



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

PO Box 120, Windham, New Hampshire 03087

(603) 432-3806 / Fax (603) 432-7362

[www.WindhamNewHampshire.com](http://www.WindhamNewHampshire.com)

**Planning Board Minutes**

**May 1, 2013**

**Board Members:**

Kristi St. Laurent, Chairman – Present  
Margaret Crisler, Vice Chair – Excused  
Pam Skinner, Member – Excused  
Jonathan Sycamore, Member – Present  
Sy Wrenn, Member – Present  
Carolyn Webber, Member – Excused

Ross McLeod, Selectman – Present  
Kathleen DiFruscia, Selectman Alternate, Excused  
Lee Maloney, Alternate Member – Excused  
Vanessa Nysten, Alternate Member – Present  
Alan Carpenter, Alternate Member – Present

**Staff:**

Elizabeth Wood, Community Planner  
Cathy Pinette, Planning Board Minute Taker

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

Chair St. Laurent called the meeting to order at 7:02 pm, followed by the Pledge of Allegiance, member attendance and gave a brief synopsis of the agenda.

The Chair stated there is still an alternate position open on the Board.

Ms. Nysten was seated for Ms. Crisler, Mr. Carpenter was seated for Ms. Webber, and Mr. Wrenn will be serving as Vice Chair.

**Planning Board Alternate Appointments – Review and Recommendation**

The Chair stated Mr. Jim Fricchione has expressed an interest in serving as an alternate.

- Mr. Jim Fricchione, 6 Bayberry addressed the Board. Mr. Fricchione stated he would like to become more involved in the community and would like to be an alternate on the Planning Board. He stated he was new to Windham with his family and he would like to apply his 20 years of diverse business experience to the position. He spoke about his current professional position and past positions.
- The Board asked Mr. Fricchione what his current job was. Mr. Fricchione stated he was vice president of sales. The Board asked why he chose the Planning Board. Mr. Fricchione stated he has been to several meetings because of the Bayberry subdivision and likes how the Board operates. The Board asked if he was familiar with the Town ordinances or regulations. Mr. Fricchione stated no, but he was willing to learn. The Board asked Mr. Fricchione what he has done in preparing for a commitment to the Board. Mr. Fricchione stated he has looked at the website and asked questions of Ms. Wood.

**Mr. McLeod motioned to go into nonpublic session at 7:12 PM under RSA 91A-3 (c) to discuss reputations, seconded by Mr. Sycamore. Roll call: Chair St. Laurent – yes, Mr. Sycamore – yes, Mr. Wrenn – yes, Ms. Nysten – yes, Mr. Carpenter – yes, and Mr. McLeod – yes. Motion passed 6 – 0.**

The Board was back in public session at 7:20 PM.

- The Chair stated the Board was in favor of appointing Mr. Fricchione to the position of alternate Planning Board member and asked Mr. Fricchione if he would like a one or two year term. Mr. Fricchione stated he was fine with either.

**Mr. Sycamore motioned to appoint Mr. Fricchione to a two-year term as an alternate on the Planning Board, seconded by Mr. Wrenn. Motion passed 6 – 0.**

Mr. Wrenn read Case#2013-6 into the record. The Chair asked Ms. Wood if this application was complete and Ms. Wood stated yes.

### **Public Hearings**

#### Case#2013-6/Whelan Estate Subdivision/Watershed/139 Range Road (22-R-200)

A Subdivision Application and Cobbett's Pond & Canobie Lake Watershed Site Plan and Subdivision Application have been submitted for 139 Range Road (22-R-200), located in the Rural District, Cobbett's Pond & Canobie Lake Watershed Overlay Protection District, and Wetland and Watershed Overlay Protection District zones. The applicant, Karl Dubay of The Dubay Associates, Inc., on behalf of the Richard T. Whelan Estate, is proposing to subdivide the lot into two lots, one lot sized 3.328 acres (144,967.7 sq. ft) to contain the existing single family home, and another vacant lot sized 2.630 acres (114,555 sq. ft.) for future single-family development. Access for the future residence is proposed off of Settlers Ridge Road. A protective, no-cut buffer easement, sized 2.363 acres (102,940 sq. ft.) surrounding the wetland is also proposed and will be dedicated to the town.

