



*OLD VALUES - NEW HORIZONS*  
**PLANNING AND DEVELOPMENT**

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**Planning & Development  
Meeting Minutes  
11/4/2009**

**Roll Call:**

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

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

**Staff:**

Laura Scott, Community Development Director – Present  
Elizabeth Wood – Town Planner - Present  
Tracey Mulder – Administrative Asst. – Present

**Call to Order/Attendance/Pledge of Allegiance**

Mr. LoChiatto opened the meeting at 7:00 pm, followed by the Pledge of Allegiance.  
Seated for Nancy Prendergast is Sy Wren.

**CIP Presentation**

The Capital Improvement Plan (CIP) is the financial component of the Windham Master Plan first adopted in 1985 and last updated in 2005. It is the management planning and budgeting tool for controlling capital expenditures. The Planning Board has the responsibility to review the CIP and adopt it annually. The adopted plan is then submitted to the Board of Selectman and School Board for approval.

Mr. LoChiatto opened the discussion explaining the CIP presentation is not a public hearing and the public hearing will be held later. The CIP Committee is before the Planning Board to provide them with their status.

Jack Merchant, a citizen appointee on the CIP Committee, presented the Board an overview of the CIP 2010 appropriations and how they arrived at their calculations. He listed the current members of the CIP Committee. Mr. Merchant noted that this year the CIP had a total of over 11M in requests. He said this was a bit of a misnomer because three of these items, although

discussed this year, are large items, which would not be expended in one year and may be spread out over the next several years. These items are roads, proposal for new town hall, and Fire Department substation. Mr. Merchant explained the process the CIP uses to establish proposed expenditures by soliciting requests from the head's of each Town department, compile the data and after presentations by the individual departments the Committee discusses the merits of each individual request and ranks them. Expenditures are ranked from class 1-6. If a request is ranked a class 1 than it is an urgent need and cannot be delayed, a class 2 is necessary but can be spread out over the next three years, a class 3 is desirable and spread out over four to five years, class 4 is deferrable, class 5 is premature as it needs more research and class 6 is considered inconsistent and contrary to land use planning or community development.

Mr. Merchant outlined the CIP FY 2010 – 2017 Appropriation Chart in detail to the Board; specifically outlining the requests of the Fire Department, Police Department, Selectman, Recreation, School Department and Highway Department.

Mr. Merchant said the attempt of the committee is to keep the annual expenditures for any of the capital items at seventy-five cents per the current valuation. The anticipated valuation for the 2010 is over 2B. Mr. Merchant noted that most of these CIP requests have been moved to 2011-2017 in order to mitigate the tax impact and keep the CIP expenditures at 720K for FY 2010.

This year the CIP Committee is proposing to the Board and expenditure for \$300,000 for road improvements and \$420,000 to be applied toward the salt shed. The salt shed does not need to be completed or started until 2011 and there is a substantial amount of money set aside already and there may be some ability to redesign the concept of the salt shed and reduce the cost.

Mr. Merchant discussed the request from the school department of \$400,000 for an architectural study for the elementary and middle schools in FY 2010. He stated the compilation of this is to have an assessment of existing facilities in town with their projected requirements will be and come up with a plan to complete the funding through a large bond. The Committee thought the focus should be on completing the assessments with architectural studies of all the existing facilities, and compile the plan for options to complete the facilities expansion for the Town.

Mr. Merchant noted a new section on the appropriations chart that shows the two school bonds and what the impact will be on the community.

In summary, Mr. Merchant said what the Committee is seeking approval for the CIP to show \$300K to be spent on roads, \$420K to be for the salt shed, \$160K to be for the architectural study, and \$840K to be for the capital reserve fund for the proposed new schools.

The Board thanked the CIP Committee for their presentation and time working on this. The public hearing will be scheduled for the adoption of the CIP on November 18<sup>th</sup>.

