



## *OLD VALUES - NEW HORIZONS*

# COMMUNITY DEVELOPMENT

PO Box 120, Windham, New Hampshire 03087

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

**www.WindhamNewHampshire.com**

**Planning Board**

**Draft 12/15/10 Minutes**

### **Roll Call Planning Board:**

Phil LoChiatto – Chiarman – Arrive 8:16 p.m.  
Bruce Richardson – Member – Present  
Kristi St. Laurent – Member – Present  
Ruth-Ellen Post – Member – Present  
Pam Skinner – Member – Excused  
Rick Okerman – Member - Excused

Lee Maloney – Alternate – Arrived at 7:22 p.m.  
Sy Wrenn – Alternate – Present  
Louis Hersch – Alternate – Excused  
Bruce Breton – Selectman Member – Excused  
Ross McLeod – Selectman Alternate Member - Present

### **Staff:**

Laura Scott, Community Development Director – Present  
Elizabeth Wood – Community Planner – Excused  
Mimi Kolodziej – Temporary Minute Taker – Present

Ross McLeod is seated in for Bruce Breton.

Sy Wrenn is seated for Rick Okerman.

Lee Maloney is seated for Pam Skinner

In the absence of Chair LoChiatto, Bruce Richardson opened the Public Hearing at 7:02 p.m. followed by the Pledge of Allegiance.

### **Public Hearings for Zoning Amendments for the 2011 Town Meeting:**

Mr. Richardson said that before the Board move into a public hearing on the proposed 2011 Town Meeting items, he had a suggestion for the Board to consider. He felt that since the Economic Development Survey is in progress, his suggestion would be to wait for their results before tackling many of the zoning amendments slotted for tonight's agenda. The Board has already addressed a large number of changes. There has been considerable input and concern expressed by the public, and Mr. Richardson recommended that the Board should wait and put these zoning amendments off until next year. This would make it simpler for the voters who already have about ten items to address on the warrant.

Selectman McLeod spoke in support of Mr. Richardson's suggestion and interjected that one of the key elements of the Town's Master Plan update is that any planning in town should be done carefully and with consideration for all the Town's resources, not just economics. This is why Ms. Scott's title is that of a Community Developer rather than an Economic Developer. He further explained that the re-zoning amendments on tonight's agenda may be better staid until I-93 is built out and route 111 laid in. Neither of these has happened yet, and it seems premature at this point to move forward.

**Mr. McLeod made a motion to remove sections: Section 612 Village Center District; Section 606 Limited Industrial District and Zoning Map; Section 605.3 Gateway Commercial District; Section 614 Professional, Business, and Technology District; Section 605.1 Business Commercial A District Uses and Zoning Map; Section 605.2 Business Commercial B District and Zoning Map and Section 200 - Definitions in consideration for this year's warrant. Seconded by Ms. Post.**

Mr. Richardson suggested adding Neighborhood Business Zoning Map to Selectman McLeod's motion.

**Selectman McLeod amended his motion to include Neighborhood Business Zoning Map to his previous motion. Seconded by Ms. Post.**

Ms. St. Laurent mentioned that considering the map and rezoning at the same time creates a layer of complexity that may make the process more difficult for the voters.

Mr. Richardson confirmed her opinion to be potentially true; however, out of consideration for the public present last week who showed a reluctance to consider one without the other, it was suggested to put both off until 2011.

Ms. Scott offered that next year the Board might decide to do only one District at a time, map and language, to make it easier for the Board and public.

Sy Wrenn agreed with Ms. St. Laurent's observation about the complexity of addressing both the map and language at the same time.

Ms. Post expressed concern that voting may be less than successful due to voter fatigue if the map amendments were included on the ballot along with the important changes already included.

**Motion passed: 4-1 with Ms. St. Laurent opposed**

Ms. Scott encouraged the public to participate in April when the 2012 Town Meeting Workshop Items will again be brought up for discussion.

Mr. Richardson encouraged the public to complete the Economic Development Survey.

**Section 708 Junk Yards**

Mr. Richardson thinks the ballot will be fairly congested with the current 10 items to be dealt with without the Junk Yard item. He thinks the town has survived without a Junk Yard ordinance for the past 35 years, and this is another item that needs some study. He would like to see this postponed until next year.

Ms. Post feels Junk Yards do need to be regulated and contained to preserve the character of the town. She thinks the it is reasonably written and not overly restrictive. She would like to see it move forward.

Mr. Richardson feels that the Board is over the top with warrants for voters to consider.