- Ms. Wood stated they were two items left for each Board member at their seat. One is an e-mail from Town Administrator Dave Sullivan regarding the easement and one is an e-mail from Attorney Christopher Boldt which is nonpublic but the Board will need to be aware of the advice given for this case. Chair St. Laurent stated the Board of Selectmen have been going back and forth with Attorney Boldt regarding this case.
- Ms. Wood stated there are no variances or waivers requested for this proposal. She stated there have been reviews done by Keach Nordstrom Associates, the Technical Review Committee, the Conservation Commission, the Highway Department, and the Highway Safety Committee. All recommendations are outlined in her memo dated April 26, 2013. She also stated when the abutter mailing was done there was missing data in the database for Parcel A. Mr. Spano's was not in the database and Ms. Wood e-mailed him and mailed him the notice for this case. She suggested as a condition of approval that both applications be contingent on each other getting approved.

**Mr. Carpenter motioned to accept for public hearing Case#2013-6, seconded by Mr. McLeod. Motion passed 6 – 0.**

- Mr. Karl Dubay of the Dubay Group representing the applicant addressed the Board. He stated Mr. Keach reviewed the hydro report and had no comments. He stated this is a 6 acre lot with one existing house and they are dividing it into two lots and adding a new house. He stated after legal review it was recommended to make it a private easement covenant. Mr. Dubay stated the new house will face Settlers Ridge Road.

Mr. McLeod recused himself from the case as this will need to go before the Board of Selectmen.

- Mr. Dubay stated that Parcel A was supposed to be dedicated to the town of Windham many years ago. He stated there is an old road under Parcel A and that according to the RSA's landowners still have a right to access their property. He stated the plans have been cleaned up but not submitted yet and he is waiting for State subdivision approval.
- The Board questioned if the applicant looked into buying Parcel A. Mr. Dubay stated they are not sure if the town accepted it or who owns it. The Board discussed the no cut zone and placing metal markers on trees and recording that in the deeds. The Board discussed the fact that there were two locations on the plans that a well would be. Mr. Dubay stated one location is where the proposed well would go but the actual house plan lot could have it in a more desirable spot. The Board asked Mr. Dubay if the old well would be filled in and would be noted on the final plan. Mr. Dubay stated yes.

The Chair opened the hearing to the public at 8 PM, hearing no comments the public portion was closed.

**Mr. Carpenter motioned to approve as presented the subdivision application Case#2013-6 the following conditions: The applicant must provide a copy of the State Subdivision Permit once it is issued for the file and add the Permit# of the approval to the plan, The “No-Cut Buffer” must be noted on a private deed restriction for Lots 22-R-200 and 22-R-201 and a note must be added to the Subdivision Plan stating that the “No-Cut Buffer” is a private deed the Restriction. Provide a copy of each of the property deeds after they have been recorded at the Registry of Deeds, The “No-cut Buffer must be marked with placards which must be placed in clear view, Add a note to the plan stating that Settler’s Ridge Road is a closed drainage system, thus no alteration of the existing curb will be permitted when the driveway for Lot 22-R-201 is built. The new finished driveway must be level with the existing curb, The applicant must submit a financial guarantee (bond, cash, or letter of credit) to the Community Development Department in the amount of \$2,500 to ensure driveway is installed properly and to cover any damages that may occur to the existing closed drainage on Settlers Ridge Road as a result of installation prior to the finalization of this subdivision, Add a note to the plans stating that Dig Safe must be contacted prior to installing storm drains, the under drain, and underground utilities, Approval of this application is conditioned on the Board of Selectmen accepting “Parcel A” and incorporating it as part of Settlers Ridge Road and also conditional on final acceptance of Settlers Ridge Road; and, that the placement of the driveway for Whelan Lot 22-R-201 occur within the “pan handle” segment so that any**