## **2010 Town Meeting Proposed Changes**

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

Ms. Scott stated that the WWPD ordinance was previously identified by staff and Board members as needing to be looked at due to confusion with interpretations and understandability of the ordinance. The Board agreed the WWPD ordinance should be updated, and since this was a large undertaking, they did not feel that they would not have time to work on this internally, nor would the Planning Department because of staffing shortages, and it was decided to outsource the updating of the document. KNA, the Planning Board's consulting engineering firm, reviewed and rewrote the current ordinance for the Planning Board to review.

Mr. LoChiatto indicated this draft ordinance was made available a week ago and there will be another workshop and public hearing on this draft ordinance.

Steve Keach, of Keach-Nordstrom, the Town consulting engineer, presented to the Board the draft of the Wetland and Watershed Protection district Ordinance. Mr. Keach noted for the Board that since the Town's WWPD Ordinance was written, a lot has changed at the state level because there is now a state definition of wetlands. Therefore, updating this ordinance is a good move, as it will help homeowner's understand and the Town administer and apply the ordinance evenly across the board.

Mr. Keach went through the document outlining that he included a new ordinance "Title & Authority". He recommended the Planning Board adopt an amended ordinance pursuant to RSA 674.21 the innovative land use control statute. The primary purpose of this is administrative which allows the Planning Board to grant Conditional Use Permits as outlined in the rewritten section 601.1.2.

Mr. Keach also recommended the Board keep the contiguous area of one acre or more and 100-foot buffer language in section 601.4.1 (A & B) as this has served the Town well. He went on to discuss section 601.4.2 as a new section identifying what the WWPD will not include. It is implied in the current ordinance, but not explicitly written in all instances, and adding this will eliminate any ambiguity.

In addition, he has acknowledged the scope of the Comprehensive Shoreland Protection Act. The current ordinance has exceptions under 601.4.4, for certain bodies of water such as Cobbett Pond, Shadow Lake, Rock Pond, Moeckle Pond, and Canobie Lake. These bodies of water are presumably covered by the Comprehensive Shoreland Protection Act but excluded from the WWPD as is currently written and he has rewritten the ordinance, not listing any bodies of water, to cover bodies of water that are unknown at this time.

In addition, Mr. Keach said he painstakingly expanded what most zoning ordinances have for identifying and delineation of wetland and watershed district boundaries. His point in doing this is to create a uniform process for the Town so that all wetlands regardless of whose land they are on can be evaluated, and identified equally and evenly.

In addition, he has provided an avenue to handle boundary disputes, discussed permitted uses, prohibited uses and conditional uses.

Ms. Post mentioned she was looking for clear reference to watershed areas, definitions and purposes and did not see anything mentioned in the document protecting watershed areas aside from mentioning the buffers. Mr. Keach responded that in part, it is implied in the surface waters of the state because without a watershed there are no waters, however; in the current WWPD Ordinance there is methodology for defining watershed but in the controls under the ordinance there are no protections for watershed. Ms. Post noted that because the existing ordinance does not contend with the watershed issue, she hoped this would be remedied in the rewritten ordinance. The Board discussed the difference between wetlands and watershed.

In addition, Ms. Post requested that a list of mitigations measures be included in the document with respect to Conditional Uses.

Ms. Post congratulated Mr. Keach and Ms. Scott stating how very pleased she is with some of the changes that have been made to the ordinance.

The Board discussed with Mr. Keach some changes in the language of the rewrite with respect to the administration of the conditional use permits.

Mr. LoChiatto opened the discussion up to the Public.

Betty Dunn addressed the Board about protecting wetlands created or enlarged as a result of the I-93 construction. She would like to have these manmade wetlands protected in the regulations. She went on to say just because the state made it does not mean we do not want to protect it. Mr. Keach said the wording could be changed to address this issue.

Ms. Dunn mentioned that the Comprehensive Shore land Protection Act has restrictions and requirements that are significantly different from the rewrite and she was wondering how the Town plans to reconcile the two documents. She is concerned about not protecting the watershed just because it goes beyond the 250ft from the Shoreland. Ms. Dunn and the Board discussed the reasons behind protecting the ponds in the WWPD.

