

**PLANNING BOARD MINUTES**  
**January 14, 2009**

**ROLL CALL:**

Phil LoChiatto, Chairman – Present	Nancy Prendergast, Vice Chairman – Present
Rick Okerman, Secretary – Excused	Walter Kolodziej, Regular Member – Present
Ruth-Ellen Post, Regular Member – Excused	Pam Skinner, Regular Member – Present
Louis Hersch, Alternate Member – Present	Kristi St. Laurent, Alt Member – Present
Sy Wrenn, Alternate Member – Excused	Bruce Breton, Selectmen Member – Present
Galen Stearns, Selectmen Alternate – Excused	

**STAFF:**

Al Turner, Director of Planning and Development – Present

Mr. LoChiatto opened the meeting at 7:00 pm. The Board stood and recited the Pledge of Allegiance. *Mr. Hersch and Ms. St. Laurent replaced Ms. Post and Mr. Okerman.*

**CORRESPONDENCE:**

- Letter from NH DOT regarding meeting with the Planning Board regarding renovations to the Freda Hardware building at 77 Indian Rock Road. To be placed on the February 4 agenda;
- Letter from Al Turner regarding the Capital Improvements Program. Board agreed to discuss this at the January 21 meeting;
- Email regarding the CTAP Open Space Plan Application. Board discussion regarding matching funds, and time is of the essence;
- Confidential legal communication from Attorney Campbell regarding workforce housing statute;
- Two letters from DES regarding an alternation of terrain permits for: 1) lot 11-A-50; and 2) lot 20-D-1600;
- RPC meeting minutes of December 10;
- NH Citizen Planner flyer;
- Habitat for Humanity Newsletter

**MINUTES:**

- Mr. Kolodziej motioned to approve the December 9 minutes. Ms Skinner seconded. Passed 7-0;
- Ms. Prendergast motioned to approve the January 7 minutes. Mr. Kolodziej seconded. Passed 7-0.

**ROAD BOND:**

- Ironwood Road, final bond release of \$28,476. Mr. Breton motioned to grant the final release and recommend to the Board of Selectmen to accept the road as a Town road. Mr. Kolodziej seconded. Passed 7-0.

**OLD/NEW BUSINESS:**

- Workshop meeting for next week regarding the economic stimulus package.

**PUBLIC MATTERS:**

**Citizen Petitions**

**Mr. LoChiatto read the petition as follows: Citizen Petition #1** – Petition of Charles McMahon and others to see if the Town will vote to rezone parcels 11-C-800, 11-C-350, 11-C-300, 11-C-125, 11-C-100, 11-C-701 and 11-C-702 from the centerline of the existing Route 111 northerly a distance of 1200 feet from Professional Business and Technology to Business Commercial A. This will enable the parcels

to be zoned in a manner consistent with the creation of the new Rt 111.

Mr. Turner showed and explained the area on a map. Board discussion regarding the Board's initiative to move some of the parcels forward, there is no conflict between the petition and the Board's amendment, does the citizen petition always trump the Board's amendment, should the Board's amendment be dropped, the citizen petition includes more properties, responding to zoning by variance, Wall Street is a natural geographic border, and the Board's amendment has been sent to the warrant.

Comment from petitioner Charles McMahon, he stated that he's a citizen of Windham, a Board of Selectmen member, a State Representative, the President of the Baseball League, and Chair of the Elderly Housing Project, but no has no further interest than of being a citizen, he then distributed and discussed a map of the proposed changes, a commercial base is needed, the high school prompts this recommendation, do not have the tax base to afford the high school, the Rt 93 area is a reasonable area to rezone, the facts do not support that our police and fire services would be increased with commercial development, need to change some of the zoning for the tax base, there will be no bailout from the state for federal government, and asked for the Board's support.