drainage flows away from the “pan” of Parcel A. A note must be added to the plan to this effect, Add the name of the proposed subdivision to the Title Block, Amend the plan to note the correct addressing for proposed Lot 22-R-200; it should be house# 5 Settlers Ridge Road, Per Section 504.1.4 the Plans must contain base flood elevation data; thus, on Sheet 2 of the plans, add the FIRM number referenced under “Zoning Ordinance Notes” (Although this information is detailed in Note 4, Sheet 3, it should also be made clear on Sheet 2 as referenced), Indicate the Right-of-Way widths of existing roads. If widths varies, note widths of widest and narrowest sections, Add benchmark elevation, shown on Sheet 3, on all other plans sheets depicting site, in accordance with Section 701.1.3.11, Update Sheet 3 of the plans to reference the NH RSA 231:43 III, rather than “RSA XYZ”, Correct misspelling of word “building” in New Home Site text box on Sheet 7, Correct contour elevation around well area (394) with (294) on Sheet 8, Add a note to the plan stating that the existing 30’ dug well on proposed lot 22-R-200 is to remain on the property within the protective “No-Cut Buffer” will be filled in, and Subdivision approval is conditional upon Planning Board approval of the Cobbett’s Pond & Canobie Lake Watershed Subdivision Application that was submitted jointly with this proposal on 4/3/13, seconded by Mr. Sycamore. Motion passed 5 – 0.

The Chair asked Ms. Wood if the Cobbett’s Pond & Canobie Lake Watershed Site Plan application was complete. Ms. Wood stated yes. The Chair stated the Board has Mr. Keach’s memo of April 10, 2013 with his review and Mr. Keach was good with it. Ms. Wood stated everything meets the requirements.

**Mr. Wrenn motioned to approve Case#2013-6 Cobbett’s Pond & Canobie Lake Watershed Subdivision Application as presented, seconded by Mr. Sycamore. Motion passed 5 – 0.**

Mr. McLeod rejoined the Board.

Mr. Wrenn read Case#2013-5 into the record. The Chair asked Ms. Wood if this application was complete and Ms. Wood stated yes.

**Mr. McLeod motioned to open Case#2013-5 for public hearing, seconded by Mr. Wrenn. Motion passed 6 – 0.**

Case#2013-5/Carr Lot Line Adjustment & Historic Covenant/134 Range Road (17-L-45, 46)

A Lot Line Adjustment Application has been submitted for 132 Rockingham Road (17-L-45, 46), located in the Residence District A and Cobbett’s Pond and Canobie Lake Watershed Zone. The applicant, Karl Dubay of the Dubay Group Inc., on behalf of the property owner, Ryan Carr, is proposing to adjust the line between Lots 17-L-45 and 17-L-46 resulting in one lot sized 2.38 acres (103,861 sq. ft) and another lot sized 1.39 acres (60,622 sq. ft.) and maintaining a single-family residence on each lot. The applicant is also proposing to file a Historic Covenant with the recorded deed as required as a condition of approval by a Variance issued by the Zoning Board of Adjustments on 3/12/13. Waivers are being requested from Sections 601.16 and 601.12 of the *Subdivision Regulations*.

- Ms. Wood stated the applicant had received a variance from the Zoning Board from Section 702 and Appendix A – 1, minimal lot area by soil type, with the condition that a restrictive covenant

be recorded with the Registry of Deeds for the historic home on lot 17 – L – 45. She stated she does not have the historic covenant from the applicant yet. The Heritage District will need to review and approve the historic covenant. She stated this proposal has gone before the Technical Review Committee and their comments are provided along with her Planning review in her memo of April 24, 2013.

Ms. Nysten recused herself from the Board.

