

PLANNING BOARD MINUTES
December 19, 2007

ROLL CALL:

Ruth-Ellen Post, Chairman – Present	Ross McLeod, Vice Chairman – Excused
Nancy Prendergast, Secretary – Present	Walter Kolodziej, Regular Member – Present
Phil LoChiatto, Regular Member – Present	Pam Skinner, Regular Member – Present
Neelima Gogumalla, Alternate – Excused	Rick Okerman, Alternate – Excused
Alan Carpenter, Selectmen Member – Excused	Margaret Crisler, Selectmen Alternate – Present

STAFF:

Al Turner, Director of Planning and Development – Present
Shaun Logue, Town Planner – Present

- Ms. Post opened the meeting at 7:05 pm;
- The Board stood and recited the Pledge of Allegiance.

BOND:

- Flat Rock Road Island, final release of \$4,188. Mr. LoChiatto motioned to release the bond. Mrs. Crisler seconded. Passes 6-0.

CORRESPONDENCE:

- Fixed project obligation from the school district;
- Proposed changes to the Historic Demolition Delay Ordinance;
- Letter to David Sullivan regarding noise ordinance comments from Mr. Turner. Board discussion that the noise ordinance is a Selectmen's citizen petition, does it require police enforcement or code enforcement, this is a Selectmen's issue, and there are enforcement issues.

PUBLIC MATTERS:

Capital Improvement Committee – Public Discussion

Jack Merchant, CIP Committee Vice Chairman, discussed the CIP including a schedule of how the dollar amounts are received, receipt of department head capital expenditure requests, and he described the expenditure classifications. He reviewed the list of fixed obligations, scheduled expenditures, narrative explanations, and department requests and funding. Board discussion regarding the CIP public hearing will be January 2. Mr. LoChiatto thanked the CIP Committee. Mr. Merchant listed the Committee members that included Phil LoChiatto, Chairman; Jack Merchant, Vice Chairman; Rob Gustafson, Secretary; Walter Kolodziej, Roger Hohenberger, Bev Donovan, Bruce Breton, Beth Valentine, and Dennis Senibaldi. *Ms. Gogumalla joined the Board replacing Mr. McLeod.*

Trimmers Landscaping Site Plan – Public Hearing
17 Mammoth Road, lot 14-B-5000

Mr. Turner stated that the application is complete and ready for public hearing. Mr. LoChiatto motioned to accept for public hearing. Mr. Kolodziej seconded. Board discussion that this is a minor site plan approval. Passed 7-0.

Mr. Turner described the application including the location and zoning, the site has an aquifer protection district, he described the waivers requested, he showed an aerial photograph, he reviewed development issues and discussed drainage, signage, on-site traffic flow, pesticides, hours of operation, minimizing the amount of noise in the mornings, line-of-sight, and some tree cutting. He reviewed the staff's

recommended conditions of approval. Board discussion regarding the abutter notifications and application fees. This site is a non-conforming use but has been on the property for years. The Board continued discussion regarding drainage and berms, paving on the site, number of directional signs, additional parking, on-site traffic flow, and leach bed location.

Eric Skinner, business owner, stated he has worked with staff to work out the issues. Board discussion continued with Mr. Skinner regarding not backing trucks onto Mammoth Road, the signs are small but instructive, hours of operation will start later in the morning, service work is not performed on site, Mr. Skinner did not realize the noise was intrusive to the neighbors, additional spruce and hemlock trees to be added, and the construction of a berm. Mr. Skinner explained the drainage plan. Mr. Turner stated that he was not aware of any drainage problems in the past. Staff is okay with the plans. Discussion with Mr. Skinner included the outdoor lighting on motion detectors, lighting directed toward the parking area, the type of materials on site, additional five customers parking spaces, and that most of the business is off-site.

Public comment from Karen Elgart, 6 Colonial Road #3, secretary of the condo association, has concerns that the diagram is misleading, a buffer has been thinned and there is nothing left of significance, storage containers are in the area and it is unsightly, the few additional trees is inadequate for a buffer, spruce and hemlock trees do not grow very fast, concerned about the drainage from the mulch and compost because of the well water, is 2" of gravel enough for the large trucks, there are deliveries before 7:00 am, on two occasions fireworks have been set off. Board discussion regarding the location of the buffered area of concern. Ms. Elgart stated that they never had problems with the previous landscaping business.