Board discussion with Mr. McMahon regarding Wall Street extension is shown on the plan, the rationale for the change, Commercial A would be consistent on each end of Rt 111 near the exits, a broader tax base is needed and this will help, development will take a few years, what is the State is going to do in this area and would that effect the development of these parcels, there is a certainty that Rt 93 is being built, the moving of the park and ride is not disastrous, Windham is different and we want to stay different, do not want to become commercialized, people that want to stay in Town will find a way to stay in Town, and things have not happened because of a lack of sewer and water.

Mr. LoChiatto read a letters from: 1) Chris McCarthy, Nottingham Road; 2) Police Chief Lewis; and 3) Fire Chief McPherson.

Board discussion regarding the length of the potential rezoning along Rt 111 is 3200 ft, a common private drive to be used to access the properties, and the rezoning won't change the Town that much. Mr. McMahon stated that it is impossible for Rt 111 to become like Rt 28 in Salem, and there are comments made on the floor of the State House that Windham is not looked at as a needy Town.

Public comment continued with Russ Wilder, Birchwood Road, stated he has been on the Conservation Commission and Planning Board, the Professional Business and Technology rezoning was done with a lot of thought, this rezoning is significant and needs a Master Planning process, the real estate market is not there to support a large Commercial A development, we should plan and not react, the Board's amendment does make sense, do not recommend the petition but study it for careful planning, planning is the purview of the Planning Board, and we have time to plan and get all the facts.

Kathleen DiFruscia, Horseshoe Road, speaking on behalf of the Cobbett's Pond Improvement Association (CPIA), she stated that she's a member of the Economic Development Committee, Windham Community Endowment, serves on the NH Lakes Association, and the legal advisor to the CPIA, a business person and lawyer, CPIA was formed in 1949 as an environmental group and recreational activities, committed to the protection and preservation to Cobbett's Pond, it's an irreplaceable Town asset, she further discussed the attributes of the pond, she showed the watershed on a map, the rezoning is in the pond's watershed, she further discussed the details of the watershed, the CPIA opposes the citizen petition, Mr. McMahon believes that Griffin Park is the heart of Windham, she believes that Cobbetts Pond is the heart, the pond quality has changed dramatically, a watershed

restoration plan should be completed before any zoning changes are made, a grant has been received for the restoration, she discussed the study being conducted by Geocentrics, there are some streams in the rezoning area going into the pond, the study should be done by the Spring 2010, the study will include what development in the watershed will do to the pond, would like the study done before the rezoning of property in the watershed is done, and the developments will have an increase in impervious surface which affect the quality of the pond's water. Mr. LoChiatto asked Mrs. DeFruscia to speak specifically to this citizen petition. She responded that the zoning changes are in the pond's watershed, nothing should be done until the study is done, no ordinances in Town to protect the pond or Canobie lake, asked the Board to wait until Geocentrics completes their study, there is time for good planning, meeting weekly with NH DOT making sure another 100' plume of sediment doesn't occur again, and asked the Board to work with the CPIA and wait.

Patrick Poore, Viau Road, discussed the differences in the zoning regulations for Commercial A and Profession Business Technology District, Commercial is for the motoring public, the zone change will not help with our taxes, one access will be a problem for safety issues, the new zone is for larger development, the employment as the developments would not necessarily be for the residents of Windham, there's no need to rush to change the zoning, the Manchester police chief stated that there was an increase in shoplifting during the Christmas season in Commercial areas, everything that is allowed in the current zoning is allowed in Commercial A, and should maintain the character of our Town.

Edward Lynch, 176 Range Road, spoke in favor of the change as we need the tax base, it is logical place to put Commercial property, and that's why Shaw's wanted to be there.

Andrew Lane, 2 Woodvue Road, spoke in favor of the change as it is the most logical place for commercial development, his taxes have doubled since 1999, we have serious tax issues and need commercial development to help pay for this, he stated that phosphorous is probably the cause of the pond's problem, get more taxes from Commercial property, and need to work hard to attract businesses.

