

*OLD VALUES - NEW HORIZONS*  
**COMMUNITY DEVELOPMENT**

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**Approved Planning Board Minutes**

**June 6th, 2012**

**Board Members:**

Margaret Crisler, Chairman – Present

Ruth-Ellen Post, Vice-Chair– Present

Pam Skinner, Member – Excused

Kristi St. Laurent, Member – Present

Jonathan Sycamore, Member – Excused

Lee Maloney, Alternate Member – Present

Carolyn Webber, Member – Present

Ross McLeod, Selectman Member – Excused

Kathleen DiFruscia, Selectman Alternate - Present

Sy Wrenn, Alternate Member – Present

Vanessa Nysten, Alternate Member – Arrived at 8:15 pm

**Staff:**

Laura Scott, Community Development Director

Elizabeth Wood, Community Planner

Cathy Pinette, Planning Board Minute Taker

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

Chairman Crisler called the meeting to order at 7: 04 pm, followed by attendance and the Pledge of Allegiance.

**Seat Alternates**

Ms. Maloney was appointed to sit for Mr. Sycamore. Mr. Wrenn was appointed to sit for Ms. Skinner.

Ms. DiFruscia asked the Chairman if the Board could interview the candidates for the CIP Committee before the presentation. The Chairman stated she would be following the agenda.

**CIP Kick-Off**

- Presentation on CIP – what it is and isn't – Ms. Wood stated that a capital improvement is a major expenditure considered beyond the scope of normal annual operating or maintenance expenses. She stated in 2011, a major expenditure was required to exceed \$50,000. The Planning Board has authority to change this dollar amount. She stated we have a Master Plan in town, but the CIP is a financial master plan. This year's Committee will look at 2013 to 2019. They will look at what was done last year and go from there. There are items that are over 50,000 that are not on the CIP such as salaries, operating budget, phone, Internet, water, etc.

- Discussion on “capital expenditure” level for inclusion in CIP - Ms. Wood would like the Board to decide if they would like to stay at \$50,000.
- The Chairman stated the CIP is not a budget committee but part of a Planning Board, and is under the Planning Board and not the Selectmen.
- Ms. Webber stated that some of the smaller departments would be hard-pressed to find expenditures over \$50,000. She thinks the Board should change the expenditure amount to \$25,000 or \$30,000.
- Ms. Post stated there is no actual money involved in the CIP fund, it is a planning process. When all is said and done, it is turned over to the Board of Selectmen who decides what goes on the warrant. She recommends the amount to be \$25,000.
- Ms. Maloney stated she was on the CIP Committee and the threshold was \$40,000. She believes \$40,000 is good.
- Ms. St. Laurent stated she served on the CIP last term and the amount was \$50,000. She can see the benefit of going below \$50,000, but she thinks \$35,000-\$40,000.
- Mr. Wrenn is not sure about the amount.
- Ms. DiFruscia believes that \$50,000 is very reasonable. She doesn't want to go too low, but believes 35,000 to \$40,000 is reasonable.
- The Chairman stated capital funds are for long-term improvements. She's content with \$50,000 but would not want to go below \$40,000.

The Chairman opened the discussion to the public at 7:20 pm.

- Dennis Senibaldi, 29 Partridge Rd, stated he was on the Committee when it was \$100,000. Anything below \$50,000 are things department should be planning for. To go below \$50,000 departments would have a multiple of items to present.
- Ms. Maloney stated there is a criteria for each request. It depends on what the item is they are requesting.
- Mr. Alan Carpenter, 8 Glenwood Road, stated it would take a long time for the CIP to hear presentations. He thinks it should be \$100,000.

The Chairman closed the public hearing at 7:26 pm.

- The Chairman stated the points made were very valid.

