



OLD VALUES – NEW HORIZONS  
**COMMUNITY DEVELOPMENT**

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**Planning Board Minutes  
November 13, 2013**

**Board Members:**

Kristi St. Laurent, Chairman – Present	Ross McLeod, Selectman – Excused
Margaret Crisler, Vice Chair – Excused	Kathleen DiFruscia, Selectman Alternate – Excused
Pam Skinner, Member – Excused	Vanessa Nysten, Member – Present
Jonathan Sycamore, Member – Excused	Alan Carpenter, Alternate Member – Present
Sy Wrenn, Member – Present	Jim Fricchione, Alternate Member – Excused
Paul Gosselin, Alternate Member – Present	Steve Bookless, Alternate Member – Arrived at 7:20

**Staff:**

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 appointed Mr. Carpenter to sit for Ms. Skinner and Mr. Gosselin to sit for Mr. Sycamore.

Regular Member, Ms. Nysten, will serve as Vice Chair.

**2014 Town Meeting Workshop: Zoning District Boundaries, Zoning Map**

Chair St. Laurent explained this is a continuation of some rezoning considerations recommended by the subcommittee. Ms. Nysten and Mr. Wrenn sat on the subcommittee and explained one of the items on the Master Plan was to look at expanding the Neighborhood Business District (NBD). The charge of the Planning Board was to look at areas to see what made sense for zoning changes to keep the areas contiguous. Ms. Wood explained this is different from the cleanup of split zone parcels with rezoning that was looked at by the Planning Board in the past. The proposals may change the intent and usage of the parcel and have more of an impact on the property owners. She also stated in the past if a property owner expressed opposition to the proposed changes the Planning Board did not move forward. The Chair determined they would start with the 2 largest parcels. Maps were displayed on the screen for public and Board review.

**Lot # 2-A-700, 125 North Lowell Rd and Lot # 3-A-800, 122 North Lowell Rd**

These lots are multi-zoned Rural District and Neighborhood Business District. Ms. Wood explained the lots do not have a clear transition where the zones change from NBD to Rural. The Board reviewed maps to determine the current lot lines and zoning districts.

The Chair opened the workshop to the public at 7:23pm.

- Sean Foster, 44 Range Rd, asked to keep both parcels unchanged.
- Tom Case inquired about the section of the lot that abuts Route 93 and asked why the subcommittee thought it should be zoned NBD.

- Mr. Wrenn explained this is a busy and expanding highway and therefore the subcommittee felt it was not well suited for residential areas.
- Mr. Case read from Section 604 the definition of a NBD and as defined feels this area with a total of 77.5 acres becomes more than a NBD.

The Chair closed the Public Workshop at 7:27pm.

**Ms. Nysten motioned and Mr. Carpenter seconded to keep the parcels at 125 North Lowell Road and 122 North Lowell Road the same zoning that currently exists, multi zoned Rural District and Neighborhood Business District. Motion Passed: 5-0.**

Alternate Member Steve Bookless was seated at 7:27pm for Margaret Crisler.

**Lot # 2-A-950 6 Brown Rd, 2-A-980 129 North Lowell Rd, and 2-A-1100A North Lowell Road**

Mr. Wrenn stated since the surrounding properties are zoned NBD the subcommittee thought it would be appropriate to make it more contiguous by rezoning these Rural District lots to NBD. Ms. Wood explained for assessment purposes if the home is owner occupied and there is no business on the property, a conversion from rural to NBD will not change your assessment if you file a waiver with the Assessor.

The Chair opened the workshop to the public at 7:34pm.

- Mr. Case commented the problem is there are houses on these properties and if changed to NBD it would become a non-conforming use and you could have trouble getting a mortgage.
- Bill Crucius stated all of the abutting properties on Brown Road are residential and asked why rezone properties that people bought as residential. He also stated the land behind his property is all wetlands, hills, and ledges and can't be developed.
- Mr. Carpenter explained that in a retail environment, the more you have the more successful they all are. He also stated if the landowner doesn't want it rezoned there is no reason for the Board to do it.
- Kate Carmody stated she wanted the zoning to stay as it is. She believes business will bring more traffic.
- Mr. Carpenter asked Ms. Normington, owner of parcel 2-A-1100A what her preference was and she stated she had no preference.
- Ms. Wood stated she would check to make sure there wasn't an error with how Ms. Normington's parcel is currently zoned.

The Chair closed the Public Workshop at 7:40pm.