Ms. Scott there were no standards at the local level for those who are currently operating as Junk Yards. The Board of Selectman are required to issue Junk Yard licenses, yet there is no process in place. This would help those in town to legally operate a Junk Yard have standards to follow. The ordinance was drafted from guidance documents provided by the Department of Environmental Services and the New Hampshire Local Government Center. There have been two workshops and a Public Hearing on this ordinance, and Ms. Wood has incorporated all the Board's and public's recommendations into this document. Although the ballot will be a lengthy ballot, this will be an ongoing issue, and it would be nice to give local people guidelines should they want to operate a junk yard.

Selectman McLeod asked that the definition of Junk Yard be clarified to distinguish between accumulated yard trash and junk. He asked about the position of our Transfer Station to this definition and who is making the determination of what is or is not junk. Once these have been clarified, he thinks it could move forward.

Mr. Richardson emphasized that his main concern was the volume of ordinances that the public will be asked to consider on voting day, and this may not be one of the more critical ones to address this year. Voter fatigue may sabotage more important issues, and the Town has survived the past 35 years without a Junk Yard ordinance.

Ms. Post feels that this is one ordinance that voters may really welcome but would like to hear from the public via a Public Hearing.

Ms. Maloney would like to see it move forward. She thinks it is a safeguard and helpful to the general public.

Ms. St. Laurent thinks it would resonate with voters due to the many phone calls the Community Development Department received throughout the year regarding this issue.

Ms. Post read Section 708 Junk Yards into the record.

This is the creation of a new ordinance. It provides for the regulation and licensing of junk yards under the authority granted by NH RSA 236:115 to municipalities. The ordinance includes a definitions section; regulates the location of junk yards; details fencing/screening requirements and; outlines the process for obtaining a junk yard license and for renewing a junk yard license. To obtain a junk yard license, the ordinance requires the applicant to receive a Certificate of Approval from the Zoning Board of Adjustment; to receive Site Plan Approval from the Planning Board and; to receive approval for a license from the Board of Selectman. A license is valid for a maximum of one (1) year and must be renewed every April 1<sup>st</sup> by the Board of Selectman. A section outlining the provisions for appeals is outlined as well as a provision for pre-existing junkyard uses and antique motor vehicle use.

Ms. Scott addressing Mr. McLeod's definition question explained that although not referenced, the definition was taken from NH RSA's. The code enforcement officer responds to complaints and views the situation on site and looks at the quantity of material as opposed to establishing a value on it. The Transfer Station is exempt. The fourth section of the definition is not a state definition but added based on discussion from the last Planning Board meeting. The Appeals piece was added from the last week meeting as well. Selectman McLeod would like to see the phrase "which may include" added to the Junk definition of Section 708.3 after the words, "Any old or discarded material ..." and remove number four.

Mr. Richardson mentioned that this will also regulate scrap/salvage yards which do not deal in worthless junk.

Mr. Wrenn does not think that number four under 708.3 is describing one, two, or three but is another separate definition.

Mr. Richardson had trouble with the definition of "old" and "discarded" as being too subjective and contradictory.

Selectman McLeod would like to replace the word "old" with the word "junk" on page 2 of the Ordinance under the section titled: Junk yard. On page two in the section titled, "Automotive recycling yards," Mr. McLeod would like to insert the words "at least" before "500 square feet." He questioned the allowance of a junk yard in Business Commercial A, Business Commercial B, and Neighborhood Business districts.

Ms. Post agreed that they should not be allowed in Neighborhood Business districts but wanted to hear discussion about Business Commercial A and B.

Mr. Richardson does not think that there will ever be a request for a new Junk Yard license in Windham.

Mr. Wrenn agreed with Selectman McLeod that junk yards should not be allowed in Neighborhood Districts and Business Commercial A and B districts. He does not think that there will ever be an interest in opening a new junk yard in Windham.

Mr. Richardson re-capping the discussion said that junk yards will be removed from these three districts and limited to Limited Industrial District only.

Mr. Richardson opened the hearing to the Public.

Eileen DiOrio of Windham questioned the already existing junk yard type properties currently not in Limited Industrial districts. Do they have to move?

Mr. Richardson said there are no existing licensed junk yards in Windham, and any new ones would have to be licensed in Limited Industrial or get a variance.

Ms. Post clarified that any pre-existing junk yards would have to have been in existence since 7/8/65 to be exempt.

Ms. Scott mentioned that because there are none in existence, this does not apply.

Ms. DiOrio mentioned a property on route 28 currently in a Commercial A district.

Mr. Richardson explained that the property in question will have to comply and apply to the Selectman for a license, and because they are not in Limited Industrial or receive a variance.