**Ms. Post motioned for the threshold to be \$40,000, seconded by Ms. Webber. Motion passed 6 – 1.**

- Appointment of 2 Planning Board members - The Chairman stated there are currently two Planning Board members serving on the CIP; Ms. Webber and Ms. St. Laurent. Ms. Webber and Ms. Post volunteered to be on the Committee this year. Ms. Webber stated meetings were every other Wednesday last year and that worked with her schedule.

**Ms. DiFruscia motion to appoint Ms. Webber and Ms. Post to the CIP Committee, seconded by Ms. Maloney. Motion passed 7 – 0.**

### **Interview and Appointment of Citizen Member**

- Ms. Jennifer Simmons, 7 Porcupine Road, addressed the Board. She stated her family has lived in Windham for ten years. She has a bachelor's degree from the University of Maine in accounting and she has work for Putnam Investments and Lehman Brothers in their trading departments. She is active in many community organizations including the Friends of the Library, she is the new President of the PTA, she is a volunteer at the Golden Brook School, and she chairs the annual strawberry festival and book fair. She stated that Windham is a growing town and she wants to make sure that we preserve the historic traditions in our community while allowing the necessary growth of population expansion. She stated it is important that we strategically manage our towns' capital for the future.
- Ms. Post asked Ms. Simmons why the CIP Committee interests her. Ms. Simmons stated she is in the schools, the library, and the athletic fields and sees what needs to be done and she would like to help on this Committee.
- Ms. Webber asked Ms. Simmons if she was happy with the Town taxes. She asked if Ms. Simmons thought they could be lowered. Ms. Simmons stated she knows the Town is growing and she knows there is no income tax, she doesn't believe the taxes will go down.
- The Chairman asked Ms. Simmons what professional experience she has to bring to this position. Ms. Simmons stated she has a degree in accounting and her professional financial experience.
- Ms. Maloney stated that the CIP usually meets on Wednesday's and asked Ms. Simmons if that would work with her busy schedule. Ms. Simmons stated that Wednesday's are open for her.

The Chairman thanked Ms. Simmons for volunteering for the Committee.

- Mr. Dennis Senibaldi, 20 Partridge Rd, addressed the Board. He stated he has been highly involved in town in the last 13 years with Recreation, Conservation, and the PTA, he is a former Selectmen and current town employee. He has a unique perspective on what the Town needs as he sees it every day. He would like to continue for another term. He has no conflicts with the meetings.

- The Chairman asked Mr. Senibaldi what educational and professional background he would bring to this position. Mr. Senibaldi stated his tenure as a Selectman, he is intimate with the department heads, he is already aware of what the Town needs, and he speaks to lots of people about town issues. He looks at different methods of financing. He has been on the Committee for one term and would like to do another term.
- The Chairman asked Mr. Senibaldi, as a town employee of the transfer station, would you recuse yourself from CIP requests from that Department. Mr. Senibaldi stated he would look at each item and decide. He has no issues with making the best decision for the Town, not his department. He would see no need to step down.

The Chairman thanked Mr. Senibaldi for volunteering for the Committee.

**Ms. DiFruscia moved and Ms. Post seconded to enter into Nonpublic Session in accordance with RSA 91-A: 3 II (c) at 7:40 pm. Roll call vote all “yes”.**

**The Board returned from Nonpublic Session at 7:50 pm.**

**Ms. Maloney made a motion to appoint Ms. Simmons to the CIP Committee as she best fits the description of a citizen representative, seconded by Ms. Webber. Motion passed 6 – 0.**

### **Public Hearings**

#### Case#2012-14 Minor Site Plan/Change of Use/Small Wind Energy System

An Application for a Minor Site Plan/Change of Use and a Building Permit Application have been submitted for the installation of a Small Wind Energy System at the Windham High School, located at 64 London Bridge Road (Lot 20-D-1500), in the Rural District. The applicant, Jeffrey Goodman of Wind Guys USA, LLC, on behalf of the Windham School District, is proposing to install a 45’ high tower (with a blade tip height of 51’), 170 lb Small Energy System with rotors sized 12’ in diameter adjacent to the Northwest corner of far Western parking lot.

