



*OLD VALUES - NEW HORIZONS*  
**PLANNING AND DEVELOPMENT**

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**Planning Board Minutes 3/31/10**

**Roll Call:**

Phil LoChiatto, Chairman - Present  
Nancy Prendergast - Member- Present  
Kristi St. Laurent, Member - Present  
Louis Hersch, Alternate - Excused  
Pam Skinner, Member - Present

Rick Okerman, Vice Chairman - Present  
Ruth-Ellen Post, Member - Present  
Sy Wrenn, Alternate - Present  
Breton, Selectman Member - Present  
Ross McLeod, Selectmen Alternate Member -  
Excused as an Alternate Planning Board Member

**Staff:**

Laura Scott, Community Development Director - Present  
Elizabeth Wood, Town Planner - Present  
Tracey Mulder, Planning Assistant - Present

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

Mr. LoChiatto opened the meeting at 7:00PM, followed by the Pledge of Allegiance.

**Joint Meeting Planning Board & Board of Selectmen**

Workforce Housing Joint Discussion

Roger Hohenberger - Selectman- Present  
Ross McLeod - Selectman- Present  
Charlie McMahon - Chair, Selectmen - Arrived at 7:08pm

Bruce Breton, Planning Board Selectman Alternate is seated as a Selectmen for the joint portion of tonight's meeting.

Also in attendance is Town Council Bernard Campbell.

Planning Board Chair LoChiatto noted that the focus of the joint meeting is to discuss the Town's options for Work Force Housing (WFH) and to understand what the process is for applications with respect to new state WFH statute and how the Board can move forward with processing applications since both WFH Ordinances on the ballot failed.

Mr. Bernard Campbell, Town Council, addressed the Boards and discussed a letter he sent to Laura Scott dated March 15, 2010, a copy of which was provided to the Board members in their packets. Mr. Campbell summarized his letter providing the Board with two options he thought could be pursued to address Workforce Housing applications prior to March 2011, at which time a new WFH Ordinance could be adopted.

The first option available to the Town is to hold a special Town Meeting, prior to the March 2011 Town Meeting, to try to get a WFH Ordinance passed. This would require the Planning Board asking the Board of Selectmen to hold a special Town Meeting and for the Planning Board to draft an ordinance, hold the required public hearing, and then holding the Town Meeting.

The second option is for staff to review WFH applications and refer applicants to the ZBA if portions of their development proposal do not meet the current zoning ordinance. If the ZBA grants relief from the Ordinance, then staff would move the WFH application to the Planning Board for site plan/subdivision review.

Mr. Campbell believes that because the Town does not have existing housing stock sufficient to accommodate its fair share of WFH, the Town does not meet the 'Safe Harbor' criteria outlined in the State WFH statute at this time.

Mr. Campbell explained that if/when the ZBA denies an applicant a variance needed to construct WFH, the court could order the Town to grant a permit to an applicant under the builders remedy provision of the State Law. However, Mr. Campbell stated that because this is a new statute he does not have any case history on which to base what may or may not happen if an applicant takes the Town to court at the ZBA level of the process.

Mr. LoChiato opened the discussion to the Planning Board and Board of Selectman.

The Boards discussed with Mr. Campbell how the delineation of authority could be handled between the ZBA and the Planning Board when typically decisions such as architectural review are done by the Planning Board and not the ZBA. Mr. Campbell concurred that some of these WFH applications shift responsibility to the ZBA and he went on to say the ZBA is not well tailored to provide relief under the Affordable Housing Statute.

The Boards discussed whether or not the ZBA could offer an applicant a variance with conditions and Mr. Campbell answered yes this happens all the time. In addition, Mr. Campbell said any applicant could read the zoning ordinance and figure out what they can build within the current standards. Not all WFH applications may need relief from the Zoning Ordinance.

Ms. Prendergast noted that the WFH committee did do an analysis of existing housing stock and currently Windham does not have an adequate number of WFH units, as defined under NH RSA.

The Boards discussed the potential loss of oversight of the planning process and on what basis could the ZBA impose conditions to a site plan and subdivision application. Mr. Campbell stated the ZBA has the purview to attach conditions as a land use board and he provided examples of such conditions.

The Planning Board pursued the issue of the ZBA imposing conditions of approval as it is now a Planning Board function but the Board realizes this could become a larger part of the ZBA process based on the WFH statute and current Town Ordinance.

The Boards also discussed what would happen if the ZBA imposed a condition that the Planning Board did not agree with and Mr. Campbell answered that the Planning Board does not have the authority to remove the conditions imposed by the ZBA.

Ms. Post questioned why WFH applications would need to go before the ZBA at all since state statute requires all Towns to provide for WFH. Attorney Campbell responded that as a board, the ZBA and Planning Board are bound by the current zoning ordinance and currently the density does not allow for WFH and an applicant would need to get a variance. The Boards pursued the discussion regarding what types of variances would be heard before the ZBA and why the applicant could not go before the

Planning Board instead. Ms. Post commented that she had concerns with major planning decisions going before the ZBA since they are a Board that is not primarily responsible for major planning decisions.

Selectman Hohenberger asked about the recourse for the Town if an applicant appeals an adverse ruling made by the ZBA. Attorney Campbell answered that just as any other ZBA appeal he would defend the Town and try to uphold that ZBA decision.

Selectman McMahan asked specifically what the Board of Selectmen would be involved in with respect to Workforce Housing and Mr. Campbell discussed the possibility of a holding a special town meeting to vote on a revised WFH ordinance. Attorney Campbell went on to say the Town has a window of opportunity right now. If the Planning Board asked the Selectman to hold a special town meeting in last summer early fall, the Planning Board would have to post their amendment prior to the Town meeting and that amendment would go into effect the day it was posted and until it was voted on by the Town.