Michael Mazelewski commented off topic that all the people who left the room earlier are very concerned about the Gateway and PBT districts, and he thought they wanted to make sure there were some restrictions on development in those areas. There are some major parcels for sale this year, and they wanted to have something to vote on this year.

Mr. Richardson explained that it was because of last week's meeting and out of deference to the attending public that the Board chose to move those issues to the 2012 Town Meeting to benefit from more public input and discussion.

Alan Carpenter asked when does his back yard junk qualify for junk yard status. Is it the regulation that states when it reaches the bulk of 2 or more automobiles? He supports the removal of junk yards from Neighborhood district. He questioned whether there are any soil testing requirements to safeguard our ground waters and private wells.

Mr. Richardson is concerned about junk yard regulating becoming a code enforcement and public relations nightmare. Addressing the soil testing question, he explained that the state has concrete containment requirements where things can be disassembled.

Mr. Carpenter said that these requirements address when businesses are operating on vehicles, but does not address the storage and probable leakage from piles of old machinery.

Ms. Scott turned attention to Section 708.6.3.3 of the proposed ordinance. The State Department of Environmental Services has a compliance checklist and self audit standards which must be met before receiving their certificate of approval. Junk yards have to go through training, Green Yards program training, and comply with best management practices which are frequently updated.

Mr. Carpenter expressed concern about the “self audit” section. He wondered if the Town’s code enforcement officers, should they suspect leakage, have any authority to request a soils test.

Ms. Scott replied that the Town then contacts the Department of Environmental Services if there is a suspected environment concern. The Health Officer and Fire Department are notified first, and if the level is raised then the DES is alerted.

Mr. Carpenter suggested that there be a mandated buffer zone between a junk yard and a wet land, stream, or river.

Ms. Scott added that in the Aquifer Protection District and the Cobbetts Pond District, junk yards are not an allowed use.

Selectman Carpenter suggested it may be a reasonable insertion to expand the buffer zone to include wet lands. For 2011, he mentioned rezoning one section at a time rather than 5-6 major districts at once.

Mr. McLeod recommended adding buffer zone limits under 708.4 Location. Within 708.6 Licensing he thinks language should be added stating, “specifically addresses materials storage location with concern for environmental impact.”

Mr. Richardson suggests that should be addressed in the Sits Plan Regulations.

Ms. Scott thinks it might be better placed in 708.6.2 where site plan is discussed. She would like to add, “Specific attention is to be paid to the location and types of material stored with attention on environmental impact.”

Ms. Scott referring to Section 708.4.5 suggested adding language that states, “No junk yards are allowed within a WWPD or within 150’ of a vernal pool.”

Mr. Richardson thinks 100’ would be consistent with the WWPD requirement.

Patrick Poore looking at 708.6.2 thinks the Board need to be concerned about leads, pesticides, and transmission fluids. He asked Ms. Scott to read back the amended language on storage.

Mr. Richardson closed the hearing to the public.

Mr. Richardson had an issue with pre-existing, grandfathered situations; homeowners with things in their yard that are borderline. Will they be in violation of the ordinance? He would like to give some consideration to these situations which our new ordinance does not.

Mr. Richardson recapped that this is the second Public Hearing and will need to go to a third due to the language and zoning changes.

**Selectman McLeod made a motion to move 708 Junk Yards to a third Public Hearing. Seconded by Ms. Maloney. Vote passed: 6-0**

The Board decided to move 708 Junk Yards to a third Public Hearing held on 1/5/11.

Chair LoChiato assumed his seat at 8:16 p.m.

**Section 701.3 Commercial Antenna Structures and Section 200 Definitions.** Amend Section 701.3 to clarify that commercial antenna structures are only allowed in Commercial A, Limited Industrial, and the Professional

Business, and Technology Zoning Districts; be consistent with the terminology within the Section to reference “commercial antenna structure”; delete Sections 701.3.2 & 701.3.3; and Amend Section 200 to add a definition of “commercial antenna structure”.

**Chair LoChiatto read Section 701.3 Commercial Antenna Structures and an amendment to Section 200 Definitions into the record.**

Ms. Scott emphasized that this is the third Public Hearing and is not meant to be a comprehensive cell tower ordinance. The Board is making some minor changes to the height regulation section of the zoning ordinance. The purpose of the hearing is to clarify where commercial antenna structures are allowed, what was meant by “commercial antenna structure” and tweaking some other language.

Selectman McLeod asked why the Board is removing guy wire restrictions if this is just a location change. Ms. Scott answered that over several meetings and many discussions the Board requested this change. Ms. Post explained that hardly anyone uses guy wires any longer.

Mr. Richardson addressed the plan view change and definition confusion and mis-reference due to the change of the definition to “commercial antenna structure” from antenna.