Ms. Post read Case #2012-14 into the record.

The Chairman asked Ms. Wood if this application was ready for acceptance. Ms. Wood stated yes.

**Ms. DiFruscia motioned to accept Case#2012-14 for public hearing, seconded by Mr. Wrenn. Motion passed 7 – 0.**

Ms. Post stated that for public disclosure she had worked with WIRE off and on for a few years. She doesn't feel she has any conflicts. The Board saw no conflicts.

- Ms. Wood stated this is the first application on a small energy system. It will be on the school grounds. The comments from the Planning Board are nonbinding. This is a Minor Site Plan/Change of Use. Deputy Martineau has reviewed the site plan for the small wind energy

system at Windham High School and does not see any fire related issues with this. The building inspector has to review the application for regional impacts.

- Alan Carpenter, Chairman of WIRE, confirmed Ms. Wood's statement that this is on school property and the Planning Board comments are nonbonding.
- Mr. Jeffrey Goodman of Wind Guys USA, spoke regarding the small wind energy system. He stated the unit is a 2.4 kW unit and would be put up at the high school. This unit might make 2000 kW hours and it won't make a big impact on what school uses. It is more of a learning tool for the students he stated.
- Ms. Webber asked how many decibels of noise the unit would create. Mr. Goodman stated 55 dB at the bottom of the tower. At the borders you will hear nothing. The noise level is like the wind rustling. Ms. Webber asked if it got windier if the noise would increase. Mr. Goodwin stated yes. Ms. Webber asked if the unit was invisible at full force as she was concerned about the birds. Mr. Goodman stated he never had a bird issue.
- Ms. DiFruscia asked Mr. Goodman if there was any maintenance needed. Mr. Goodman stated there is a five-year warranty and maintenance is minimal.
- Ms. Post asked Mr. Goodman if the unit falls, what is within the distance of which it would fall. Mr. Goodman stated it could hit a small hut located on the property or if it falls another way it could hit the edge of the parking lot.
- Ms. St. Laurent asked Mr. Goodman what the maximum wind speed was that this unit could handle. Mr. Goodman stated there is a brake inside the tower. At 330 RPMs the brake will shut the unit down, that is 56 mph. He stated it makes its best power between 20 to 30 mph.
- Mr. Wrenn asked Mr. Goodman if there was cabling in the tower. Mr. Goodwin stated yes. Mr. Wrenn asked if the tower was galvanized. Mr. Goodman stated yes, it is flat galvanized.
- Ms. Post asked how the tower was anchored into the ground. Mr. Goodman stated 2 inch bolts and there is a cage in the concrete pad the tower will be on. The tower can handle 140 – 150 mph.

The Chairman opened the hearing to the public at 8:08 PM, hearing no comment; the public comment period was closed.

Ms. DiFruscia believes we need to determine if it meets Section 306.

**Ms. DiFruscia motioned to approve that the minor site plan criteria is met as presented and submitted, seconded by Ms. Post. Motion passed 7 – 0.**

Case #2010-46 Workforce Housing Application – Condition of Approval

A public hearing is to be held, in accordance with NH RSA 676:4(D) to review and confirm that the

requirements of Condition #5 of the April 18, 2012 Conditional Approval for Lot 19-A-300 (66 Mammoth Road), which is located in the Rural and Aquifer Protection Districts, has been satisfied. This application is for a 10-unit residential condominium development, consisting of 5 duplex buildings with 5 units to be Workforce Housing, per NH RSA 674:58-61. The applicant is Peter Zohdi of Edward N. Herbert Assoc. Inc, on behalf of Sun Coast Properties LLC.

Ms. Post read Case #2010-46 into the record.

The Chairman asked Ms. Scott if the application was ready to accept. Ms. Scott stated yes.