Susan Nagle, 1 Colonial Drive #2, has lived there since 2000, the buffer has diminished, can hear traffic from Rt 111 and the noise from the property has increased, is there an ability to enforce any issues including the hours of operations, and could the trucks be loaded on the previous evening? Mr. Skinner stated that he could make an effort to try that. Ms. Nagle stated the gravel is noisy, and she can see lights. She also thanked Mr. Turner for everything he does for the Town. Board discussion that the Town knows about enforcement issues from letting the staff know.

Jacques Boroche, 6 Colonial Drive #2, would like a date attached to the planting of the trees. Mr. Turner stated that the Board should require a performance bond for the trees.

Mr. Skinner discussed the storage trailers have been removed. Ms. Elgart stated that there is an assortment of small sheds which add to the cluttered unpleasant look. Michael Farris, property owner, stated that there is a residence that has three sheds the size of doghouses that have been there for 10-15 years.

Mr. Skinner stated it's okay to bond the buffer, he will plant whatever the Board decides, he proposes a 2 ½-3' tall berm with 8-10' trees, he can extend the buffer area, Memorial Day is a typical planting time, the wells are no closer than 75', 2" erosion stone is typical for construction sites and will refresh as needed, and trucks do not start before 7:00 am except for the snow plow trucks. Board discussion regarding increasing the treed buffer. Mr. Skinner stated that he does not light fireworks, there is another resident on the property, staff will deal with any enforcement issues, and he has been in business for 12 years.

Board discussion regarding down-lit shielded lighting, the property has 2-single family homes and a business. Ms. Elgart stated they would like a lot of trees and allow a certain portion of the property to

grow naturally with some evergreens also. Board discussion with Mr. Skinner regarding arborvitae growth, arborvitae needs a lot of sunlight, and want to make a naturalized buffer.

Mr. LoChiatto motioned to approve the waiver for Section 500 to not supply the required full-size plan set, site improvements, CD in pdf format, and stamped plans from a professional NH registered engineer. Mrs. Crisler seconded. Passed 7-0.

Mr. LoChiatto motioned to grant the waiver of Section 900 to not supply the required name and address of engineer, drainage computations and independent review of drainage details as the drainage has been discussed and worked out beforehand with staff. Mr. Kolodziej seconded. Passed 6-1. Ms. Prendergast opposed.

Mr. LoChiatto motioned to grant the waiver of Section 700 to not supply the required subsections 50-61 of the site plan checklist as it is predominately an existing site, the applicant has added 2" drainage stone and drainage leach field as per staff, and worked with staff for appropriate mitigation of the plan. Mrs. Crisler seconded. Passed 7-0.

Mr. LoChiatto motioned to approve the minor site plan for Trimmers Landscaping at 17 Mammoth Road with the following conditions of approval: 1) Construction of a berm (buffer) on the southerly portion of the property to direct drainage away from abutting neighbors located on Colonial Drive extended from the southeast corner of the gravel to the existing paved area; 2) Install 8-10' hemlocks and spruce pines along the southerly portion of the property to act as a buffer to abutting neighbors located on Colonial Road. The trees are to be a mix of hemlock and spruce and work with staff for spacing and screening; 3) Increase the buffer on the southerly portion of the property from 24.6' to be required 50' as per Windham regulations. Remove or relocate the man-made features within the buffer; 4) No chemicals, pesticides, herbicides or other potential polluting chemicals shall be stored on site at any time; 5) Hours of operation shall be from 7:00 am to 6:00 pm Monday through Friday, from 8:00 am to 5:00 pm on Saturday, and closed on Sundays; 6) Lights are required to have motioned sensors and be shielded to not adversely impact the abutting neighbors; 7) Signage to be installed to direct customers to appropriate parking areas, signage to direct delivery trucks to rear of the building for unloading of materials, handicap parking sign to be installed, signage directing customers to the office area, signage in rear of parking area prohibiting customers from entering the work area, signage at property entrance prohibiting delivery trucks from parking on the shoulder of the road and using Mammoth Road to back into the driveway; 8) Installation of a leaching catch basin at the low point in the rear of the property to capture drainage; 9) Work with staff for performance bond; and 10) Plantings done not later than mid-June, 2008. Mrs. Crisler seconded. Board discussion regarding loading and dumping of stones, are all the issues documented and does the site work? This is a minor site plan change. Passed 5-1-1. Mr. Prendergast opposed. Ms. Gogumalla abstained. Mr. Skinner asked the neighbors to come and see him if they have any issues. *Mr. Kolodziej left the Board.*