Selectman McLeod asked if the Board has overly restricted commercial antenna structure locations to commercial A and Professional Business B so that the cell tower companies will now need variances.

Selectman McLeod suggested allowing commercial antenna structures in the Neighborhood Business District like the one at Waterhouse or perhaps in the Gateway District.

Chair LoChiatto discussed the possibility of allowing antennae in Neighborhood Districts. Because of the location of Neighborhood Districts close to pockets of Residential zoning, the Board thought it to be prudent to avoid allowing towers in Neighborhood District.

Mr. Richardson said if the cell companies want a variance, there is nothing the Board can do.

Chair LoChiatto opened the hearing to the public.

Bob Skinner expressed two concerns. He wondered if Business, comma and Technology includes Neighborhood Business.

Mr. Richardson answered that it does not. It refers to Professional, Business and Technology which is one zone.

Mr. Skinner second question wondered why the guy wire restrictions were eliminated. He thinks it is important to include that language.

Chair LoChiatto said that the ordinance already requires the tower to be 150' from the lot line. If this is so, then it is unlikely the guy wires would extend outside that 150'.

Mr. Skinner thinks that the guy wires may very well extend further than 150'. The guy wire anchors are often substantial concrete blocks and would now exist near the roadway. The Town does not want large antenna abutments on the roadway open to potential accidents. Guy wires need to be addressed.

Mr. Poore does not see any description or differentiation for ham radio users who have antenna structures. What happens if a ham radio user is adjacent to a Commercial property with a commercial antenna structure? Is this

allowed? Section 701.3.5 states that there shall be only one commercial antenna structure on a Commercial lot and it will be at least 4000' from the next tower.

Ms. Scott clarified that the definition of commercial antenna structure specifically talks about broadcasting and operating for commercial gain. So it would not apply to the ham radio user.

Mr. Poore asked about two commercial antenna structures on 2 adjacent lots. Would they be allowed if they were closer than 4000' apart but on separate lots? Mr. Richardson responded by saying "No." Mr. Poore said that Section 701.3.5 says one tower, one lot. Mr. Richardson said that Section 701.3.5 continues to states that they shall be located 4000' apart from the center of the tower base regardless of which lot they are one. Mr. Poore wondered what the 4000' restriction is based on – aesthetics?

Chair LoChiatto closed the hearing to the public.

Ms. Post wants to understand the Board's reasoning for excluding that restriction.

Chair LoChiatto explained the geometry and rationale of the guy wires not extending beyond 150' from the property line and not into the right of way.

Selectman McLeod suggested if the guy wire restriction is not hurting anything, it might be wise to keep it in. It may help us. This could be later addressed when the Board takes up a comprehensive commercial antenna structure ordinance.

Chair LoChiatto offered to include the language about guy wire restriction.

Ms. Scott said that this is not a substantial language change to existing language.

**Selectman McLeod made a motion to move Section 701.3 Commercial Antenna Structures as amended to warrant. Seconded by Ms. Maloney. Motion passed: 7-0**

Chair LoChiatto interjected that the public expressed concern about the 26,000 G.V.W. After some research, he would like to review this matter and make changes if the Board is amenable. He thinks that 26,000 G.V.W. might be too large. A moving truck or Harvey Industries window moving truck is about 26,000 G.V.W.

Mr. Richardson remembered Board discussion that wanted to allow the Verizon worker to park his truck at home. He researched and had discussion with associates of his in the car industry who said that the State has restriction for vehicles over 18,000 pounds different for those under 18,000 pounds. A Verizon truck is slightly less than 18,000 pounds. Mr. Richardson thinks that this is probably a good place to be. A 24' truck is too big.

Chair LoChiatto said that this ordinance is about allowing the plumber or electrician who uses his truck for business on a daily basis to park in his driveway. A two axle, 18,000 G.V.W. is what we want.

Ms. Post suggested a length restriction of 16'.

**Mr. Richardson made a motion to reconsider the Rural District amendment sent to warrant which allows a 2 axle, 26,000 G.V.W. vehicle to overnight parking and amend it to state a 2 axle, 18,000 G.V.W. Seconded by Ms. Post. Vote passed: 7-0**

Ms. Scott said this would be moved to the 1/5/10 Public Hearing.

**Meeting Minute Review and Approval:**

November 3, 2010 minutes:

Ms. Scott said that Ms. Wood made changes on page 11 and 12 on the last two pond cases.

**Mr. Richardson made a motion to approve the minutes of November 3, 2010 as written. Seconded by Ms. Maloney. Vote passed: 4-0-3 Selectman McLeod, Mr. Wrenn, and Ms. Post abstained.**

November 18, 2010 minutes:

Ms. Post remembers saying the phrase, “a lot of stores have these types of signs.”

