are very expensive to do although it does provide the necessary information for the Board to decide. We don't want to be unreasonable but we want to protect the Town. Mr. Wrenn agreed with Ms. St. Laurent. Mr. Wrenn stated there needs to be two engineering plans and there's lots of expense doing the engineering and then doing open space subdivision engineering. Mr. Wrenn thinks the Board should think about incentives next year.

The chair entertained a motion.

**Ms. Nysten motioned to move to warrant with the proposed changes and changing 40% to 20% in Section 6 11.6.5 and work on the incentives next year, seconded by Mr. McLeod. Motion passed 5 – 0.**

**Mr. McLeod motion that anything the Planning Board puts forward for the warrant shall have the breakdown of the Board's vote reflected and the comment “recommended by the Planning Board” on each warrant articles/amendment when appropriate, seconded by a Mr. Wrenn. Motion passed 5 – 0.**

Ms. Nysten read the public hearing notice for Sexually Oriented Business, Definitions Section 200

**Sexually Oriented Business, Definitions Section 200**

Amend Section 200 of the Definitions Section pertaining to Sexually Oriented Business to state: As defined in Section 605.1.11.2, for the purposes of this ordinance Sexually Oriented Business shall not be considered a “retail” sales use, but shall be a use permitted only where specifically allowed.

- The Vice Chair stated this was just to clarify language.

The Vice Chair entertained a motion.

**Ms. Nysten motioned to open to public hearing Sexually Oriented Business, Definitions Section 200, seconded by Mr. Wrenn. Motion passed 5 - 0.**

The Vice-Chair entertained a motion.

**Ms. Nysten motioned to move the proposed language to Section 200, definitions, to town warrant, seconded by Mr. Wrenn. Motion passed 5 – 0.**

Mr. McLeod left the meeting at 9:55 PM.

Minutes

**September 26, 2012**

**Ms. St. Laurent motioned to approve the edits to the September 26, 2012 draft minutes as**

**suggested by Ms. Nysten and provided to the Board and staff, seconded by Mr. Wrenn. Motion passed 4 – 0.**

- The Vice Chair had some minor amendments.

**Mr. Wrenn motioned to approve the amended draft minutes of September 26, 2012, seconded by Ms. St. Laurent. Motion passed 4 – 0.**

- October 3, 2012 and October 17, 2012 draft minutes will be discussed at a later date due to a lack of members who can vote this evening.

**October 23, 2012**

**Ms. St. Laurent motioned to approve the edits of October 23, 2012 draft minutes as suggested by Ms. Nysten and provided to the Board and staff, seconded by Ms. Nysten. Motion passed 3 – 0 -1 with Mr. Wrenn abstaining.**

- The Vice Chair had some minor amendments.

**Ms. St. Laurent motioned to approve the amended draft minutes with changes of October 23, 2012, seconded by Ms. Nysten. Motion passed 3 – 0 -1 with Mr. Wrenn abstaining.**

October 31, 2012

**Mr. Wrenn motioned to approve the edits of October 31, 2012 draft minutes as suggested by Ms. Nysten and provide to the Board and staff, seconded by Ms. St. Laurent. Motion passed 4 – 0.**

**Old/new business**

- The Vice Chair stated the Board was given member binder updates. Next meeting will be held at 6 PM.

**Adjournment**

The Vice Chair entertained a motion to adjourn.

**Mr. Wrenn motion to adjourn, seconded by Ms. Nysten. Motion passed 4 – 0.**

- Meeting adjourned at 10:20 PM.

These minutes were approved 1/23/13 and are respectfully submitted by Cathy Pinette, Planning Board Minute Taker.