**Ms. Nysten motioned and Mr. Gosselin seconded to keep the parcels at 6 Brown Road Lot 2-A-950 and 129 North Lowell Road Lot 2-A-980 as currently zoned Rural District. Motion Passed: 5-1, Mr. Wrenn opposed.**

**Ms. Nysten motioned and Mr. Wrenn seconded to move to Public Hearing Lot 2-A-1100A on North Lowell Rd to change the zoning from Rural District to Neighborhood Business District. Motion Passed: 6-0.**

**Lot #2-A-600 117 North Lowell Rd and Lot #2-A-80 113 North Lowell Rd**

Mr. Wrenn stated since the surrounding properties are zoned NBD the subcommittee thought it would be appropriate to make it more contiguous by rezoning these Rural District lots to NBD.

Mr. Carpenter asked if there was a variance issued for this property and Ms. Wood replied she didn't know. Mr. Carpenter asked the property owner to come forward to provide information.

The Chair opened the workshop to the public at 7:45pm.

- Mr. Andrew Dickinson, property owner, stated he had been using the NBD zoning of the abutting properties as an argument to operate a business at this location. They did get an approval for a variance to the zoning in 1996. Due to the comments made by Mr. Case regarding mortgages he is unsure if he wants his property rezoned. He also wanted confirmation his taxes would not go up if his property was rezoned.
- Chair St. Laurent stated she thought he might not be eligible for the tax waiver as he does have a commercial use on the property.
- Mr. Wrenn explained this is a workshop and if it is moved to Public Hearing he would have the opportunity to speak again. At that point it could either be tabled or moved to Town Warrant.
- Chair St. Laurent stated that to keep this alive it would have to be moved forward to Public Hearing. We would send out a notice of the meeting and accept input at the meeting or sent in writing.
- Mr. Gosselin commented that if his business grew or he hired employees his current variance may not allow it.
- John Blanchard, 113 North Lowell Road, asked why they are attaching all of the properties together.
- Mr. Wrenn answered it is the logical place to end the NBD zone.
- Ms. Nysten advised Mr. Blanchard if he wanted to expand his house he would need a variance if his property is rezoned to NBD.
- Mr. Carpenter stated if the Board did not move forward with Mr. Atkinson's property it wouldn't be logical to move forward with Mr. Blanchard's property.
- Ms. Nysten asked Mr. Blanchard if he was opposed to moving forward to public hearing and he replied yes.
- Mark Samsel, Depot Road, stated he had no opinion either way but asked the Board to think about the grade and site lines of North Lowell Road at the property.

The Chair closed the Public Workshop at 8:09pm.

**Ms. Nysten motioned and Mr. Wrenn seconded to move 117 North Lowell Rd Lot #2-A-600 to Public Hearing to change the zoning from Rural District to Neighborhood Business District. Motion Passed: 6-0.**

**No action was taken on Lot #2-A-80.**

#### **Lot #13-A-100 Roulston Road**

Chair St. Laurent explained the parcel is multi zoned Residential District A and Limited Industrial District due to the relocation of Roulston Road, Lamson Road and Industrial Drive intersection. Mr. Wrenn stated the parcel is surrounded by roads on three sides and there is limited industrial, some business, and rural. It makes sense to have one zone and NBD is a good transition between neighborhoods and other commercial uses.

Mr. Carpenter noted it was surrounded on three sides by limited industrial parcels.

Mr. Bookless asked who owned the land and if they want the property changed.

Ms. Wood answered the property was owned by Cordell Development and they were notified but did not respond.

The Chair opened the workshop to the public at 8:10pm.

- Betty Dunn stated the property owners applied for a variance for a medical office building and were denied as the abutters were opposed. The property is not appropriate for a residence. She asked why changing it to NBD would not be spot zoning.
- Chair St. Laurent explained it would be set up as a transition between residential use and industrial use.
- Mr. Carpenter stated if we made it NBD and were challenged we would not win. Hard to make a 1.3 acre parcel a business district.

- Ms. Nysten stated the neighbors made it clear they do not want limited industrial but are not opposed to Residential District A.
- Mr. Gosselin believes the only reasonable use would be limited industrial to conform to neighboring properties.
- Mr. Bookless believes there is not much you can do with the property from a residential point of view and questioned if the Board changes it to Limited Industrial does the owner have any recourse to change it. He felt it would be beneficial to get input from the most affected parties.
- Chair St. Laurent believes a NBD gives a nice transition for the abutters. She also noted the impact of traffic on the abutters.
- Ms. Nysten believes creating a transitional zone is the right thing to do for the residents.
- Mr. Wrenn stated it is spot zoning with a purpose.

