



OLD VALUES - NEW HORIZONS
PLANNING AND DEVELOPMENT

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Planning Board Minutes
9/9/09

This meeting was not videotaped or broadcast by WCTV

Roll Call:

Phil LoChiatto, Chairman – Present
Nancy Prendergast, Secretary – Present
Ruth-Ellen Post, Member – Present
Louis Hersch, Alternate – Excused
Sy Wrenn, Alternate – Present
Ross McLeod, Selectman Alternate - Excused

Rick Okerman, Vice Chairman - Excused
Walter Kolodziej, Member - Excused
Pam Skinner, Member – Present
Kristi St. Laurent, Alternate – Present
Breton, Selectman Member - Present

Staff:

Laura Scott, Town Planner – Present
Tracey Mulder – Admin Asst. – Present

Call to Order/Attendance/Pledge of Allegiance

Mr. LoChiatto opened the meeting at 7:00 pm, followed by the Pledge of Allegiance. Sy Wrenn was seated for Walter Kolodziej.

2010 Town Meeting Workshop

Workshop for members of public to present ideas to Planning Board on amendments to Zoning Ordinance for 2010 Town Meeting

Mr. LoChiatto opened the meeting to the public at 7:05 p.m. Mr. LoChiatto noted two written proposals for the Town workshop.

1. A memo with an attached proposed petition to change wording in the WWPD
2. Watershed Protection Ordinance for the Cobbetts Pond watershed

Mr. LoChiatto explained to members in attendance the workshop is to be considered a listening session. The purpose of the workshop is to seek public input to make sure priorities accurately reflect the needs of the Town. The Board would like to use the ideas presented at the meeting to possibly place as Articles on the Town Warrant. Mr. LoChiatto noted the workshop will close at 8:00 p.m. in order to hold a Public Hearing. The workshop may resume after the Public Hearing, if needed.

Mr. Wayne Morris spoke regarding adopting the purposes of zoning ordinances, as written in NH RSA 674:17, into the Windham Zoning Ordinance.

Mr. Tom Case addressed the Board regarding the Town's Zoning Ordinances stating that they need to be read line by line and that he has been told this has been done; however he does not believe this to be true. He went on to say there are discrepancies in the language in the Zoning Ordinance that need to be clarified and he will send Ms. Scott a list. He went on to say the neighborhood business districts should have some limitations with regard to office space and retail sales.

He commended Ms. Scott on her sign ordinances; however, he is unsure about the size change for height of signs.

Mr. Case also made a point that some of the language regarding the WWPDP should be changed. Currently the WWPDP indicates no boating or fishing in the WWPDP. Mr. Case suggested this be taken out because no one can boat or fish in a WWPDP.

LoChiatto thought that he made a good point and that many of the regulations are not clearly defined.

Wayne Morris asked the Board for clarification regarding Workforce Housing (WFH) and the percentage of homes in Windham that need to be eligible for Workforce Housing. Specifically Mr. Morris asked if it was true that 51% of what is zoned needs to be WFH. Mr. LoChiatto commented that Ms. Prendergast and Ms. Bev Donovan are working on WFH and the Town is mandated to allow opportunities WFH. Mr. LoChiatto explained that we need to define our WFH approach and write an ordinance accordingly.

Mr. Morris discussed with the Board the conversion of seasonal dwellings from 3 seasons to 4 seasons and the potential risk this has become. There are issues of safety with the Fire and Police departments and he has grave concerns about these conversions. Applicants need only apply for a variance for setback requirements to convert their seasonal dwellings to year round. He would like to see the applicants go through more stringent processes to convert their housing due to safety issues. Specifically, he would like the homes that do not have independent wells, stay as seasonal dwellings and not conversions. In the past, most seasonal dwellings have shared wells. Ms. Prendergast asked Mr. Morris what the specific safety concerns were from the Fire department and Mr. Morris stated that the Fire Department needs to have a pre-planned access route in order to adequately help the homeowner if needed.