Mr. William Schroeder addressed the Board discussing wetlands in section 601.4 B ".....having an area of less than one acre if such Wetlands are contiguous with the Surface Waters of the State....." he thinks this is good because it recognizes the idea that wetlands which are adjacent to a lake or stream deserve protection from the WWPD. However, in 601.4.2 B the

rewrite discusses the exclusion of land in the Shoreland Protection Act and he believes this is a problem because the Shoreland Protection Act is designed to protect lakes, streams, and not wetlands. There would be no buffer area around the WWPD because the word wetland does not appear in the Shoreland Protection Act. He says it seems like the exception will be unprotecting wetlands in the most critical area we have in Town. Mr. Schroeder read the list of lakes in the Town under the Shoreland Protection Act.

Mr. Alan Carpenter addressed the Board stating the WWPD was adopted approximately 37 years ago and since that time, we have not had an ordinance reviewed and revised by a sitting Planning Board as often as WWPD. Mr. Carpenter questioned the Board as to use of their time and why this rewriting the WWPD is a priority. Mr. LoChiatto responded by reiterating to Mr. Carpenter that the Planning Board has not spent any time on the WWPD rewrite and that the consultant has done all the work up to this point. In addition, Mr. LoChiatto stated the reason the Board is rewriting the Ordinance is because of the number of variance cases that are brought before the ZBA, and because of this, the Ordinance needed to be rewritten.

Mr. Carpenter wanted to know if Conditional Use Permits negate the ZBA and Mr. LoChiatto indicated that is the intent of the revision. Mr. Carpenter discussed with the Board different reasons why a variance might be needed and the Board said the revised ordinance would reduce the number of variances but not eliminate them. Ms. Scott noted that a Town resident can apply for a variance if what the resident is proposing to do is not listed as a permitted use and not listed under conditional uses, it is prohibited.

Tom Seniow addressed the Board inquiring if the public will be receiving a document showing all of the revisions. Mr. Keach responded that there is no direct correlation between the two documents and, because they are so different, he will not be providing a document showing the revisions. The ordinance is a total rewrite and would be replacing the entire existing WWPD Ordinance not just sections.

Mr. Seniow questioned regarding the buffers around the WWPD and he wondered why Mr. Keach did not address the current 200ft buffer. Mr. Keach said the 200ft buffer is a small number of cases and land having a slope of 12% or greater which is exceptionally difficult to administer.

Russ Wilder a former Windham resident who was one of the early authors of the WWPD ordinance, addressed Board with his comments/concerns. Mr. Wilder thinks the revised ordinance is a great improvement and provides a statement of purpose and is well organized. Mr. Wilder provided the Board a marked-up version of the proposed WWPD ordinance with his comments and hoped Mr. Keach could incorporate some of his comments into the draft. The Board noted that Mr. Keach did a very good job with the draft version of the ordinance and with the comments that Mr. Wilder is providing the ordinance will be more understandable.

Mr. Wilder discussed his concerns regarding wetlands and associated buffers, terminology, alteration of terrain, shore land protection act and conditional use permits, seasonal streams, culverts etc.

Jim Tierney commented that the ordinance is lacking in definitions and would like to see definitions referenced.

Mr. Wayne Morris commented regarding the Permitted Uses ordinance 601.6 he would like the language changed from 'motorized vehicles to non-motorized vehicles' and have the rail trail referenced separately as it is permissible for snowmobiles to ride on the rail trail. It was decided by the Board to change the language to 'trails' leaving out the motorized vehicle language. Mr. Morris also commented on the wetland functions and values and would like to see protection for vernal pools.