Ted Dyer, 84 Turtle Rock Road, stated that a similar citizen petition has been rejected the last two years, and urged the Board to reject it this evening, and the Cobbett's Pond study has shown that septic flow into the pond is not the problem.

Betty Dunn, Woodvue Road, stated that the Town is very different from when she first came to live in Windham, she stated that she's not opposed to the expanse of the tax base, how many commercial developments are allowed in the current zoning, what will happen to our lifeline road, and she asked for an explanation of the Board of Selectmen are looking for citizens to serve on a committee to look at Rt 111. Mr. LoChiatto stated that he would like to stay on the topic of the petition, and CTAP is having a committee look at an extension of Wall Street to North Lowell Road. Ms. Dunn asked why would we be voting to make this change when we are not sure of the best plan for this area. Mr. Breton stated that CTAP came before the Selectmen Monday night with a bunch of ideas and nothing is in concrete. Ms. Dunn stated why don't we work hard with the zoning we currently have, the area is still in flux, and let's expand the tax base in accordance with the Master Plan.

Dennis Senibaldi, Selectman, stated that the connection of Wall Street to North Lowell Road has been discussed for years, and the CTAP committee discussion had nothing to do with the citizen petition. Mr. Turner stated it's a corridor study not just for Wall Street.

Alan Carpenter, 8 Glenwood Road, discussed how the corridor study came about from discussions 8-10 years ago, asked the Board to vote to not recommend the citizen petition, it is correct that the property

has been zoned Professional Businesses and Technology for 10 years and it has not been developed, thought that Rt 93 would be 4 lanes by now, no one is going to build here until the Rt 93 plans are complete, should not sell out Windham, serious developers will look at the property, an economic consultant working on the Master Plan stated the greater percentage of taxes that comes from Commercial A development the higher the tax burden on the residents, our border towns have a lot of commercial development and all have a higher taxes, Shaw's is a neighborhood business, Professional Business and Technology district will have a less impact on our traffic, commercial development doesn't fix the tax issue but now we won't enjoy our Town and have a tax issue, he showed a chart comparing commercial taxes vs. residential taxes, can't build your way out of the taxes, he discussed the pros and cons to the change, he discussed why he moved to Windham, when retail businesses have a problem with customers they call the police, and the small businesses that have been developed in the last few years look good. Board discussion regarding the Master Plan says we should increase non-residential tax base to 10%. Mr. Poore restated that the uses allowed now are allowed in commercial zoning.

Mr. LoChiatto reread the petition. Board discussion regarding not supporting the petition, it has been turned down twice before, the citizen's wishes should be respected, support the Board's amendment, do not want a conflict with the amendment, like the limited access, waiting on this area of Town right now, and the Board's amendment cleans up the zoning by variance plus other parcels. Mr. Kolodziej motioned to send to Town meeting as "not recommended" by the Planning Board. Ms. Prendergast seconded. Parking areas are the same in both zones, and traffic would be different with each zoning. Passed 4-3. Mr. Breton, Mr. LoChiatto, and Mr. Hersch opposed.

Board discussion whether the votes should show on the warrant. Mr. Breton motioned to show the vote count for each Planning Board amendment. Mr. Kolodziej seconded. Passed 6-0-1. Ms. Prendergast abstained.

**Mr. LoChiatto read the petition as follows: Citizen Petition #2** – Petition of Charles McMahon and others to see if the Town will vote to rezone property at Range Road and Route 111 identified as lots 18-L-480, 18-L-450, 18-L301, 18-L-400, 18-L-300, 18-L-303, 18-L-302, 18-L-310, 18-L-201 at 41, 43, 49, 53, 57, 59, 61, 63 and 67 Range Road from Professional Business and Technology District to Business Commercial District "A". This will enable the parcels to be zoned in a manner consistent with the creation of the new Route 111.

