



OLD VALUES - NEW HORIZONS

## COMMUNITY DEVELOPMENT

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### Planning Board Minutes

November 20, 2013

#### Board Members:

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

Ross McLeod, Selectman – Excused  
Kathleen DiFruscia, Selectman Alternate – Present  
Vanessa Nysten, Member – Present  
Alan Carpenter, Alternate – Excused  
Jim Fricchione, Alternate – Excused  
Steve Bookless, Alternate – Arrived at 9pm, not seated

#### Staff:

Laura Scott, Community Development Director  
Elizabeth Wood, Community Planner  
Laura Accaputo, 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 a brief synopsis of the agenda.

The Chair seated Mr. Gosselin for Margaret Crisler.

#### Public Hearing – Application

Case#2013-36/Customary Home Occupation/Conditional Use Permit/Day Care

**Ms. Skinner motioned and Mr. Wrenn seconded to open for Public Hearing Case#2013-36; Motion Passed: 7-0. Ms. Skinner motioned and Mr. Wrenn seconded the continuation of Case#2013-36 to January 15, 2014 per the Applicant's request. Motion Passed: 7-0-0.**

Ms. Skinner read Case#2013-37/ Major Watershed Application into the record.

#### Administrative Review of Application:

Case#2013-37/Major Watershed Application

A Major Cobbetts Pond and Canobie Lake Watershed Application has been submitted for 18 Bell Road (17-J-116), located in the Residential A District and Cobbetts Pond and Canobie Lake Watershed Overlay Protection District zones. The Applicant, Joseph Maynard of Benchmark Engineering, Inc. on behalf of Paul and Cynthia Finn, is proposing to raze the existing residence and carport and build a new single-family residence, install a new septic system, and complete other site improvements. The proposed amount of impervious surface coverage is 2,658 sq. ft. or 30%.

Chair St. Laurent confirmed with Ms. Wood the application was complete. Ms. Wood explained Mr. Steve Keach did an initial Engineering Review and Mr. Maynard made revisions based on his recommendations. Mr. Keach was provided the revised plans on November 15, 2013 and has not yet provided a follow up review.

Mr. Sycamore stated the property was going from seasonal to year round and asked about the status of impact fees. Mr. Maynard explained this property had been year round for many years.

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Mr. Maynard outlined the request on behalf of Paul and Cynthia Finn proposing to raze the existing residence and carport and build a new single family residence, install a new septic system and complete other site improvements. The proposed amount of impervious surface coverage is 30%. The Zoning Board of Adjustment has approved several variances.

#### **Questions/Comments from the Board**

- Ms. DiFruscia asked if there was going to be any ground cover bordering along the water for storm water runoff.
- Mr. Maynard explained there is existing low shrubbery and they meet the point value for vegetation on site. They will re-do the buffer between the property and the Bell Road Beach and possibly additional planting in the spring. He distributed two pictures of the rocks along the wetlands.
- Chair St. Laurent asked Mr. Maynard to outline the changes Mr. Keach requested reflected on the plan and was satisfied that his concerns were met.

The Chair opened the hearing to the public at 7:21pm, hearing none the Public Hearing was closed.

Ms. DiFruscia asked if there was any location for the well other than so close the shoreline. Mr. Maynard explained it is 9ft from the shoreline, the state minimum is 10ft and they allow waivers. He believes this location makes sense as it is the flat end of the site.

**Ms. Nysten motioned and Ms. DiFruscia seconded to approve the Major Watershed Application, Case #2013-37, due to the new septic system, well, and preparation of storm water management and erosion control plan consistent with New Hampshire storm water manual, subject to approval and satisfaction of Mr. Keach's requirements. Motion Passed: 7-0-0.**

#### **2014 Town Meeting Workshop**

-Neighborhood Business District Parcel Rezoning

Mr. Wrenn explained this is part of a series of workshops to discuss the possible rezoning of some properties based on the proposals of the subcommittee. The subcommittee was formed to see if the Neighborhood Business District zones should be expanded or changed in any way.