- Mr. Karl Dubay of the Dubay Group on behalf of the applicant addressed the Board. He explained the plan and his proposal. He stated he has received variances for soil types from the Zoning Board. He stated Mr. Gallagher would like more land for his property and there is a small encroachment on Mr. Carr's property by Mr. Gallagher. Mr. Carr who owns the historic house wants to get an historic covenant. Mr. Dubay stated he needed two waivers for this lot line adjustment. He needs a waiver from Sections 601.16 and 601.12 of the Subdivision Regulations. He stated nothing has changed with the soils and they are not putting in a new septic on the property. He has a draft copy of the historic covenant which he gave to the Chair. He stated he still has to work with the attorney as they want to add the building envelope to the covenant.
- The Board asked Mr. Dubay for more specifics as to why they would like a lot line adjustment. Mr. Dubay stated Mr. Gallagher wants to buy part of Mr. Carr's property as Mr. Gallagher's pool is encroaching. Mr. Gallagher also has geothermal heat and wants to put a new well in. The purchase of the land helps Mr. Carr financially to help preserve the historic house. The Board, staff and Mr. Dubay discussed the discrepancies in the address on the plan. It was stated that the address numbers had been changed after the plan was submitted. Mr. Dubay stated that will be changed on the final plans. The Board asked Mr. Dubay if this lot line adjustment would trigger any other lot line adjustments in the area. Mr. Dubay stated not with these two lots and he hasn't heard of any others.

The Chair opened the hearing to the public, hearing no comments the public portion was closed.

- The Board asked Mr. Dubay if there are any future plans to subdivide the back lot. Mr. Dubay stated that the land does not support three lots by soils.

**Mr. Wrenn motioned to approve the waiver request from Sections 601.16 and Section 601.12 with the findings as follows: 1) No additional construction is being added 2) The proposal meets the State criteria for soils and has reserve area, seconded by Mr. McLeod. Motion passed 5 – 0.**

**Mr. McLeod motioned to approve the waiver request from Section 701.2.10 with the findings as follows: The plans drawn to a 1"=30' scale show more detail than the required 1"=50' scale, seconded by Mr. Carpenter. Motion passed 5 – 0.**

**Mr. McLeod motioned to approve the Lot Line Adjustment Application with the following conditions: The applicant must file a Historic Covenant with the recorded deed for Lot 17-L-45. The language of the Historic Covenant must be reviewed and approved by the Heritage Commission prior to recording the deed at the registry, Upon recording the Historic**

**Covenant, three (3) copies of the recorded deed for Lot 17-L-45 must be provided to the Community Development Department, The applicant must submit the State Subdivision Approval Permit and add the Permit# to Sheet 5 of the plans, Ensure all addresses are correct on the plan. This includes the 21-K-20B which has been readdressed to 3 Turtle Rock Road (previously 134 Range Road), Indicate the width of the right-of-way on Range Road (Rt 111A); if the ROW is variable, include the widest and the most narrow measurements, At the time that the Historic Covenant is filed, include the Book and Page number of the deed filing on Sheet 4 of the plans, Add the unit of measurement of the required benchmark elevations to all sheets (feet?), and the Final Plans must contain the original stamps and signatures of the surveyor and engineer and signatures of the property owner and Planning Board Chair, seconded by Mr. Wrenn. Motion passed 5 – 0.**

Ms. Nysten was seated back on the Board.

Mr. Wrenn read Case 2010-20 into the record. Ms. Wood stated the Board had a memo dated April 16, 2013 from Ms. Laura Scott, Community Development Director, which includes all outstanding conditions of approval at this time. This application has been extended one year and the applicant would like to extend it again.

### **Conditional Approval Extension Requests**

Case 2010-20 Walkers Woods Estates Open Space Subdivision & Site Plan (6-C-1, 100, 2000A, 2000B)

- Attorney John Cronin representing the applicant addressed the Board. Attorney Cronin stated they have been working with the Sheffield Street Water Association on putting in a community well and there are many legal issues involved. He stated they still have two outstanding issues which are the water systems and the traffic island. They will look at removing the island if Mr. McCartney and Mr. Keach would like that. He stated it was not prudent developing due to the economy these past two years. He spoke about the extensions that he is received in other towns and a New Hampshire Court case regarding extensions. He stated nothing has changed in their plans with zoning. He stated they would like a one-year extension to get the water system done and maybe come back regarding the traffic island. The Board discussed the traffic island. The Board asked why it has been two years for this project to be completed. Attorney Cronin stated the Association needs to sign off and he needs the Town's approval to not have the traffic island. The Board continued discussion why extension was needed. The Board discussed the community well. Attorney Cronin stated they are working with Pennichuck to get a community well for the applicant and the neighbors.
- Mr. Don Lévesque of the Sheffield Street Water Association addressed the Board. He stated there have been active and ongoing discussions with the owners of Walkers Woods Estates for the past two years. He stated there are a lot of legal issues with the water situation and they are 95% of where they want to be. He stated the Association wants this to go through and they are not opposed to an extension as it will benefit the neighborhood. He stated the neighborhood's questions and concerns have been addressed.
- Ms. Wood retrieved the file for this case from the Community Development Office. Mr. McLeod read the minutes from July 13, 2011 and the Board discussed how long this case is taking. Mr.