Zoning Ordinance Amendments – Public Hearing Continued

Board discussion regarding hearing the demolition delay ordinance first, limit the discussion to 30 minutes, and a lot of time has already been spent discussing this ordinance. Ms. Post proceeded with the Demolition Delay Ordinance.

Amendment #20: Historic Demolition Delay Ordinance

Add section 719 Historic Demolition Delay Ordinance. This amendment would delay the demolition for up to 30 days for any structure over 400 square feet that was built prior to 1940 or appears on the Historic Resource list.

Ms. Post and Mr. McLeod worked on clarifying the document, and Ms. Post described those changes. Board discussion regarding further potential changes, this is not a citizen petition, and the intent is not to stop the tearing down of a building but to document the building. Mr. Turner suggested an added definition and some wording changes for building officials.

Public comment from Carol Pynn, Historic District Commission, thanked the Board and staff for all of their help.

Mrs. Crisler motioned to move the demolition delay ordinance as amended tonight to Town warrant with recommendation of the Planning Board. Ms. Skinner seconded. Board discussion regarding informal meeting, and all meetings are public. Mrs. Crisler amended her motion to remove the word “informal”. Passed 5-1. Mr. LoChiatto opposed. He stated that he opposed because he thought that the document is not meeting the goal.

Amendment #1: Amend Section 200: Definitions:

Amend Section 200: Definitions: Change in Use of Structure by adding the following definition “An extension, enlargement, and/or alteration of pattern of utilization of the structure or change in purpose for which the structure is used and which increases the total intensity use of the structure.”

Mr. Turner read the amendment, he discussed the purpose of the change, we don’t currently have a definition of “change-of-use”, this will help staff and the Zoning Board of Adjustment, and not go ahead with the junkyard definition. Mr. Logue reviewed Attorney’s Campbell’s comments with the Board.

Mrs. Crisler motioned to move amendment #1 to the January 9 meeting as amended. Ms. Skinner seconded. Passed 5-1. Mr. LoChiatto opposed. Board discussion of the definition of junkyards needs to be worked out at a workshop.

Amendment #2: Amend Section 601: Wetland and Watershed Protection District:

Amend Section 601.2: Definitions by insertion at the end thereof, the following new definition: Hydric Soils: “Soils that are saturated or flooded during a sufficient portion of the growing season to develop anaerobic conditions in the upper soil layers.”

Mr. Logue read Attorney Campbell’s comments and this is a minor change. Board discussion that there are three definitions to choose from, choose option “A”.

Mr. LoChiatto motioned to move Amendment #2 to the warrant using the definition “A” A geographical area in which all water drains to a given stream, lake, wetland, estuary or pond. Within every watershed, water runs to the lowest point on that landscape – a stream, lake, wetland, estuary or pond. (NH DES) and with Attorney Campbell’s minor changes. Mr. LoChiatto withdrew his motion.

Public comment Andrew Lane, 2 Woodvue Road, stated there are two things causing confusion in the courts regarding the definition of streams and brooks. Mr. Turner discussed the court case regarding the interruption of the stream, and waiting on a decision from a judge regarding the interruption of a stream or ending it. Board discussion that this is not what the Board is defining, this is the time to change the definition, too late in the process to start a new amendment, it should be discussed next year, it could be moved to the January 9 meeting, it cannot be introduced at this late notice, need to wait for the Judge’s decision. Mr. Lane suggested adding the following at the end of the definition “a manmade feature entering an exempt water body as defined in 601.4.4 shall not have a WWPD associated with it.” Ms. Post asked staff to make a note of this for next year.