#### **Lot 9-A-500 (150 Haverhill Rd); Lot 9-A-780 and Lot 9-A-825 (landlocked between Rt. 111 & Kendall Pond Rd)**

Ms. Nysten pointed out the proposed zones for these lots are Neighborhood Business (NBD) or Village Center District (VCD); they are currently zoned Rural. Ms. Wood explained these proposals will impact what you can do on the property. There has been interest in town to bring in more business development to lower the tax base. The subcommittee looked at the entire town to see where business growth could go. Ms. Nysten stated another objective of the subcommittee per the Master Plan was to see where the Neighborhood Business District could be expanded. Chair St. Laurent explained the purpose of the VCD. The Board discussed the allowed uses for the area as currently zoned (rural) and the recent changes adopted at Town Meeting for the proposed zones (NBD, VCD) such as allowed uses and design guidelines. Mr. Greenberg asked if any studies had been done to see the impact of neighboring properties and was told this is just for rezoning and any proposed development would have to go through the application process which includes proof of proper wells, septic, drainage, storm water runoff, etc. The Board also discussed what the proposed zoning districts would not allow such as drive thru's (other than for a bank or pharmacy), gas stations, and supermarkets. Mr. Wrenn explained the rezoning process which has many steps starting with workshops going all the way to town vote. Ms. Nysten read the purpose of the NBD and its uses.

The Chair opened the hearing to the public at 7:50pm

- Tom Case stated he believes the intent of NBD is small business for the convenience of the neighborhood. Currently this area has 37 acres zoned as NBD and adding these parcels (another 50+ acres) makes no sense. He also questioned why in 2003 some existing single family homes and elderly housing units were rezoned to NBD. He believes we have moved away from the idea of what NBD is.
- Chair St. Laurent explained not all uses listed for NBD are intended for use of the residents in that area only. It is intended that the businesses complement the neighborhood.
- Greg Kindrat, 61 Haverhill Road, asked whatever changes are made to consider the impact on people living in the area.
- Tracey Partington, 17 Galway Road, stated she is pro business and likes to use the businesses in town. This area is the west end of Windham and most people come out to 111 east of this area; development would be to the detriment of this neighborhood. She also stated there is a limited customer base in town and rather than creating competition we should support the businesses we have. She also asked about tax relief and what the benefit would be to the town.
- Mr. Wrenn stated a Conservation Committee study showed .28 of every tax dollar collected from a commercial property goes to town services and the rest goes to the general fund. With residential it's 1.05 for town services meaning the town loses .5 on every dollar collected.
- Mr. Gosselin stated the property owner has the option to develop to their best interest and he is not aware of any plans for development if rezoned. The subcommittee is looking at what makes sense for this area.
- Ms. Nysten commented the Cost of Services Report was based on commercial development from 2009 and would likely be different today. From her understanding, more intensive commercial business comes at a higher cost to the town.
- Rebecca Zachas, 22 Faith Road, stated in March 2005 Citizens Petition #2, to rezone the largest parcel, was defeated. March 2008 Article 2 Petition 5 to rezone was defeated. March 2009 proposed rezoning by the Planning Board the majority vote was received however it was not passed as a Protest Petition was in place requiring a 2/3 majority to pass. This history should speak volumes that residents do not want this property rezoned for business. There is no way to go back once it is rezoned and developed. She urged the Board to not move forward with rezoning.
- Brian Brant, Galway Road, stated it is easy to get to where the businesses are and West Windham is not underserved. He believes workforce housing would have happened by now if it made sense to the owner.
- Roger Wheeler, 26 Kendall Pond Rd asked what this would do to the value of the landlocked property at this location and why this is being pursued after it was voted down by residents.
- Chair St. Laurent stated this is just to have a discussion since there had been the new proposal of rezoning to VCD. She also explained that if this were rezoned but continued to be used as a residence only, the land owner would still pay the residential tax rate. They would have to apply yearly at the Assessors Office for the residential rate.
- Greer Ross, 17 Clark Farm Rd, feels they are already well served and the current Town Center brings the Community together. She feels it would be more viable to use the existing commercial land we already have than to rezone this area.
- Michelle Sheppard, 10 Galway Road, stated her concern was about cut through traffic and the danger to public safety.
- Richard Texeira, 18 Galway Road, Questioned the need for two Village Centers and felt kids would be in danger and traffic would be an issue.
- Betty Dunn stated the concept of a NBD was small in scope for small businesses on small lots. If rezoning were done here it would not be in that concept, it would be like a mini mall. This property has one owner and would not likely be broken up but developed as one major project.