**Ms. Post motioned to accept Case #2010-46 for public hearing, seconded by Mr. Wrenn. Motion passed 7 – 0.**

- Ms. Scott stated that the Board conditionally approved this application in April with condition 5 being” the manner in payment of third-party monitoring has been determined collaboratively with Town Counsel and Community Development Department staff.” She stated the WFH Restrictive Covenant and Agreement would cover buyers, the town, and the applicant. They also came up with eligibility application requirements. Ms. Scott stated legal counsel felt that the conditions of number five should come back to the Board.
- Ms. Nysten arrived at approx. 8:15 pm.
- Mr. John Cronin, on behalf of the applicant, has no issues with the WFH Financial eligibility application and the wording.
- Ms. St. Laurent asked Mr. Cronin if the income verification would be for all units. Mr. Cronin replied eligibility would be for all 5 WFH, the covenant and the agreement information will be available for all to see. Mr. Cronin stated the person buying will have to take care of the covenant and have Mr. Keach do this. This covenant holds everyone accountable.
- Ms. Post has concerns that the WFH remain affordable for 30 years. Looking at the WFH Restrictive Covenant and Agreement regarding (Section III, D) Exempt Transfers, certain things stand to destroy the affordability. Mr. Cronin stated these are operations that will happen by law. If the surviving spouse decides to sell, then they would need to make the subsequent transfer. Ms. Post stated she thinks it could be clearer by stating for “for the duration of the exempt transfers”. She asked if notice is to be provided to the town if a bank forecloses. Mr. Cronin stated the bank would need to comply. Ms. Post feels it is a weak link in the chain. Ms. Post questioned if the Board wanted the WFH Restrictive Covenant and Agreement paperwork to go to the Department and have it stated that way in the agreement (Section VI Miscellaneous). Ms. Scott stated that things could change, department names or who to send it to within Town Government. It will be on record with the assessor. Ms. Post would like additional language added to the exemption list to say that these exemptions are only for the duration of the exemption. Mr. Cronin feels that that is addressed. He is willing to work with Attorney Campbell and Ms. Scott.
- Attorney Campbell addressed the Board. He stated as Mr. Cronin has indicated the WFH Restrictive Covenant and Agreement, has been reviewed by himself for the Town. Attorney

Campbell is comfortable with the language. There is a potential for some number of units to move in and out but thinks they will be back in the WFH as soon as possible.

- Ms. Maloney asked that under the section " Miscellaneous VI of the WFH Restrictive Covenant and Agreement if Mr. Cronin could add "condominium association". Mr. Cronin stated he could do that.

The Chairman opened the hearing to the public at 8:37 pm, hearing no comments, public comment was closed.

**Ms. DiFruscia motioned to approve Case #2010-46 with the requirement of condition five having been met with the addition of the WFH restrictive covenant agreement, adding "notice to the Town of Windham" and adding "condominium association", seconded by Ms. Post. Motion passed 7 – 0.**

The Board recessed at 8:40 pm. The Board was back in session at 9:30 pm

Case#2010-44 (Continued from May 9, 2012)

Major Open Space/Workforce Housing Subdivision/Site Plan Application &WWPD Special Permit

A Major Open Space/Workforce Housing Subdivision/Site Plan Application and WWPD Special Permit has been submitted by Karl Dubay, of The Dubay Group, Inc., on behalf of AWAC Realty Trust, for Lot 11-A-1418 (76 Meetinghouse Road), which is located in the Rural, Aquifer, and WWPD Districts. The Application is to subdivide 11.87 acres off Lot 11-A-1418, which already contains an existing home, and into a 13 lot Open Space Subdivision (12 residential lots and 1 open space lot) with a new Town-maintained road, as well as associated drainage improvements. Of the 12 residential lots, 3 lots are proposed to be Workforce Housing lots, as defined in NH RSA 674:58. The WWPD Special Permit is for drainage improvements along Meetinghouse Road.