Mr. LoChiatto restated his motion to move to the amendment #2 to warrant using the definition “A” A geographical area in which all water drains to a given stream, lake, wetland, estuary or pond. Within every watershed, water runs to the lowest point on that landscape – a stream, lake, wetland, estuary or pond. (NH DES) and with Attorney Campbell’s minor changes. Mrs. Crisler seconded. Passed 6-0.

Amendment #3: Amend Section 301: Establishment of Districts

Amend Section 301 Establishment of Districts by adding a new subsection 301.15 Route 28 Access Management Overlay District. Mr. Turner read the amendment, the overlay district exists, it is just not listed. Mr. Logue stated that Attorney Campbell did not have a problem with this.

Mr. LoChiatto motioned to move amendment #3 to Town warrant with the recommendation of the Planning Board. Ms. Skinner seconded. Passed 6-0.

Amendment #4: Amend Section 302: Location of Districts by the following:

Amend Section 302 by deleting the dates and words “dated May, 1974, and as amended.” And Amend Section 302 by adding the following words after the words “bounded on” “the latest approved...” and deleting the word “a.”

Mr. Turner read the amendment and Mr. Logue read the amendment with Attorney Campbell’s comments incorporated as follows: Amend Section 302 by deleting the current language and replacing it with the following: “302. Location of Districts: Said Districts are hereby established as shown, located, defined and bounded on the latest approved map entitled, "Zoning District Map of the Town of Windham, New Hampshire" signed by the Planning Board and filed with the office of the Town Clerk; with the exception of the Wetland and Watershed Protection District, the Flood Plain District, the Aquifer Protection District, the Elderly Housing District, the Open Space Residential Overlay District and the Route 28 Access Management District, which are not defined by boundary lines on said map, but are districts determined by criteria set up under Sections 601,607,609, 610, 611 and 615 respectively; which map, together with all explanatory matter thereon, is hereby incorporated in and made part of this Ordinance.”

Mr. LoChiatto motioned to move amendment #4 to the Town warrant as recommended by the Planning Board and with Attorney Campbell’s comments as they are minor in nature. Mrs. Crisler seconded. Passed 6-0.

Amendment #5: Amend Section 400: Continuance of Existing Uses

Amend Section 401 by deleting the word “variance.” And Amend Section 406.4 by deleting the word “District...of lot” and replacing the words “Max Bldg.” with “Maximum % building covered for the relevant zoning district.” Mr. Logue stated that Attorney Campbell suggested not going forward with this variance portion of the amendment, it needs more work and can be discussed for next year. Mr. Logue read Attorney Campbell’s changes as follows: “Amend Section 406.4 by deleting the words “District...of lot” and replacing the words “Max Bldg.” with “Maximum % building covered for the relevant zoning district.”

Mr. LoChiatto motioned to move amendment #5 to warrant specifically for Section 406.4 as recommended by Attorney Campbell (not including section 401). Mrs. Crisler seconded. Passed 6-0.

Amendment #6: Amend Section 500: New Construction and New Uses. Attorney Campbell recommended not going forward with this amendment.

Amendment #7: Amend Section 601.3: Uses Permitted

Amend Section 601.3.9 by deleting the word “lines” and inserting the word “systems” and adding the following words “water, gas, sewer, electric, telephone, cable and communication lines.” after the words “Utility systems:” Mr. Logue read Attorney Campbell’s comments.

Mr. Turner read the remainder of the amendment as follows: Amend Section 601.3.8 by deleting “Driveways subject to the following:” and inserting the following words “Driveways, streets and roads subject to the following:” He discussed the need for the amendment. Board discussion regarding minor changes, the issue has gone to court as roads and streets were not mentioned to be allowed in the WWPD.

Mr. LoChiatto motioned to move amendment #7 to January 9 public hearing inclusive of Attorney Campbell’s comments. Mrs. Crisler seconded. Passed 6-0.