Comment from petitioner Charles McMahon, he stated he is also a member of the Economic Development Committee, he further explained his petition and the parcels it includes, he discussed the history of the zoning of the property and the reasons the State bought the property, he stated that he has no financial interest in this change, this change is trying to level our taxes, has worked with the DOT, the State is not going to sell the land with the current zoning, Pennichuck Water is in the area, Professional Business and Technology is restrictive and gets lower taxes, this is not new and it is not rushing, change needs to happen now, the change will allow the property to be sold and developed, let the citizens vote, he works in real estate and high-tech electronics, commercial is happening and offices are not, only 670 acres available for development, provides an opportunity to get to the 10% commercial tax base as suggested by the Master Plan, it is a 27 acre area and it can maintain the ambiance of our Town and allow us to stay in Town, and hopes that the Board will support the petition.

Board discussion regarding can't imagine the State won't sell without changing the zoning, the State bought when values were high, market conditions have changed, and the State will sell to recoup their money. Mr. LoChiatto read a letter from the Chairman of the Long Range Planning Committee regarding rezoning. Board discussion regarding a property owner requesting a change. Mr. McMahon

stated the State has had jurisdiction over Windham for 20 years, want to protect Cobbetts Pond, and the Long Range Planning Committee will not sell the property unless it is rezoned.

Board discussion with Mr. McMahon that the State recommendations was for one lot not nine lots, the minutes and transcript of the meeting do not say it will not be sold without the rezoning but recommends that the rezoning would make the property more valuable. Mr. McMahon stated he was at the meeting, and the members want it to be back to the original zoning, and if we stay the same we know what will happen.

Russ Wilder, Birchwood Road, stated he was on the Planning Board when the property was rezoned, they worked with the NH DOT and the State wanted a zone that would be less traffic intense, at the time the State was in favor of Professional Businesses and Technology, our State Reps should discuss the original way the State wanted it, the State probably wouldn't want to sell in a depressed market, it will probably be voted down, take the time to plan, should work together to get the State to live up to what they asked us to do. Mr. Breton stated that he attended one of the Long Range Committee meetings and they said the opposite of what Mr. Wilder is saying. Board discussion regarding a less traffic intense use, the design was to keep out of the Canobie Lake watershed, were asked to rezone to anything other than retail, businesses can't get a commercial loan now, something needs to be done but do not need to rush, and our State Reps need to argue with the State regarding the zoning. Mr. McMahon stated the property was bought as Commercial A, then the Town down-zoned it, and the State believes the value is less because of the down-zoning.

William Schroder, 14 Woodvue Road, stated he is a member of the Canobie Lake Protection Association, NH Lakes Association, and Water Quality Standards Committee, he stated there is a parcel in the Canobie Lake watershed and another parcel is lake front, the Board has a lot more say on how the parcels get developed with the current zoning, concerned with more impervious surfaces, impervious services degrade the lakes and ponds, asked to not suport the zoning change and study the impact to Canobie and Cobbetts.

Patrick Poore, Viau Road, stated this is the same issue as the previous petition, there's no more benefit to change this, there is time to wait, we need to be careful where we spend money, need to carefully plan, and can't go back once the changes are made.

Alan Carpenter, 8 Glenwood Road, stated it doesn't matter what the State sells the property for as it won't change property taxes, concerned that the change will make a negative effect on the traffic, this has regional impact as the properties drain into the Salem water system, do not want big retail on waterfront property, citizen petitions are good for individual lots, this should be discussed with more input, and asked the Board to not recommend this petition.

Betty Dunn, Woodvue Road, asked the Board to not recommend this petition, wants to reinforce that this is a lake front property and is a water supply for the Town of Salem, is the editorial allowed to be a part of the ballot and it has no legal effect, the Board does not have the authority to change the petition, the Board should get an opinion of Town Council as to whether the editorial should be there. Board discussion that Attorney Campbell did not have a problem with the editorial, should Attorney Campbell's letter be released, the Board will either recommend or not recommend, the Board cannot change the language, and the question can be forwarded to Attorney Campbell. Mr. LoChiatto read a portion of Attorney Campbell's letter.