Ms. Post read Case#2010-44 into the record

- The Chairman stated that the 65 day process will be over on June 22. The Board would like to ask for an extension to the June 27 for the waiver under 619.7.3. We would need the information by June 14th.
- Mr. Dubay stated he believes it is the waiver for the 25%, and the Chairman replied, yes and the financials. Mr. Dubay stated that the financials were already reviewed by the town consultant.
- Ms. Wood stated the large packet the Board has from Mr. Dubay has the financials in it. Mr. Dubay stated it was dated 2011, the fiscal impact study was done and reviewed on March 31, 2011 by the Town consultant and is Exhibit I and is in the packet. It confirms the study from the guidebook, November 7, 2011 exhibit J, clarifying the review and is part of the record. He stated they did that as a process of the ZBA variance, that variance included the 25% and the open space and the WFH are tied together with the variance. When the WFH comes through, you have to do it to meet the RSA and there is a waiver request. The Chairman referenced 619.7.3. Mr. Dubay

argues this is an administrative issue. He feels comfortable because the percent issue was taken care of a year ago and this is not one to be re-reviewed by the Town's consultant. The Chairman stated she still wants to continue to June 27<sup>th</sup> or July 11<sup>th</sup> and notice it. Mr. Dubay believes during the design review process the Board can discuss waivers. If the Board agrees the criteria is met with the process in place, that they do meet the criteria of the waiver. If they were to accept a continuance they would have to go back and prepare to come back with something specific, if that is what the Board would like. He would like the Board to acknowledge that the criteria was already met. The Chairman stated the Board would prefer not to make a decision tonight to be given more time to look at the packet. He would like the Board to discuss the WWPD tonight. The Chairman stated they would like to do the whole application at one time. The Chairman asked Ms. Wood if there are any other issues if a continuance is issued. Ms. Wood stated her concerns from her June 1 memo were in the Board's packet.

- Mr. Dubay stated that Mr. Pliskin would like Attorney Campbell to explain what all this means. Mr. Dubay stated during the design review hearing they talked about waiver provision and acknowledge that if the Board wanted to move forward in their new process that was fine with the applicant. He doesn't know if it needs to be "noticed". He believes the Board has acted on waivers before without "noticing" the public.

Ms. DiFruscia left at 9:45 pm.

- The Chairman stated the Board often has a blanket notification and they did not do that with this. Mr. Dubay stated that the notification process and how that logistically happens because he believes it was discussed at the last meeting. Also, there is no reason to carry every item forward to the next meeting when there is a small punch list, and there is no reason to not have the Board address these items tonight. He would like Attorney Campbell to speak to this.
- The Chairman stated Attorney Campbell can address why we need to properly address the waiver notice and the financial analysis.
- Mr. Dubay asked why a proper analysis was not done what would happen if they don't agree with the continuance. The Chairman stated the sticking point was proper notice. Mr. Dubay stated that Mr. Pliskin wants to be sure the Board crosses their t's and dots their i's. He stated when the Town notified the abutters for the ZBA it was taken care of with the town process. Mr. Pliskin would like to hear from Attorney Campbell on this.
- Attorney Campbell addressed the Board. He stated as he understands it the applicant requested a waiver under Section 619.7.3.3. This waiver must be accompanied by a financial analysis. He is not convinced a separate notice is required by law, but does note that the Board's practice has been notifications for waivers. You would need a public hearing. He understands there has not been a discussion regarding the wavier and the financials. The Board has used best practices. If the Board has traditionally incorporated this practice, he would advise the applicant to do so.