Amendment #8: Amend Section 601.4.8: Regulations

Mr. Turner described the need for this amendment as there is no guidance for the applicants in our regulations. Mr. Logue read Attorney Campbell’s comments. Board discussion regarding sending to warrant or to January 9, and a correction of a typo.

Mr. LoChiatto motioned to move amendment #8 to the January 9 public hearing with Attorney Campbell’s comments. Mrs. Crisler seconded. Passed 5-0-1. Ms. Prendergast abstained.

Amendment #9: Amend Section 602.2: Uses Permitted Upon Site Plan Review as Provided in the Windham Site Plan Regulations

Amend Section 602.2 by addition the following words after the words “Uses Permitted Upon Site Plan...” “Application and...” Mr. Turner read the amendment and discussed the reason for the amendment.

Mr. LoChiatto motioned to move amendment #9 to Town warrant. Mrs. Crisler seconded. Passed 6-0.

Amendment #10: Amend Section 702: Area, Frontage, Yard and Floor Area Requirements

Amend Section 702.1 by deleting the word “the specified yards and provided that” and replacing it with the words “the required yards provided in the ordinance.”

Mr. Turner read the amendment and described the reason this amendment is needed.

Mrs. Crisler motioned to move amendment #10 to Town warrant. Ms. Skinner seconded. Passed 5-1. Mr. LoChiatto opposed.

Amendment #11: Amend Section 610: Elderly Housing by the following:

Amend the name of the Ordinance to “Age-Restricted Housing” and all internal references. And amend Section 610.6.1.1 by deleting “1) A spouse under the age of fifty-five (55) married to a resident aged fifty-five (55) or older;” Renummer the remaining sub-sections. And amend Table of Contents by deleting the words “Elderly Housing” and replacing them with the words “Age-Restricted Housing.”

Mr. Turner read the amendment. Mr. Logue stated that Attorney Campbell prefers the wording “Housing for Older Persons”. Board discussion that this is the wording Congress uses, leave it alone, and the age is still 55 no matter what it’s called.

Mrs. Crisler motioned to move amendment #11 to Town warrant with Attorney Campbell's recommendations. Mr. LoChiatto seconded. Passed 6-0.

Amendment #12: Amend Section 704.4: Limitations on Parking

Amend Section 704.4.1 by inserting the following sentence "There shall be no parking of unregistered or uninspected vehicles in the required side yard, front or rear setbacks."

Mr. Turner read the amendment. Mr. Logue read Attorney Campbell's comments to include adding the word "outdoor" before "parking." Board discussion regarding whether the word "outdoor" is needed.

Ms. Prendergast motioned to move to the January 9 public hearing. Mrs. Crisler seconded. Passed 6-0.

Amendment #13: Amend Section 610.6.1: Development Standards

Amend Section 610.6.1.12 by deleting the words "two (2) dwelling units" and replacing them with the words "one (1) dwelling unit."

Mr. Turner read the amendment and recommended to delete this amendment.

Amendment #14: Amend Section 303: Location of Boundaries of Districts

Amend Section 303 by adding the following section "303.7...For lots located in more than one district, uses and structures shall conform to the requirements of the district in which they are located. If the use or structure spans the boundary between districts, the provision which imposes the greater restriction or higher standard shall apply."

Mr. Turner read the amendment and Attorney Campbell had no comments.

Mr. LoChiatto motioned to move amendment # 14 to Town warrant. Mrs. Crisler seconded. Passed 6-0.

Amendment #15: Amend Section 500: New Construction and New Uses

Amend Section 500 by renaming the title from "New Construction and New Uses" to "Site Plan Approval Requirements".

And amend Section 501 by deleting the following "For the purposes of this Ordinance, any lawful building or structure or use of a building, structure or land or part thereof, may be constructed, altered, enlarged, repaired or moved, occupied and used for any purpose which does not violate any section of this Ordinance or any of the provisions of the ordinances of the Town of Windham."

And replacing with the following "Any lawful building, structure or use of a building, structure or land or part thereof, may be altered, repaired, occupied and used for any purpose which does not violate any section of the Zoning Ordinance." And Amend Section 503 by deleting the words "demand any additional requirements of the lot beyond previous use." and replace with the words "intensify the use of the lot beyond the previous use."