Ms. Kathleen DiFruscia, Attorney for the Cobbetts Pond Improvement Association, agreed with Mr. Schroeder about Shoreland Protection Act needing a lot of work mentioning wetlands. Ms. DiFruscia would like to see Conditional Uses (601.8) listed and would like to see the language in section C applied to A and B. Thinks we need to delineate where wetlands are in the Town by marking the wetlands on a map.

Mr. Andrew Lane addressed the Board regarding the language in sections 601.4.1 and 601.4.2 referencing what is and is not included in the WWPD ordinance. He believes there could be an overlap with the language and thought that section 601.4.1 would make more sense if it were changed to read: ".....shall include the following unless excluded by 601.4.2".

Mr. Alan Carpenter wondered if the definition for brooks and streams was now included in the draft section 601.5 under Surface Waters of the State. Mr. Keach answered in the affirmative. In addition, he questioned section 601.6 B Permitted Uses and thought that 'educational activities' could be misconstrued because the term is so broad. Ms. Scott indicated this could be changed to read: "...passive educational activities'. He also had concerns with section 601.6 H where the ordinance states public and private stormwater management and treatment works is listed. Mr. Carpenter was concerned that a developer would come to the PB with a plan and they would use all the high-end dry land for the home sites and seek a special permit to put all of the drainage swales, retention ponds and pump houses in the middle of the WWPD. And, he wonder if this section would allow this or would this fall under the condition uses, i.e. if it were under conditional uses it would allow the Board to ask the developer if they had some other place to put the drainage swales, retention ponds etc. rather than disturbing land in the WWPD. Mr. Keach explained to Mr. Carpenter that public and private stormwater management and treatment works means detention ponds, treatment swales – water that ultimately discharges to a water body. Mr. Keach felt this was too logical to exclude. Mr. Carpenter thought this was too disruptive to vegetation and wildlife in a given area. In addition, Mr. Carpenter asked Mr. Keach to explain section 601.8 D under Conditional Uses by providing an example. Mr. Keach responded that if someone had a building that was built in



the 1800's that the building could be renovated or expanded so long as it was designed to minimize disturbance of land situated in the District.

The Board thanked everyone for their time and stated that there will be another workshop scheduled on this draft ordinance.

A ten minute break was taken.

#### Sign Ordinance (Section 706)

Laura Scott, Community Development Director, submitted and discussed the draft Sign Ordinance with the proposed changes from the last meeting.

Mr. Breton noted that he does not want to have signs in the Village Center District reviewed by the Heritage Commission.

Ms. Post asked the Board what the rationale was for changing the language from Historic District Commission to Heritage Commission. Ms. Scott indicated the reason behind the change was during the last PB meeting Ms. Carol Pynn, Historic District Commission/Heritage Commission addressed the Board and said she thought it was important to have the Heritage Commission review signs for the Village Center District. Ms. Post is in favor of leaving it the way it is written in the current revised document. Ms. Scott reiterated to the Board that Ms. Pynn wanted it to say Heritage District rather than Historic District.

Mr. LoChiatto asked Ms. Scott if under the Site Plan and Zoning Regulations if the Heritage Commission had the opportunity to review Site Plans and signage. Ms. Scott said that through the Technical Review Committee process and any applications that are submitted for Site Plan or Subdivision, are routed to the Heritage Commission, not for approval, but for comments. Mr. LoChiatto noted for the Board that through the existing processes, the Heritage Commission has the purview of review and he does not feel that the language does not need to be included. Mr. LoChiatto's concern is that this has happened with other committees that we have in our ordinance they are required to submit comment or review and if we don't have them in time for public hearing what is the avenue to remedy this potential problem – should we have language in there that gives a deadline for comments. Mr. Breton noted that since the Heritage Commission can review through the Technical Review Committee, then having this in there be redundant, and he believes it should be removed.

Ms. Crisler, spoke to the Board on behalf of Ms. Carol Pynn. Ms. Crisler wanted to remind the Board that reviewing Site Plan or Subdivision plan is not the same as reviewing a sign permit, they should come in as a standalone application, and this is not redundant. Ms. Crisler explained the reason the Village Center is defined as a Historic Center of Town and why the Heritage Commission is extremely interested in reviewing signs is because it should have a look and feel if being historic, for even new buildings.