Ms. St. Laurent drew attention to the top of page 8 where there is a reference to “...there were concerns about the impervious surface...” This was a comment raised by the public.

Ms. Post recalled saying something that does not appear. At the top of page 5 under the Pond Ordinance, Ms. Post mentioned why Section 6 was removed. Ms. Scott will amend.

**Ms. St. Laurent made a motion to accept the minutes of November 18, 2010 as amended. Seconded by Ms. Maloney. Motion passed: 4-0-3 Selectman McLeod, Mr. Richardson, and Ms. Maloney abstained.**

Minutes of December 1, 2010:

Mr. Richardson noted that on page 1 he is listed as an alternate instead of a member.

Mr. Richardson noted on page 9, second paragraph “sub-committee” should read “work or study group.”

Ms. Post wondered if the sequence is out of order. She did not recall asking for further clarification of an issue after the motion. This discussion will be placed before the motion.

**Mr. Richardson made a motion to approve the minute of December 1, 2010 as amended. Seconded by Ms. St. Laurent. Motion passed: 5-0-2 Selectman McLeod and Mr. Wrenn abstained.**

Minutes of December 4, 2010 Meetinghouse Road Site Walk:

Mr. Wrenn stated that he was in attendance at the site walk.

Chair LoChiatto note a typo on Mr. Richardson’s name on page 1.

**Ms. Maloney made a motion to approve the minutes of December 4, 2010 as amended. Seconded by Mr. Wrenn. Motion passed: 4-0-3 Selectman McLeod, Ms. St. Laurent, and Chair LoChiatto abstained.**

**Planner’s Report:**

**Community Development Director’s Report:**

Ms. Post asked what “Talking the Talk” was about.

Ms. Scott explained that the local Government Center offered a workshop on working with colleagues with respect and team building. All Community Development Department staff attended.

**Miscellaneous:**

Ms. Scott received a memo from the Town Administrator regarding a piece of property currently on the market by the Department of Transportation. The Town has the right-of-first-refusal, and the Selectman are looking for input from the Planning Board. It is on route 28; 2 very small parcels which equal about ½ acre. Ms. Scott’s recommendation to the Board is that the Town merge the two lots, or it is a requirement of the Purchase and Sale

that they be merged first. They are currently non-conforming lots. Ms. Scott needs to respond back by 12/20. The lots are on the corner of route 28 and Harris Rd.

**Mr. Richardson made a motion to comment to the Selectman that the Planning Board sees no value to the Town in purchasing the land, but would ask the state to merge the two lots before selling them. Seconded by Mr. Wrenn. Motion passed: 6-1 Selectman McLeod abstained.**

Ms. Scott mentioned the Board of Selectman cut budget funding that has been allocated to assist the Planning Board with regulation and/or ordinance work. She hopes that there may be some funds available in this years' department budget and that the Board will support her effort to encumber them for work on the Cell Tower Ordinance. She has received an estimate for \$2,500 and expects to request encumbered funds from the Selectman. She would like to enter into a contract before the end of the year for the work with the Board's support.

Ms. Post thinks there are other things she would prefer spending money on; such as, design review standards. This would be more important to the Town overall.

Ms. Scott said she is looking to get CTAP funding for design review and several other issues. The Cell Tower Ordinance is not open for CTAP funding. Because of the complexity of the cell tower issue, health issues, and the many federal regulations, she felt that having a consultant work on it with the Board would be a good use of Town money.

Selectman McLeod clarified that cell tower regulations have been taken out of the Board's control. This will make it a much easier ordinance to work on your own. Selectman McLeod will e-mail a re-write of the ordinance that he worked on in 2001. Complex terms have been removed, and it should be something that is well within the capability of this Board to work on.

Chair LoChiatto recommended asking the Selectman to earmark \$5,000 for the Planning Board if CTAP funds are not available. Then the Town can research several companies for quotes.

Betty Dunn stated that there are many people in town who are aware and concerned about design review standards. There are several people within the community having some expertise in this area who would be willing to step forward and offer their assistance.

**Ms. St. Laurent made a motion to recommend to the Board of Selectman that any unused budget funds from the Community Development Department up to \$5,000 be encumbered for the development of design review guidelines. Seconded by Ms. Post. Motion passed: 5-1-1 Mr. Richardson voted no and Selectman McLeod abstained.**

**Selectman McLeod made a motion to adjourn at 9:18 p.m. Seconded by Ms. Maloney.  
Motion passed: 6-0**

These minutes are respectfully submitted by Mimi Kolodziej.