Ms. Betty Dunn and Ms. Carol Pynn address the Board regarding historic homes in the Town. Ms. Dunn and Ms. Pynn would like to see incentives to developers to preserve historic structures rather than demolish them. Ms. Dunn and Ms. Pynn wondered if there was a way, either through zoning or site plan review, to provide exceptions or incentives to keep the historic homes. Other towns have made amendments or additions to ordinances to make it

easier and more profitable for people to preserve their historical homes. Ms. Prendergast discussed perhaps expanding the demolition delay ordinance. Ms. Scott discussed relaxing on some of the restrictions for the development of parcels where these historic homes are located, such as setbacks, access, parking, etc. Ms. Dunn and Ms. Pynn told the Board they would write up an ordinance and bring it before the Board, stating they hoped to guide developers into preservation rather than demolition of these historic buildings.

Ms. Kathleen DeFruscia, attorney for the Cobbetts Pond Improvement Association, addressed the Board regarding the Cobbetts Pond Watershed Protection Ordinance. Ms. DeFruscia discussed the CPIA proposed ordinance and a letter of support from the NHDES. Ms. DeFruscia explained the information in the proposed ordinance stating that without this ordinance Cobbetts Pond will continue deteriorating.

Ms. DeFruscia would like the Board to:

1. Review the proposed ordinance
2. Would like to work with the Board regarding suggestions and recommendations
3. Provide a satisfactory ordinance that can be brought to Town vote.

Mr. LoChiatto discussed with Ms. DeFruscia if the ordinance was going to be expanded to include other water bodies within the Town. Ms. DeFruscia indicated that the NHDES would like to see this ordinance applied to Rock Pond, portions of Canobie Lake, Moeckle Pond and other bodies of water in Windham. Ms. Post inquired about the ordinance and asked if it was to serve as a model for the protection of other lakes in NH. Ms. DeFruscia replied that the Cobbetts Pond ordinance will be used as a model and serve as experimental ordinance and if it is successful, then it may be expanded to include other lakes but for now the focus is Cobbetts Pond. Ms. DeFruscia discussed more about the Cobbetts Pond ordinance reiterating she believes the language in the existing zoning ordinance needs to be more definitive.

Mr. LoChiatto discussed the meeting schedule for the submission deadlines for petitions to amend zoning ordinances, historic district ordinance or building code considerations. Mr. LoChiatto noted that November 9th is the first day to accept petitions. Citizens had 30 days to submit petitions with public hearings typically starting in January 2010.

Andrew and Christine Lane addressed the Board regarding the WWPD. Mr. Lane presented to the Board a memo regarding his interpretation of the WWPD ordinance. Mr. Lane commented to the Board that he believed the common sense interpretation of the WWPD ordinance is being changed in the courts. Mr. Lane would like to have certain water bodies have exception so they are not part of the WWPD 100 ft. setback.

Mr. Lane would like to have the Zoning ordinance 601.4.4 regulating the Wetland and Watershed Protection District amended to provide an exemption from the setback requirements for various lakes and ponds in the Town of Windham.

Mr. LoChiatto commented that the WWPDP Ordinances is on the Board's list to review this year and the Board needs to review how this change in ordinance would affect not only the Lane case but all other bodies of water in the Town.

Public Hearing – School Impact Fees

Mr. LoChiatto read into the record the Public hearing notice to adopt the methodology and fee schedule outlined in "Procedure for the Computation of Impact Fees for the Windham Public School District Revision Year 2003" revised November 2003.

Ms. Scott noted for the Board the following:

- Memo dated Sept. 4
- Document to formally adopt the Impact Fees
- A letter from attorney Bernard Campbell made public on 8/20/09 regarding Impact Fees

Ms. Scott conveyed to the Board and the Public in order to resolve some procedural glitches with existing School Impact Fee methodology and fee schedule, a public hearing was scheduled for the Planning Board to officially adopt this document. The impact fee ordinance was adopted at Town meeting.

The school impact methodology and fees schedule is currently being updated and will be presented for Planning Board review and for adoption before the end of this year.

Mr. Roger Hohenberger and Ms. Marsha Unger were present to answer any questions from the public and the Board on the 2003 document. Mr. Hohenberger read into the record the methodology regarding the calculations of the 2003 impact fees outlined in the supporting documents.

Mr. LoChiatto noted that the fees have been collected for the past six years and clarified he believed the impact fees are valid and have been in place since 2003 in the zoning ordinance. This hearing is to merely approve methodology.

Mr. Hohenberger mentioned there has been an exhaustive search of the minutes for a Planning Board vote to accept the methodology and fee schedule but none have been found. However, he thinks they should have been in the minutes but no hearing to adopt the methodology took place.