She also noted that several years ago the state passed a statute that would allow a developer that owned a significant parcel to propose something that the town could vote on.

- Chair St. Laurent stated that the VCD and Open Space are examples of innovative land use controls that are codified in our Ordinance. We're always willing to listen if someone has an idea.
- Betty Dunn stated she believes mixed use compatible with the neighborhood is possible and she'd like to see that discussed more for all parcels throughout town.
- Heath Partington, 17 Galway Road, stated the abutter notifications for South Clarke Farm were sent to the Association and most people did not receive the notification (from their association).
- Ms. Nysten stated it's her understanding from staff that notification is not required but the Planning Board wanted involvement from the community early on so the extra effort was made to notify owners and abutters. The open space lot was an abutter so notification was sent to the association for the open space.
- Mr. Partington commented in regards to Mr. Gosselin saying that no one is ready to develop this parcel for business at this point is ignoring the history of the parcel. We know who owns the parcel and we know they want to develop a business there. In 2008 we were told by the engineer there is no way they will develop this parcel for single family homes. This is a huge parcel and was never presented as a mix use. He feels this location will not serve the majority of Windham; most of the town is east of this area. He stated at the end of 2012 Windham had 542 acres of undeveloped land zoned commercial in areas that are much more attractive to developers than this area. He noted he feels that we are reaching the point of saturation for business vitality. He also noted that stating commercial development will lower the tax rate is not a true statement and gave examples of other communities with more commercial development and higher tax rates than Windham.

**Ms. Nysten motioned and Ms. Skinner seconded to leave the current zoning (Rural) for 150 Haverhill Road (Lot 9-A-500) and the landlocked parcels between Rt. 111 and Kendall Pond Road (Lot 9-A-780 and Lot 9-A-825) based on the testimony received.**

Ms. DiFruscia stated she was familiar with the history of this area and has long not supported the rezoning of these parcels and the testimony she heard from the neighborhood has reaffirmed that position.

Mr. Sycamore stated the Windham Economic Development Committee did a survey in 2010 and the results were consistent with what he heard tonight.

**Hearing no further discussion the Chair went back to the motion. Motion Passed: 7-0-0.**

Mr. Bookless arrived at 9:00pm, not seated.

**Lot 14-A-50 (8 Mammoth Rd); Lot 14-A-100 (16 Mammoth Rd); Lot 14-A-6 (6 Mammoth Rd)**

Mr. Wrenn explained the subcommittee proposed rezoning these properties from Rural to NBD because they are located on a busy state road and are adjacent to an existing NBD. There is conservation land behind these parcels. Current residential use will stay but this will give the owners an opportunity for a potential better and higher use of the land if they choose.

The Chair opened the hearing to the public at 9:05pm

- Tom Case stated the three parcels are very small and have houses on them. This would expand the existing 37 acres of NBD and based on his previous comments thinks the current zoning should not be changed.
- Chair St. Laurent asked if there was any communication from the property owners regarding this proposal and was told no.

**Mr. Sycamore motioned and Ms. DiFruscia seconded to leave the parcels as currently zoned.**

Mr. Gosselin stated he would like to know the opinion of the land owners.

The Board discussed the notification process if moved forward to Public Hearing and whether the land owners could be contacted by phone. Ms. Wood answered yes she would try to reach them by phone and will also send a letter by certified return receipt mail.

**Hearing no further discussion the Chair went back to the motion. Motion Failed: 3-4-0 with Mr. Wrenn, Mr. Gosselin, Ms. Nysten, and Chair St. Laurent in opposition.**

**Mr. Wrenn motioned and Mr. Gosselin seconded to move to Public Hearing the proposed rezoning to Neighborhood Business District of Lot 14-A-50 (8 Mammoth Road); Lot 14-A-100 (16 Mammoth Road), and Lot 14-A-6 (6 Mammoth Road) with a redoubled effort to contact the property owners. Motion Passed: 5-2-0 with Mr. Sycamore and Ms. Skinner in opposition.**

The board confirmed that Ms. Wood would contact the property owners by certified return receipt mail as well as regular mail.