The Chair closed the Public Workshop at 8:32pm.

**Ms. Nysten motioned and Mr. Wrenn seconded to move to Public Hearing Lot #13-A-100 Roulston Road to change the zoning from Limited Industrial and Residential District A to Neighborhood Business District. Motion Passed: 5-0-1, Mr. Carpenter abstained.**

**Chair St Laurent read a letter into the record a letter from Theresa Steele to have her property located on Route 28, Lot #8-B-2499, changed from NBD to Business Commercial A**

The Chair opened the workshop to the public at 8:40pm.

- Mr. Case stated he believes it should be left as is.

The Chair closed the Public Workshop at 8:41pm.

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

- Mr. Wrenn agrees it is zoned properly and changing this would be spot zoning.
- Chair St. Laurent asked if abutters were noticed.
- Ms. Wood answered they weren't as this was initiated by the property owner and not the subcommittee.

**Mr. Carpenter motioned and Mr. Gosselin seconded to notify the property owner that the Planning Board has decided to take no action and explain the options they have.**

Mr. Gosselin asked if they do a citizens petition will it get them a public hearing. Chair St. Laurent answered yes.

Ms. Nysten asked if abutters would be notified and Ms. Wood answered the public hearing would be advertised. The person filing the citizens petition would need 25 signatures.

**Hearing no further discussion, The Chair went back to the motion. Motion Passed: 5-0-1, Mr. Bookless abstained.**

#### **Public Hearings for Town Meeting items:**

Ms. Nysten read Section 200 Definitions (Boarding & Rooming Houses, Frontage) into the record.

#### **Section 200 Definitions (Boarding & Rooming Houses, Frontage)**

To amend the existing definition of Boarding and Rooming Houses to include a provision that requires Boarding and Rooming Houses to service not more than (4) persons and requiring that the house be owner-occupied as a

private residence. The proposal is also to add a definition for Lot Frontage, which is, a contiguous frontage as measured 50' from the front lot line. Frontage may not be accommodated by totaling up frontage on a corner lot or double-front lot.

Chair St. Laurent referenced a memo from Attorney Campbell with his recommendations of the revision to the definition of "Boarding or Rooming House". In his memo he agreed with removing the language tourist court or lodging house. He questioned limiting the facilities to not more than four persons as most boarding houses are slightly larger but said it's a judgment the Board is free to make. He added to the definition - where rooms are let "which are used primarily for sleeping and toiletry" and also where meals may be regularly served by pre-arrangement "in a common dining area". He wants to draw a distinction between Boarding and Rooming houses and Apartment Buildings.

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

- Mr. Gosselin asked if there is currently any Boarding or Rooming Houses that are larger than four as this will make them a preexisting non conforming use.
- Mr. Bookless stated he believes this is to make a distinction between inns, motels, hotels, or bed and breakfasts which are more transient and rooming and boarding houses which are more permanent.

The Chair opened the hearing to the public at 8:55pm.

- Ms. Dunn commented that people do not like to have cluttered ballots.
- Ms. Nysten stated it makes sense to clarify the definition as it currently lists tourist court and lodging house which are not allowed uses in Windham Zoning Ordinance.

The Chair closed the Public Hearing at 8:59pm.

**Ms. Nysten motioned and Mr. Carpenter seconded to move forward to Public Hearing the language suggested by Attorney Campbell as the new definition for Boarding or Rooming Houses. Motion Passed: 5-1, Chair St. Laurent was opposed.**

**Mr. Carpenter motioned and Mr. Wrenn seconded to open the motion for reconsideration. Motion Passed: 6-0.**

**Ms. Nysten motioned and Mr. Wrenn seconded to move Attorney Campbells suggested definition of Boarding or Rooming Houses to Town Warrant. Motion Passed 5-1, Chair St. Laurent was opposed.**

#### **Section 200 Frontage**

Chair St. Laurent stated Attorney Campbell had a modification to the proposed changes as he felt it was circular in syntax.

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

- Mr. Carpenter suggested changing the first three words of the proposed revision a "contiguous frontage" and replace with Attorney Campbell's modification "linear distance of property".
- Ms. Nysten and Mr. Wrenn stated they would like to use Attorney Campbell's definition as it is more comprehensive.

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

- Ms. Dunn asked if this comes forward could it be posed as one question combined with the definition of Boarding or Rooming House.