- Ms. Webber questioned Exhibit I, dated March 31, 2011, stating it mentioned nothing about a waiver. Mr. Dubay stated the waiver process didn't exist at the time but a fiscal analysis was requested under the RSA and they have provided the Board with that. He has done many projects in Town and he never saw the Board do a waiver notice. He believes normally the Board does not notify for waivers. The Chairman stated the Board can continue to date specific. Mr. Dubay stated in the spirit of cooperation they understand where the Board is coming from but would like to address some issues this evening. He stated the Board and staff has been very cooperative. Ms. Post stated she would like to continue to clarify what exactly the Board is looking for. The Chairman stated the Board will continue the hearing to June 27 and clarify what is needed at this evening's meeting. Ms. Wood stated she would need all Mr. Dubay's materials no later than June 14.
- The Chairman stated the Board would need to decide if the material provided to the ZBA is adequate for the Planning Board. Ms. Post question what the date of the waiver request was and what provision. Mr. Dubay stated he spoke about it at the hearings. Ms. Wood stated it is on the June 1 memo from Mr. Dubay and also on page 3 of the plans. Mr. Dubay stated they have also discussed this in other memos. Ms. Post asked where the waiver is for 619.7.3.3. Mr. Dubay stated they can provide what waivers were discussed and when, at the June 27 meeting. Ms. Post stated she would like to see something on the 50% WFH. Mr. Dubay did a summary of waivers in list form that he has when the town required them and also waivers when the town didn't. Ms. Post stated if the applicant had a waiver request that is dated June 1. Ms. Post is concerned the justification for the waiver request predates the request. Mr. Dubay stated it was submitted to the Planning Board. The Chairman stated she would like to ask Mr. Keach, of Keach-Nordstrom Associates, the Board's consultant, if they are still applicable.
- Ms. Webber stated the ZBA was in October/November and the financials were done in March of 2011. Mr. Dubay stated they were required to provide that under the RSA and they did.
- Ms. St. Laurent stated she was looking at the document that Keach prepared. Mr. Dubay stated the fiscal study was done in accordance with the guidebook and reviewed for three units. Mr. Dubay stated if the Board felt more comfortable the reviewer can look at it again.
- Ms. Post is looking for the numbers that tell us that it is okay to have three WFH units instead of six. Ms. Nysten asked Ms. Post if page 6 of the packet is what she was looking for. Ms. Post stated no, she saw that, but that's not what she is looking for. The ZBA variance is for open space. Ms. Post would like justification for the waiver. Mr. Dubay stated they were the first application that has done a fiscal impact study and other applicants did not. Mr. Dubay stated he will put together the dates for staff and get that to them by the 14th. Mr. Pliskin reluctantly agreed to a continuance but did so in the spirit of cooperation. Mr. Dubay stated they will be working on the items in the June 1<sup>st</sup> memo he received from staff to finalize those items.
- Ms. Wood asked the Board to please keep their memos and information for this case for the next meeting and staff will provide only new information for the continuance.

- Mr. Dubay stated he has a letter from the road agent and he has been working with him. He also has a memo from the Conservation Committee. He stated their only concern was with the workforce housing and no issue with the design.
- The Chairman stated she would not open the meeting to the public tonight since it was to be continued to date certain.

**Motion by Ms. Webber to date and time certain to June 27<sup>th</sup> at 7:00 pm, Case#2010-44, seconded by Mr. Wrenn. Motion passed 6 – 0.**

- Ms. Nysten wants to make sure that the financials are included.

### **Meeting Minutes**

**Ms. Webber made a motion to reconsider the minutes of April 25, 2012, seconded by Ms. St. Laurent. Motion passed 6 – 0.**

- Ms. Nysten provided an amendment

**Ms. Webber made a motion to accept the minutes of April 25, 2012 as amended, seconded by Ms. Post. Motion passed 6 – 0.**

**Ms. Webber made a motion to accept the minutes of May 2, 2012 as amended, seconded by Ms. Maloney. Motion passed 6 – 0.**

### **Adjournment**

**Motion to adjourn made by Ms. Webber, seconded by Ms. Maloney. Motion passed 6 – 0.**

**Meeting adjourned at 10:50 pm.**

These minutes were approved on August 15, 2012 and respectfully submitted by Cathy Pinette, Planning Board Minute Taker.