Ms. Nysten questioned if notifying these owners by certified letter would set a precedent requiring all property owners to be notified this way.

Chair St. Laurent explained she voted in favor because these are small parcels and if developed would be small scale businesses. She just wants to be sure of what the property owner's thoughts are.

Mr. Gosselin stated in almost every other case we heard from property owners or someone on their behalf, it seems strange not to hear from anyone regarding these parcels.

Ms. DiFruscia agreed and feels it would not set a precedent.

Mr. Sycamore stated there is a cost to indifference.

**Lot 3-B-360 (137 Rockingham Road); Lot 3-B-250 (135 Rockingham Road)**

Mr. Wrenn stated these properties were addressed by the property owners for rezoning from Rural to Neighborhood Business District. They are both being used for business.

Mike Salvo, 137 Rockingham Road, stated 135 Rockingham Road is a vacant lot but asked that it be considered for rezoning to NBD along with his lot. Everything in the area is commercial.

Mr. Case agrees.

**Mr. Sycamore motioned and Ms. DiFruscia seconded to move to Public Hearing the rezoning of Lot 3-B-360 (137 Rockingham Road) and Lot 3-B-250 (135 Rockingham Road) from Rural to Neighborhood Business District. Motion Passed: 7-0-0.**

Chair St. Laurent asked Ms. Wood to reach out to the owner of 135 Rockingham Road by certified return receipt mail.

**Lot 14-B-5100 and Lot 14-B-5000 15 & 17 Mammoth Road**

Mr. Wrenn explained this request came from the property owner. He would like both lots rezoned from NBD to Commercial A. Ms. Nysten noted that since this was not proposed from the subcommittee, notifications were not sent out.

Michael Farris, property owner of 15 and 17 Mammoth Road stated he did not think the current zoning was appropriate. The property is on the corner of two state roads at a major intersection with high traffic counts. The property across the street is zoned NBD but used as Commercial A. The property abuts a residential neighborhood however both NBD and Commercial A call for the same 50 ft buffer zone. Development will only enhance the buffer. By definition Commercial A is defined as a location that services motoring and transient public which is exactly what this location is.

Ms. Nysten pointed out Commercial A requires more of a buffer and the uses are more intense.

Mr. Bookless asked if there was a proposed business for this location and was told not at this time.

Mr. Wrenn noted this would be spot zoning and although he does not usually agree with spot zoning the parcel across the street, Waterhouse, is being used as Commercial A by definition.

Ms. Nysten stated her concern for the incompatibility of the residential townhouses abutting the property with the uses allowed for Commercial A.

Mr. Farris asked them to think of the likely uses for this location, which would be something that services commuter traffic. It doesn't make sense to disallow proper zoning.

The Chair opened the public hearing at 9:40pm

- Mr. Case recommended looking at Waterhouse as well.
- Ms. Dunn stated it is spot zoning unless you look at the bigger picture and include Waterhouse.
- Karl Dubay believes the Board should explore change here and at Waterhouse. He stated it is not spot zoning when you have a cluster of properties like this at an intersection of highly traveled roads. This is a commerce node, clearly not spot zoning. The buffers would be increased if rezoned to Commercial A verses what is required for NDB. Restaurants like to be at a commerce node; if NBD restaurant has to close at 10pm. The net revenue of taxes will increase if rezoned to Commercial A with no increase to services. The Board should bring it forward for discussion.
- Ruth Ellen Post suggested moving forward to Public Hearing to get all points of view.

The chair closed the Public Hearing at 9:50pm

Ms. DiFruscia stated she is concerned about spot zoning and is open to hearing from abutters. This will bring a significant change to the area and other parcels will try to follow suit which may or may not be a good thing.