Lévesque stated they started discussions two years ago once the subdivision had been initially approved. The Board questioned Attorney Cronin about what he would be doing in the next 12 months with this plan. Attorney Cronin stated he is hoping to get the neighborhood to sign the necessary paperwork.

**Mr. Sycamore motioned to grant an extension for Case 2010-20 for one-year to complete the community well and satisfy the remaining conditions of approval, seconded by Ms. Nysten. Motion passed 6 – 0.**

Mr. Sycamore left the meeting at 9:30 PM.

The Board took a recess at 9:30 PM and was back in session at 9:40 PM.

### **Meeting Minutes – Review and Approve April 17, 2013**

**Mr. McLeod motioned to approve the April 17, 2013 minutes as amended, seconded by Mr. Wrenn. Motion passed 3 – 0 – 2 with two members abstaining.**

### **Request for Building Permit on Class VI & Private Road**

Mr. McLeod recused himself as he is on the Board of Selectmen.

- The Chair spoke with staff today about a memo from Dave Sullivan, Town Administrator, regarding the Planning Board's input on building on a discontinued road.
- The Board asked Ms. Wood which part of the road was discontinued and Ms. Wood showed the Board on the GIS. The Board discussed the Simpson Road discontinuance. It was requested by the Board of Ms. Wood to see the Zoning Board file on lot 21 – G – 600. Ms. Wood stated she did not sit on the case but did give her understanding of the case to the Planning Board. There was discussion by the Board about being able to always have access to your property and the right to pass and repass on discontinued roads. The Planning Board went through the Zoning Board file on this case.

**The Board recommends to the Board of Selectmen a survey and ownership to be determined, explore the rights to pass and repass, and that this lot be maintained as one lot and not subdivided. If possible the stone wall is to be maintained near the road.**

Mr. McLeod was seated back on the Board.

### **Liaison Reports**

#### **WEDC**

- Mr. Wrenn gave an update and stated the Infrastructure Subcommittee continues to meet. He stated they are exploring sources of water for the exit 3 area. He stated they are meeting with the Derry & Salem Water Departments. They have also met with Pennichuck. They will recommend to the Board of Selectmen to fund a study.

### **Village Center District**

- The Chair stated they will be meeting with the Planning Board as soon as the end product is ready which will be soon.

**April Staff Report** - Was provided to the Board.

### **Member Binder Update**

- Meeting and Submission Schedule (Tab #2)
- Major and Minor Site Plan Flow Charts (Tab #10)

Was provided to the Board.

### **Old/New Business**

- The Chair stated Ms. Maloney's term has expired on the Board and she has chosen not to renew. The Chair thanked Ms. Maloney for her time on the Board. Mr. Carpenter asked staff to put a letter together to send to Ms. Maloney thanking her for her contribution.
- The Chair stated the Zoning Board has declined the Planning Board's invitation for a joint meeting. Also, a letter will be sent to the Board of Selectmen and the School Board for a joint meeting.
- Mr. McLeod gave the Board an example of a parking lot design criteria and guidelines he received from Robson Forensic for future reference.

### **Adjournment**

**Mr. McLeod motioned to adjourn at 10:20 PM, seconded by Mr. Wrenn. Motion passed 6 – 0.**

These minutes were approved 5/29/13 and respectfully submitted by Cathy Pinette, Planning Board Minute Taker.