Mr. Turner read the amendment and discussed the need for the amendment as brand new buildings need site plan approval. Mr. Logue review Attorney Campbell's changes.

Mr. LoChiatto motioned to move amendment #15 to January 9 public hearing with amendments. Mrs. Crisler seconded. Passed 6-0.

Amendment #16: Amend Section 706.5.14: General Sign Regulations for Multi-Tenant Commercial Buildings

Amend Section 706.5.14 by inserting the word “only” after the words “Village Center District” in the first sentence and inserting the words “displayed at a time” after the words “shall be”, delete the word “allowed” after the words “shall be” Replace the words “one-premise” with the words “on-premise”.

Section 706.5.14 will now read “In Commercial, Industrial, Neighborhood Business, Professional Business, and Village Center District only, one unlighted on-premise temporary sign shall be displayed at a time, provided:

Amend Section 706.5.14 by inserting subsection “6.” followed by inserting the words “One (1) sign per tenant per year.”

Mr. Turner read the amendment and described the change so each tenant could have a temporary sign at various times throughout the year. Mr. Logue read Attorney Campbell’s change.

Mrs. Crisler motioned to move to the January 9 public hearing as amended. Ms. Skinner seconded. Passed 5-0-1. Ms. Prendergast abstained.

Amendment #17: Amend Section 606.2: Conditions of Approval

Amend Section 606.2 by adding a new subsection “606.2.8 Neighborhood Impacts: Any potential neighborhood impacts from traffic, noise from construction, and hours of operation shall be identified by the Applicant and a mitigation plan submitted to the Planning Board for review and approval.”

Mr. Turner read the amendment and this will require neighborhood impacts as part of an application. Attorney Campbell had no comments.

Mrs. Crisler motioned to move the amendment #17 to Town warrant. Ms. Gogumalla seconded. Passed 6-0.

Amendment #18: Amend Section 607: Flood Plain District

Amend Section 607 by amending various subsections of Section 607 per the request of the National Flood Insurance Program (NFIP) and the Federal Emergency Management Agency (FEMA). Amendments are required in order to be eligible for FEMA’s flood insurance policy.

Mr. Turner stated that FEMA reviews our ordinances every year and had these changes.

Mr. LoChiatto motioned to move amendment #18 to January 9 public hearing as amended with Attorney Campbell’s and FEMA comments. Mrs. Crisler seconded. Passed 6-0.

Amendment #19: Amend Section 700: Development of Sites and Location of Buildings

Amend Section 702 by adding a new subsection “702.7 Energy or Communications Systems. Wind, solar, hydro and communication structures shall meet the required setbacks for the zoning district at their location.”

Mr. Turner stated this requires energy and communication systems to meet setbacks. Attorney Campbell had no comments.

Mrs. Crisler motioned to move amendment #19 to warrant. Ms. Prendergast seconded. Passed 6-0.

Amendment #21: Draft Impact Fee Ordinance

Provide general authority for the Planning Board to adopt methods for the calculation of impact fee assessments and related impact fee schedules for application to new development, consolidating and replacing existing sections 715 and 718 of the Windham Zoning Ordinance. Under the authority of the ordinance, impact fee schedules and supporting documentation could be adopted or amended by the Board after a public hearing. The ordinance would enable the full range of impact fees authorized under RSA 674:21, V, and would serve to update existing ordinance provisions to reflect amendments made to that statute in 2004.

Mr. Turner stated that this is combining separate ordinances as per our consultant's recommendation into one ordinance that includes impact fees for police, fire and schools. Mr. Logue read Attorney Campbell's comments regarding advertising. Board discussion regarding who hears appeals of executive decisions on impact fees, and the Planning Board decides who pays an impact fee.

Mrs. Crisler motioned to move amendment #21 to the January 9 public hearing with Attorney Campbell's comments. Ms. Skinner seconded. Board discussion regarding the wording in the advertising. Passed 6-0.

Mr. LoChiatto motioned to adjourn. Ms. Gogumalla seconded. Passed 6-0. Meeting adjourned at 10:55 pm.

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