**Mr. Wrenn motioned and Mr. Gosselin seconded to move to Public Hearing the rezoning of Lot 14-B-5000 and 14-B-5100 (15 and 17 Mammoth Road) from Neighborhood Business District to Commercial A**

Ms. Skinner asked if the motion should include Waterhouse. The Board discussed protocol for adding a property and the notification process. Mr. Dubay explained the Board is not required to have a workshop before moving to Public Hearing. The Board discussed additional parcels that made sense to include in the proposal.

Hearing no further discussion, the Chair went back to the motion

**Mr. Wrenn amended the motion to include the rezoning of lot 14-A-1100, (18 Mammoth Rd), 14-A-1100A, and 14-A-1200 (167 Haverhill Road) from Neighborhood Business District to Commercial A. Motion Passed: 6-1-0. Mr. Sycamore opposed.**

The Board discussed how notification would be handled and the Chair requested the mailing be done as soon as possible to give plenty of notice.

**Ms. Skinner motioned and Mr. Wrenn seconded to accept new business after 10pm. Motion Passed: 7-0-0.**

**Lot 20-D-900 (21 Haverhill Road), Lot 20-D-800, Lot 20-D-1000**

Mr. Valentine of WEDC discussed the location and most recent uses of the parcels. The parcels are Town owned and currently zoned Rural. The WEDC is recommending the parcels be rezoned to Commercial A as this will make them more valuable and easier to sell if the Town wanted to do so.

Mr. Sycamore asked how this aligned with the results of the survey conducted by the WEDC; where did most residents want to see commercial development in town.

Mr. Valentine answered more than 50% said Rt. 28 or near Rt. 93.

Ms. DiFruscia stated the Board of Selectman discussed recreational uses for this property and questioned if the Planning Board could move to rezone town owned property. She also questioned the protocol as she does not recall this proposed rezoning being discussed by the Board of Selectman yet.

Ms. Post stated the Planning Board is the first place the Board of Selectman should consult regarding zoning and land use recommendations for town owned property. This Boards expertise should be sought on this issue.

Mr. Dubay stated this is a valuable asset and it's our property and benefits everybody. He is hopeful the Boards can come together and get this on an agenda to clarify the issue and come up with the best use for the town.

Chair St. Laurent stated she would recommend the WEDC bring their plan back to the Board of Selectman.

Ms. Dunn suggested this be held off until spring when there will be more time for discussion.

**Chair St. Laurent polled the Board to see if the Planning Board would recommend the Board of Selectman to seek input from WEDC, Conservation Committee, School Board, Planning Board, and any other applicable Boards or Committees to look at the town owned parcels including the former police station and surrounding parcels.**

- Ms. Nysten voted yes
- Mr. Gosselin voted yes
- Ms. Skinner voted yes
- Mr. Wrenn voted yes
- Chair St. Laurent voted yes

**Recommendation Passed: 5-0-0.**

Ms. Wood asked the Board for clarification of the wording in the Purpose Section of the Cobbetts Pond and Canobie Lake Watershed Overlay Protection District. The Board discussed the text in the proposed new Section 616.1.1.7.

**Ms. Nysten motioned and Mr. Wrenn seconded to withdraw the proposed Section 616.1.1.7 “To protect drinking water resources and well head areas” as there is already a section that covers protecting water supplies and aquifers. Motion Passed: 7-0-0.**

Ms. Difruscia and Ms. Skinner were excused at 11:03pm.

### **Public Hearings – 2014 Town Meeting**

Chair St. Laurent read Building Code Amendments into the record.

#### Building Code Amendments

Under the authority provided to the Town of Windham in NH RSA 155-A:3(I), amend Section R106.2 of the 2009 International Residential Code and Section R107.2.5 of the International Building Code to require submitted site plans to depict all public and private easements, as well as applicable setback lines from lot lines, wetlands and other features creating setbacks under the Windham Zoning Ordinance.

Ms. Scott explained a few weeks ago there was concern about the way the notice was written. It has been rewritten by Attorney Campbell and is the warrant language. If adopted this becomes a local amendment to the Building Code.

The Chair opened the hearing to the public at 11:06pm.

Ms. Dunn believes saying we are going to amend the International Residential code is not realistic. The International Residential Code is a model code that we’ve adopted and incorporated into our own regulations. We should add language that says as previously adopted by the town.