Ms. Post suggested a change to eliminate the redundancy to say: "Applications for sign, sign structure or change to an existing sign .....received independently of Site Plan Review must be reviewed for comment."

Ms. Scott said she did not advise putting a time limit in the ordinance due to extenuating circumstances. This should be left to the Board's discretion.

Mr. Kolodziej stated his opinion would be in favor for removing the language and the Board always comes up with a reasonable way a sign should look like, and things have worked out fine and the Board should do their usual job with approving the signs.

Mr. LoChiatto said if there is a topic the Board cannot agree on, then leave it for Public Hearing and it can be voted on by the Board to move forward to the Warrant.

The Board took a poll as to whether they should leave in this ordinance. Ms. Scott thought that changing the language to say, "Applications for sign, sign structure or change to an existing sign ....received independently of Site Plan Review must be provided to the Heritage Commission for comment.

Ms. Post commented that the Planning Board does a very good job with the sign applications but that does not preclude the Planning Board from getting additional input and additional input can only be helpful. Ms. Post thought it should be left in with the modifications.

Mr. LoChiatto thought it should be removed because it is a redundant process due to Site Plan Review and the PB does a good job in reviewing sign applications.

There was a consensus by the Board to move to Public Hearing.

Ms. Post was excused from the meeting at 10:00 p.m., and Ms. St. Laurent was seated in her place.

#### Continuance of Existing Use/New Construction & New Uses (Section 400 & 500)

Ms. Scott addressed the Board regarding changing existing use/new construction and new uses and the recommendations from Attorney Campbell. The Board discussed the various issues with respect to the revised sections Ms. Scott suggested, Attorney Campbell's opinion, and variance issues surrounding this ordinance.

Mr. LoChiatto reviewed the revised document in Section 400 under Continuance of Existing uses. Ms. Scott was fine with Attorney Campbell's recommendations to not make any changes to this section.

The board asked input from Mr. Jim Tierney and he provided his opinion about leaving the proposed changes to section 500 as Ms. Scott had written and the Board agreed.



Mr. Okerman motioned to move to Section 500 as written to public hearing. Second by Ms. Skinner. Motion passed 7-0.

#### Customary Home Occupation (Section 602.1.6)

Ms. Scott provided a draft Ordinance to the Board for Customary Home Occupation which was modeled on the one proposed at the 2009 Town Meeting. Specifically outlined was home office, traffic in excess of normal deliveries, and grammatical errors in the previous document. The Board had a discussion with respect to the public display of goods or wares, storage etc., and the size of the lot with respect to the dwelling.

Mr. Tierney commented on the signage ordinance and asked the Board to make a few changes regarding Home Occupation signs in the Residential A, B, & C Districts.

#### **Meeting Minutes**

Mr. Breton motioned to approve minutes October 14<sup>th</sup> as written. Second by Mr. Okerman. Motion passed 5-0-2. Mr. Wrenn and Ms. Post abstaining.

Mr. Breton motioned to approve the October 21<sup>st</sup> minutes as amended. Second by Ms. Skinner. Motion passed 5-0-2. Mr. Kolodziej and Mr. Wrenn abstaining.

#### **Planner Update**

Ms. Scott submitted the Planners Report. Ms. Scott spoke to the Board regarding the law lecture series she attended this past month. The Windham Economic Development committee presented the Community Survey Results to the BOS last Monday, which are posted on the Town web site. Ms. Scott reminded the Board that the RPC and the Town are hosting a meeting about the Wall Street and Route 111 Corridor study presentation on Thursday, November 5.

#### **Adjournment**

Motion to adjourn at 10:40 p.m. by Mr. Kolodziej. Second by Mr. Okerman. Passed 7-0.

Tracey Mulder respectfully submits these minutes in draft.