- Chair St. Laurent said she believes it has been done in the past and they usually discuss how questions would be grouped and what the ballot would look like at the end.
- Mr. Carpenter stated when you separate items they stand on their own and will not get passed or turned down because of what was grouped with them.
- Chair St. Laurent asked Ms. Wood to note on the calendar a date for discussion of grouping ballot items.
- Mr. Carpenter also suggested they inform legal counsel of their intent to group certain thing together on the ballot.

The Chair closed the Public Hearing at 9:12pm.

**Ms Nysten motioned and Mr. Wrenn seconded to repost and move to Public Hearing Attorney Campbell's suggested definition of Lot Frontage. Motion Passed: 6-0.**

Ms. Nysten read Section 906 Variance Duration into the record.

**Section 906 Variance Duration**

To amend Section 906 in order to bring the ordinance into accordance with revisions made to *RSA 674:33, IV* that were approved on 6/20/13 and that will go into effect on 8/19/13.

Ms. Wood explained this will not change much as Windham already gives an automatic year for a variance and allows the possibility of two (1) year extensions. This gives the applicant two years for a variance with a one year extension.

See Ms. Wood's memo to the PB dated 11/4/13. See Atty. Campbell's memo dated 11/13/13 with attached track changes.

The Chair opened the hearing to the public at 9:10pm.

- Ms. Dunn stated the new statute uses the wording resolution of a planning application and asked if we should define the word resolution. Does it refer to when plans are signed or approved
- Mr. Gosselin suggested we get the states definition and feels this is a nuance that could be used to someone's advantage. Resolution to mean day of final PB meeting with PB approval. Ms. Nysten agrees with that.
- Ms. Dunn thinks it should be clear on the record what the Planning Board determines "resolution" means. For instance resolution meaning vote by the PB equals resolution.
- Mr. Bookless stated we should find out what the state is using as their metric for the starting point of a resolution. If we are in conflict with the state, courts will rule with the state.
- Mr. Carpenter thinks that it's clear that resolution means when PB votes on the application.

The Chair closed the Public Hearing at 9:25pm.

**Mr. Carpenter motioned and Mr. Wrenn seconded to move to Town Warrant as suggested by Attorney Campbell. Motion Passed: 6-0.**

Ms. Nysten read Sections 300.16, 302 Cobbetts Pond & Canobie Lake Watershed Protection District into the record.

**Sections 300.16, 302 Cobbetts Pond & Canobie Lake Watershed Protection District**

To amend the wording of Sections 300.16 and 302 to correctly reflect the full name of the referenced zoning district "The Cobbetts Pond and Canobie Lake Watershed Overlay Protection District," by adding by adding "and Canobie Lake" in all places where the zone is referenced.

The Chair opened the hearing to the public at 9:30pm.

- Ms. Dunn stated it already says Canobie Lake in these sections.
- Ms. Wood explained that was a clerical error.

The Chair closed the Public Hearing at 9:31pm

**Mr. Carpenter motioned and Mr. Gosselin seconded to move to Town Warrant Sections 300.16 and 302 as written by staff. Motion Passed: 6-0.**

Ms. Nysten read Section 616.1 Cobbetts Pond & Canobie Lake Watershed Protection District into the record.

**Section 616.1 Cobbetts Pond & Canobie Lake Watershed Protection District**

To amend the purpose Section of 616 to include a provision indicating the intent of protecting drinking water resources and wellhead areas.

The Chair opened the hearing to the public at 9:40pm, hearing none she closed the Public Hearing.

See Ms. Wood's 11/4/13 memo to the Planning Board.

**Questions/Comments from the Board**

- Mr. Gosselin asked if the Aquifer Protection subcommittee had discussed removing the well head portion of this.
- Ms. Nysten explained it was taken out of the Site Plan Regulations and added to this section instead.
- Mr. Wrenn stated there are some wellheads in Salem that are referenced in the Cobbetts Pond & Canobie Lake Watershed Protection District and he is not sure we know where they are.
- Chair St. Laurent believes a map was found.
- Mr. Gosselin stated he believes the proposed revision is redundant.
- Mr. Carpenter stated protecting water quality is different from protection drinking water resources.
- Ms. Nysten stated this is a specific area of wellheads.