Ms. Scott noted that the 2003 planning hearings to adopt the impact fee zoning ordinance and the methodology and fees seem to have been rolled into one process.

Mr. LoChaitto commented that the Board needs to be on firm legal footing and this could be accomplished by adopting this document. Ms. Prendergast and Mr. LoChiatto discussed why this issue was not brought the Board's attention sooner. When the impact fee ordinance was dissolved at 2008 Town Meeting to adopt a new one, the Board removed the fee amount from

the ordinance and we understood the fees would be based on the methodology in the 2003 document; however, the methodology was never adopted.

Mr. LoChiatto opened the public hearing for the "Procedure for the Computation of Impact Fees" to the Public.

Mr. Tom Case questioned why the fees and any reference to the method were eliminated from the zoning ordinance. Mr. Case does not understand why the Board is trying to correct a methodology that wasn't originally done correctly. Mr. Case went on to say that things have changed and he did not agree with charging citizens an impact fee for a school that has been paid off.

LoChiatto noted that the procedure for the impact fee was computed for the Center School and for the Middle School which included fees collected on additional infrastructure as stated in the statute.

Mr. Case made note that he did not think that the money collected for impact fees should be used on a capital project that is already paid off. Mr. LoChiatto stated that under the definition of impact fees it states in accordance with methods and fees a proportional share of the capital improvement costs which are attributable to the requirements in place for the future infrastructure required to support the new development. Based on this language Mr. LoChiatto does not believe that the collected impact fees are only for Center School and the Middle School and that the collected fees can also be used for other schools for capital improvements.

Ms. Prendergast does not feel comfortable adopting this Methodology and Fees schedule tonight since it is so old.

There was further discussion between Mr. Case and the Board regarding the interpretation of the memo from attorney Bernard Campbell to Mr. LoChiatto. It was noted that the memo could be taken two ways:

1. Mr. Campbell states in his memo that he believes under section 715.5.3 of the current ordinance the methodology can be considered adopted
2. Mr. Campbell states in his memo that because of their obligation under section 715.6 to annually review the assessment schedules, he would strongly encourage the Planning Board to make such a review and hold a public hearing to adjust/conform impact fees in the event that a party should contest that the fees do not lawfully exist at the moment.

Ms. Scott stated that most often, Town Meeting adopts an impact fee ordinance, which gives the Planning Board the authority to adopt impact fee methodologies and fee schedules. The methodologies and fee amounts are rarely put in the Ordinance itself. Ms. Scott was questioned by the Board how she would proceed if this methodology and fee schedule were not adopted. Ms. Scott explained that as the Community Development Director, she would

advise her staff not to collect the school impact fee on lots that had not been previously assessed the fee by the Planning Board. Ms. Scott went on to say that the Department has been operating since 2003 as if this document were adopted and no retroactive action will be taken on those fees previously collected.

Mr. LoChiatto read into the record page section 715 – 715.2.3 of the zoning ordinance giving authority to the Planning Board to collect impact fees.

Mr. Case would like to see accurate numbers and fees charged accordingly. He does not want to see the Board adopt a 6 year old plan. However, Mr. Case stated that he does not want to see the Town exposed to legal problems and thought the Board should adopt the document.

Mr. LoChiatto agreed by not adopting this document it could open a door to legal issues. And if we have no method on record it could be argued that the Town has been collecting fees improperly.

Mr. Breton noted for the Board that he did not believe that by adopting this document that it relieved the Town from any potential legal issues. Mr. Breton believes the Board should wait for Mr. Hohenberger to complete the new methodology and fee schedule and bring that before the Board instead.

Ms. Post said she expresses a different point of view and agreed the method needs a new review. Ms. Post commented that what the Board is being asked is not mutually exclusive. Ms. Post does not see this document as if it is being adopted as new rather she sees it as ratifying what the Board “thought” they did in 2003. By adopting this document the Board is acknowledging what they meant to do procedurally and because the Board did not follow correct procedures.

Mr. Breton referenced the memo from attorney Campbell strongly encouraging the Planning Board to adjust/confirm the school impact fees.

Mr. Hohenberger said what he thinks Ms. Scott and Mr. Campbell are trying to accomplish with the adoption of this document is to ratify something that should have been done in 2003. Ratifying the document is procedural and nothing has changed.

Mr. LoChiatto closed meeting to public.