Ms. Dunn stated that she is a citizen of the Town and it is her right and privilege to ask questions of the

Board no matter the time and expects to be treated with respect, and her request should be dealt with appropriately. Board discussion that the Chairman runs the meeting and can make rulings and has not disrespected anyone. Ms. Dunn asked if the GIS and tax maps have not been formally changed. Mr. Turner stated that the changes have been sent to the mapping company and not received as yet, lot numbers have not changed, and lot line changes will be minimal. Ms. Dunn discussed the due process for protest petition.

Andrew Lane, Woodvue Lane, president of the Canobie Lake Association, stated he would not like to see the zone go all the way to the water.

Karl Dubay, Telo Road, stated he has no financial interest, he worked for the landowner 12 years ago for a commercial development, the State road design was not completed back then, the State did not overpay for the property, is on the Economic Development Committee, there are some similarities of the zoning districts, Commercial A would increase the tax value, currently have pesticide and fertilizing loading from this property, the impervious surface is the same for both zoning districts, more septic loading for offices, good planning can take place efficiently, he discussed the Rt 111 traffic and road changes, and he is in favor of the zone change.

Edward Lynch, 176 Range Road, stated that he is in favor of the change, if not here where will you put commercial land, the ponds should be protected, and the land can be developed and protect the ponds.

Ross McLeod, Nottingham Road, stated that he is against the petition, he is a former Planner Board member, the intersection has been designed with the current zoning in mind, traffic patterns for Commercial A and Professional Businesses and Technology are very different, Professional Businesses and Technology district gives a higher concentration of wages per square foot, and the big box developments bring in less paying jobs.

Chris Lane, Woodvue Road, stated that she lives on Canobie Lake, this is in the watershed but is in favor of the rezonings as they are on the major arteries, the Board will be responsible for what is being built and to protect the lakes, and how many years have we tried to get business/technical businesses in Town and failed. Mr. Turner stated that the State announced the building of Rt 93 right after the rezoning, and people that were actively looking at the site changed their mind. Board discussion that one building permit was pulled on 2001 for Professional Business and Technology. Ms. Lane continued regarding that PBT do not want to come here, and the Commercial A zoning should be supported.

Mr. McLeod stated that he takes exception to the fact that "it hasn't happened yet", Rt 111 and Rt 93 changes and uncertainties are the reasons it hasn't been developed, the Village Center and Gateway hasn't been developed yet either, and patience will pay off.

Mr. Turner stated that there is a flaw in the citizen petition, the land is not completely zoned Business Technology, the remainder is zoned Residential A. Mr. Wilder stated that the property was zoned that way for a buffer to the residents and Canobie Lake.

Mr. Poore stated that the petition misrepresents the current situation and will mislead the voters, the petition has a flaw and should be rewritten, and the opinion note is also misleading. Board discussion that it only effects the Professional Business and Technology, should get a ruling from Attorney Campbell, the evening is getting late and what should the next step be, the flaw was discovered a week ago, Attorney Campbell is reviewing all the amendments, and Mr. turner will check with Attorney Campbell tomorrow.

Mr. Breton motioned to hold another meeting tomorrow night at 7:00 pm. Mr. Kolodziej seconded. Passed 6-1. Ms. Prendergast opposed.

Mr. Kolodziej motioned to continue the discussion of the citizen petition #2 until next meeting, tomorrow at 7:00 pm in the Planning Department. Mr. Breton seconded. Passed 7-0.

Mr. Kolodziej motioned to continue the public hearing of Citizen Petition #3-5, zoning map amendment #8 and zoning amendment #3 to tomorrow's meeting. Mr. Hersch seconded. Passed 7-0.

Mr. Kolodziej motioned to adjourn. Ms. Prendergast seconded. Passed 7-0. Meeting adjourned at 10:55 pm.

These minutes are in draft form and have not yet been reviewed and approved.  
Respectfully submitted, Nancy Charland