Selectmen McMahan commented that a special town meeting is typically held only in cases of emergency and asked Mr. Campbell his opinion as to whether or not the lack of a WFH Ordinance constitutes an emergency. Mr. Campbell did not know if this issue constitutes an emergency and that it was up to the two Boards to decide.

The Planning Board questioned the intent of an applicant to take their application directly to the court system. Mr. Campbell responded that an applicant has that right, but the court can use the Exhaustive Administrative Remedies, which requires the applicant to seek relief elsewhere before filing a lawsuit, and in this case it would be to seek a variance first and if denied then an appeal and then the applicant can file a lawsuit.

The Boards discussed when/if an application goes to court at the ZBA variance stage and is granted a Builders Remedy, if the court has jurisdiction over the entire application or just the variance request. Mr. Campbell said he could not answer that question because there are no previous cases to review.

The Planning Board discussed the possibility of joint Planning Board and Zoning Board meetings on applications of WFH and Mr. Campbell indicated he did not see this as a problem so long as all evidence is being heard at the same time and there is no prejudgment. Ms. Scott noted for the Board that an applicant has the right to request a joint meeting and the procedures for holding these meetings are currently in the Planning Board Rules of Procedure.

Chairman LoChiatto opened the meeting to the public.

Mr. Tom Case, Mountain Village Road, asked if the Planning Board is proactive in attempting to remedy the lack of a WFH ordinance, would the court system be more lenient on the Town on cases before them. Mr. Campbell responded that the time for that has passed.

Mr. Case and the Boards discussed higher density and his mapping vs. soils based lot sizing because Mr. Case is concerned with lot sizing. Mr. Case believes that the Town should hurry up and do something to recognize the problems that not passing either of the WFH ordinances has created and thinks that a solution would be to use the current Open Space Subdivision Ordinance and that some of the open space requirements could be relaxed to allow more WFH units to be built.

Alan Carpenter, Glenwood Road, addressed the Board and stated he thinks the voters knew what they were doing when they voted down both WFH Ordinances. He noted that since the Town has an upcoming primary in September, he thinks it would be better to forego a special Town Meeting and

offer a revised ordinance in September. He is asking the Planning Board to focus on a redrafting of the ordinance for a June time frame for the September primary.

Mr. Carpenter commented that with 2-3 workshops and minor changes to the ordinance the Planning Board would have a different response from the voters with the revised ordinance. Mr. Carpenter said his issue is multi family housing in the rural district. He recommended identifying specific parcels of land for WFH to be located on and thinks the Planning Board and the public can review the zoning map and reach out to land owners and abutters and see if the Town can include their property as part of the WFH Zoning Ordinance.

Chairman LoChiatto explained to Mr. Carpenter that the Planning Board conducted 17 public hearings and workshops, had numerous articles in the paper notifying and educating the public on WFH and he is skeptical that 2-3 workshops will change the mind of the voters. In addition, the minor changes Mr. Carpenter is suggesting are changes he espoused in all of his newspaper articles, that due diligence was already made, and he does not think that the process can be compressed into a 3-month timeframe.

Mr. Carpenter agreed he was quite vocal regarding WFH. He went on to say that he wished the Planning Board had put forth their first version of WFH and not the version with the changes that were made during the 12/19 and 12/30 meetings and because the first version was not put forth to the voters, it compelled him to provide information to the public. Mr. Carpenter said it is his opinion that the Planning Board did not consider the public comments.

Ms. Prendergast commented that she appreciates Mr. Carpenter's time and effort but takes exception to the fact he says the Board did not listened to the public comments. She went on to say the Board did listen to the public and thinks the Board deserves due credit. Mr. Carpenter said he came to the hearings and listened to members of the public speak to the Board and did not see many changes, some but not many, and this is the reason he would like additional workshops.

Ms. Dunn, Woodvue Road, asked the Board if the denial of an application occurs, how can the Town avoid the back and forth effect between court and the Boards and eliminate the applicant from getting the runaround between the ZBA and the Planning Board. Ms. Dunn said that the courts do not want to deal with WFH lawsuits and she thinks they would rather the Towns themselves deal with the WFH issues. Ms. Dunn does not think it is clear if an applicant receives a denial from the ZBA if they will ask for a rehearing from the ZBA or file a lawsuit.

The Planning Board Chair responded that an applicant always has the prerogative to go the court but the courts do not look kindly on that if there are local remedies to resolve the issues.

Mr. Campbell addressed the Board indicating there should be a checklist for the applicant to follow; however, the applicant can still make the decision to go to court. Mr. Campbell would argue that the applicant has not exhausted all avenues if they do not follow the checklist and course outlined at the local level.

Mr. Albert Aieed, Range Road, complemented the Planning Board on their diligence and hard work by providing public workshops and he agreed with the Planning Board that there were many changes made to the Ordinance based on public input. Mr. Aieed encourages the Town to rewrite the Ordinance.

The Boards wrapped up the discussion and stated at this point they should decide what the next step will be for WFH. The Planning Board reviewed their options to stay the course or offer workshops and then have a special Town meeting. The Boards decided that since there are no WFH applications pending, there does not seem to be an emergency. The Planning Board decided to add the WFH

ordinance to the 2010 Planning Board Work List and decided to discuss it at their next meeting and they will then advise the Board of Selectman on how they would like to proceed.

Mr. Hohenberger made a motion to adjourn the Selectman portion of the meeting. Second by Mr. McLeod. **Motion passed 4-0.**

Mr. LoChiatto thanked the Board of Selectman for attending the joint meeting.

These minutes are submitted in draft by Tracey Mulder.