Mr. Hohenberger explained the methodology used with regard to the new impact fee calculations. Mr. Hohenberger provided very preliminary numbers and indicated that right now, compared to surrounding towns, Windham has the one of the lowest impact fees.

Mr. Breton asked why the proposed new fees were higher. Mr. Hohenberger responded the reason the proposed impact fees may be higher is because Windham built a new high school.

A motion was made by Ms. Post to ratify the "Procedure for the Computation of Impact Fees for the Windham Public School District Revision Year 2003" in order to remove any procedural ambiguity resulting from the 2008 Town meeting vote. Second by Ms. Prendergast. Motion carried 4-2 with Mr. Breton and Ms. Skinner voting in the negative.

Rules of Procedure Amendment Discussion

Ms. Post addressed the Board noting that this document had been reviewed to clarify the procedures and make sure that it is consistent with state law.

Ms. Post reviewed the three main proposed changes under Article 3 – Duties of Officers;
Minutes

1. The role of Planning Board Secretary
2. Delineate between staff secretary position and Board secretary position
3. Define position of clerk/staff with regard to the Board meetings.

Further discussion by the Board noting there seemed to be conflict in the definitions between Article 1.2 and articles 1.4 and 1.5. Mr. LoChiatto provided the example that article 1.5 is meant for the rules to be waived or modified with regard to the Board's decision to hear new business after 10:00 p.m. The Board discussed adding the wording 'temporary waiver for that meeting' could be added to the document for clarification.

Ms. Scott discussed adding language to Article 6.1 regarding the Right to know laws with clarification about Sitewalks to include members of the public. In addition, Ms. Scott discussed proposed changes in Article 7 regarding Joint Meetings to include Other Land Use Boards. These changes ensure the Town is in compliance with state law.

Ms. Post suggested the Board examine Article 10 regarding Subcommittees and add language for the appointment of an alternate member for a term of one year if one of the regular members is unable to participate in the CIP.

Mr. LoChiatto indicated he would like the language changed in Article 10.6 where it states "To maximize public participation in the CIP process, "members of the general public" shall be defined as residents not currently serving as Selectman or as a member of any land use board to be changed to "To maximize public participation in the CIP process, "members of the general public serving on an elected school or municipal board" shall be defined as residents not currently serving on any Town board.

The Board discussed changing the document to become gender neutral.

Further discussion by the Board regarding Capital Improvement Projects and what the reasonable dollar amount should be for proposed capital project presented to the municipal departments, agencies, authorities and boards. Ms. Post believed the \$10K threshold keeps expenditures in check and makes tracking of capital improvements easier. It was discussed by the Board to change the CIP to 50K.

Ms. Prendergast and Ms. Post discussed the role of the Board Secretary. It was decided to keep in line with other communities this position would be eliminated. The Board agreed that the responsibilities of the Board Secretary can be undertaken by the Vice Chair.

Ms. Prendergast noted for the record in Article 5.2 if a Board member is abstaining from a vote they are still counted as part of the quorum; however, if they recuse themselves then they are not part of the quorum.

In addition, Ms. Prendergast had no objection with the language in Article 5.10 being removed regarding the Chairman's' viewpoints; however she does want to ensure the Chairman does not dominate or influence the discussion and asked for clarification as to why this language was proposed to be removed.

Mr. LoChiatto said he believed it was too extreme to ask the Chairman to wait for the rest of the Board to speak before making his points and expressing his concerns. And, by leaving the language in, this would hinder the Chairman from participating in the meetings as a regular member, thus taking away the rights of the Chairman. Ms. Post thought in Article 5.10 the sentence "refrain from participating in the debate" should be taken out and the rest can stay in the document. Ms. Prendergast commented she believed it was important that the Chairman refrain from dominating a debate between Board members. She does not believe this eliminates the Chairman from the discussion.

Mr. LoChiatto commented he believed it was his responsibility as, Chairman, to ensure all members have been fairly heard and have an equal opportunity to be heard; however, taking out the language regarding "strike the gavel" would be a good idea.

Ms. Scott will schedule a public hearing to adopt the proposed changes to the Rules of Procedure.

Miscellaneous Items

No Miscellaneous items discussed

Adjournment

Motion to adjourn by Pam skinner at 10:22. Second by Mr. Wrenn. Motion carried 6-0.

These minutes are respectfully submitted to the Board in draft by Tracey Mulder.