Chair St. Laurent stated Consul addressed that in the opening statement.

The Chair closed the Public Hearing at 11:10pm.

**Mr. Wrenn motioned and Mr. Gosselin seconded to move the language in Building Code Amendments as presented (with the elimination of to the) to Town Warrant. Motion Passed: 5-0-0.**

Chair St. Laurent read Wetland and Watershed Protection District (WWPD) (Section 601) into the record.

#### Wetland and Watershed Protection District (WWPD) (Section 601)

Add Section 601.4.8.4 to require that any activity requiring Planning Board approval within the WWPD that the boundaries on such parcel shall be marked in order to prevent encroachment. This section explains the spacing of the markers, who is required to place them on the site and the purchase of the markers.

Ms. Scott explained this is to avoid encroachment onto WWPD for subsequent owners who don’t know where the boundaries are. Attorney Campbell provided revised language to a draft that was presented a few months ago.

The Chair opened the hearing to the public at 11:13pm.

Ms. Dunn stated she agrees.

The Chair closed the Public Hearing at 11:13pm.

**Ms. Nysten motioned and Mr. Wrenn seconded to move the language in Section 601 Wetland and Watershed Protection District as presented to Town Warrant. Motion Passed: 5-0-0.**

Chair St. Laurent read Impact Fees (Section 715) into the record.

Impact Fees (Section 715)

Amend Section 715.3.2 to clarify when the Planning Board and/or the Building Inspector assesses the impact fee and delete “Code Enforcement Officer”; delete “or in the habitable portion of a residential building” from Section 715.3.5.1; renumber 715.3.5.5 to 715.3.5.6; add new Section 715.3.5.5 stating that the conversion of a seasonal dwelling unit to a year-round dwelling unit is new development for assessing school impact fees; amend Section 715.6 to add “school board” and clarify that it is a Planning Board public hearing; delete “or as a condition for” from Section 715.7.2; replace “Code Enforcement Administrator” with “Building Inspector” in Sections 715.7.3 and 715.9.1; delete “annually” from Section 715.11.3 and add “within 60 days of the six year anniversary date of when such fee was paid” to the end of that Section; and replace “water and sewer systems including” with “public capital facilities” in Section 715.12.

Ms. Scott explained this was reviewed at a workshop several weeks ago and any changes made were reviewed by Attorney Campbell. All the changes he requested have been made and posted.

**Questions/Comments from the Board**

- Ms. Nysten asked to add the statutory language to Section 715.3.3 regarding collection. She is also concerned that a Town Counsel memo was not included in PB packets.
- Chair St. Laurent stated Section 715.7.4 states collection of Impact Fees shall be on or before the time of certificate of occupancy but the statute says “at” the time of certificate of occupancy. This small change will reflect exactly what’s in the RSA language.
- Mr. Gosselin explained why developers may want to pay the Impact Fee before the certificate of occupancy and does not feel it creates an issue.
- Ms. Nysten stated her concern is making sure that the statute is followed and also for planning purposes. The money can only be held for six years and if you collect early you will have to give it back at an earlier date – that could work out to be six months, a year, or more, thereby possibly not allowing enough time to build consensus amongst residents to move forward with a project.

Chair St. Laurent opened the hearing to the public at 11:30pm.

- Ms. Post stated the statute is clear that collection is at the time of certificate of occupancy is issued and also suggested if you include an alternate schedule of payment is acceptable you should also include how it is recorded.

Ms. Scott suggested adding to 715.7.5 “such agreement will be recorded at the Registry of Deeds”.

Ms. Nysten also suggested a change to Section 715.11.3 by changing the last word “paid” to “collected”

**Mr. Wrenn motioned and Mr. Sycamore seconded to re-notice Section 715 Impact Fees with the changes discussed. Motion Passed: 5-0-0.**

**Meeting Minutes Review & Approve**

-October 16, 2013

-October 30, 2013

-November 6, 2013

**Postponed**

**Mr. Wrenn motioned and Mr. Gosselin seconded to adjourn the November 20, 2013 Planning Board Meeting. Motion Passed: 5-0-0.**

These minutes are respectfully submitted by Laura Accaputo, Planning Board Minute Taker.