**Mr. Carpenter motioned and Mr. Gosselin seconded to continue the portion of the public hearing as it relates to Section 616.1 Cobbetts Pond & Canobie Lake Watershed Protection District to December 11, 2013. Motion Passed: 6-0.**

**2014 Town Meeting Workshops (cont) -Open Space Residential Overlay District, Section 611**

Mr. Carpenter explained around 15 years ago Windham adopted the Open Space Ordinance, also known as cluster zoning. The intent was to encourage development of 10 acre parcels or greater with smaller lots and houses closer together to encourage a neighborhood feel with less impervious surface. The subcommittee came up with modifying required lot sizes and frontages to increase the amount of usable open space and decrease infringement upon WWPD. Another problem with the current ordinance is the open space parcels will be turned over to an association at some point in the development, meaning all residents in the subdivision will own the open space. We need to recover the proper management of some of these parcels. Moving forward we are proposing that those open space parcels are deeded over to Conservation. The landowners will not lose any rights and the Assessments will not change but the burden of the resident and developer forming and maintaining an association will be taken away. We also need to discuss what we do about the open space parcels that are not part of an association and are still in the hands of the developers.

Chair St. Laurent asked if this would remove the dual requirement of subdivision and site plan approval and Ms. Wood replied yes only subdivision plan approval will be required.

Mr. Carpenter asked for rewording to Section 611.6.6 by changing the language “may be” offered to “will be” offered.

Mr. Bookless was excused at 9:50pm

The Chair opened the hearing to the public at 9:55pm.

- Ms. Dunn asked about the tax impact and uses.
- Mr. Carpenter answered there will be no tax impact.

The Chair closed the Public Hearing at 9:58pm.

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

- Mr. Wrenn asked for clarification of the changes needed to the document.
- Mr. Carpenter answered just one; amend 611.6.6.1 to read Dedication of Open Space to Conservation: Before the first certificate of occupancy for the subdivision is issued, the applicant will present to the Conservation Commission the opportunity to accept the parcels as Conservation Land.
- Chair St. Laurent asked if it's possible to have Conservation Land that the town owns that the public can't use and what would happen if Conservation didn't want the land and was told it reverts back to the ordinance as open space.
- Mr. Carpenter requested they ask counsel for an opinion on how to phrase 611.6.6.1 and ask Conservation for input.

There will be an additional workshop on this item on December 11, 2013.

#### **Subdivision Regulations-Workshop - postponed**

#### **Meeting Minutes – Review and Approve:**

-October 2, 2013 (Public & Non-Public)

**Mr. Wrenn motioned and Ms. Nysten seconded to approve the October 2, 2013 public minutes as amended.**

**Motion Passed: 3-0-2, Mr. Gosselin and Mr. Carpenter abstained.**

**Ms. Nysten motioned and Mr. Wrenn seconded to approve the October 2, 2013 non-public minutes as amended.**

**Motion Passed: 3-0-2, Mr. Gosselin and Mr. Carpenter abstained.**

-October 16, 2013 - **Postponed**

-October 26, 2013 (site walk)

**Mr. Wrenn motioned and Ms. Nysten seconded to approve the October 26, 2013 site walk minutes as amended.**

**Motion Passed: 3-0-2. Mr. Carpenter and Mr. Gosselin abstained.**

-October 30, 201 - **Postponed**

**Old/New Business** (Not to include discussion of pending applications or decisions on matters requiring public notice)

**Ms. Nysten motioned and Mr. Carpenter seconded to have new business after 10pm. Motion Passed: 5-0.**

Chair St. Laurent brought up the subject of impact fees. She stated the Planning Board does a yearly review of impact fees and in order to do an accurate historical assessment of how much was collected and how it was used she thinks it



would be beneficial to have an independent consultant look at the issue and to make sure provisions put in place going forward are adequate. She would like a recommendation from the Planning Board to the Board of Selectman to seek that independent review.

- Mr. Gosselin asked how far back she wanted to go and if looking at the current impact fees is part of the process.
- Ms. Nysten answered they want to go back to 2008. She would also like to take a second look at impact fees relative to public safety after Town Meeting.
- Mr. Gosselin added he would like to look at impact fees relative to education.
- Chair St. Laurent also wants to look into ways to educate the voters relative to impact fees.
- Ms. Nysten would like the scope to verify the information such as the Building Permit date, Occupancy Permit date, grandfathering period, and the date of approval. It's important to know how much wasn't collected and why. The independent review would help staff understand, moving forward, how the process works, when they need to collect the impact fees and how much they need to collect.

**Mr. Carpenter motioned and Mr. Gosselin seconded that the Planning Board collectively send a letter to the Board of Selectman requesting they proceed with a third party audit of impact fee issues past, present, and future going back to 2008. Motion Passed: 5-0.**

Chair St Laurent stated she will draft the memo and furnish it to staff.

**Mr. Carpenter motioned and Mr. Wrenn seconded to adjourn the November 13, 2013 Planning Board Meeting at 10:53pm. Motion Passed: 5-0.**

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