



OLD VALUES - NEW HORIZONS
PLANNING AND DEVELOPMENT

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Planning Board Meeting Minutes
January 19, 2010

Roll Call:

Phil LoChiatto, Chairman – Present Rick Okerman, Vice Chairman – Arrived at 8:37
Nancy Prendergast, Member – Present Walter Kolodziej – Present
Ruth-Ellen Post, Member – Present Pam Skinner, Member – Excused
Louis Hersch, Alternate – Excused Kristi St. Laurent, Alternate – Present
Sy Wrenn, Alternate – Arrived at 7:10 Bruce Breton, Selectmen Member – Present
Ross McLeod, Selectman Alternate – Excused

Seated for Pam Skinner is Kristi St. Laurent.

Staff:

Laura Scott, Community Development Director - Present
Tracey Mulder, Planning Board Assistant - Present

Call to Order/Attendance/Pledge of Allegiance

Mr. LoChiatto opened the meeting at 7:05PM, followed by the Pledge of Allegiance.

Public Hearing - 2010 Town Meeting Zoning Amendments

Workforce Housing Overlay District

Add a new Overlay District to allow for Workforce Housing, in accordance with NH RSA 674:58-674:61 and consistent with NH RSA 672:1(III-e), as an innovative land use ordinance under 674:21 and would be applicable in the Rural, Residential A, Residential B, Residential C, and Village Center Districts. The Ordinance lays out the applicable definitions used in the Ordinance, the procedure and requirements for Planning Board applications (conceptual, design review, and final), conditions of approval, development standards (density, dwelling units, frontage/setback/yard requirements, layout, roads, water and wastewater treatment systems), and how appeals are made. As part of the Ordinance, payment of impact fees are to be waived; the density is based on NH DES Env-Wq 1000; Conditional Use Permits are used by the Planning Board to authorize development that would otherwise not be allowed under a particular site per the Zoning Ordinance, Site Plan Review, or Subdivision regulations if certain criteria are met; a 30 year affordability requirement for Workforce Housing units is required; flexible setbacks within the development; and a minimum of 25% Workforce Housing units in a mixed income development.

Mr. LoChiatto read the amendment description into the record and noted that this is the final public hearing on this amendment and no substantive changes can be made this

evening only small changes can be made that don't affect the substance of the ordinance.

Mr. LoChiatto commented that Ms. Prendergast had worked very hard on this ordinance. Ms. Prendergast brought a Power point presentation providing examples of workforce housing architecture and she thought these pictures would be suitable examples for the types of Workforce Housing development that would be built in Windham.

Mr. Kolodziej made motion to open the Workforce Housing Overlay District for public hearing. Motion was seconded by Mr. Breton.

Motion passed 6-0.

Mr. Wrenn was seated for Mr. Okerman at 7:10 pm.

Mr. Kolodziej made a motion to make public legal communication from Attorney Campbell regarding Workforce Housing. Motion seconded by Mr. Breton.

Motion passed 7-0.

Mr. LoChiatto opened the discussion to the public.

Mr. LoChiatto read the legal correspondence from Attorney Campbell into the record.

Mr. Hohenberger addressed the Board and clarified some confusion with regard to impact fees being waived for Workforce Housing. He noted that when he discussed the waiving of impact fees at a previous meeting, he was not aware that Workforce housing could be detached homes and thought they were multifamily dwellings only. According to his calculations detached dwellings bring in families and he is in opposition to the ordinance with regard to not collecting Impact Fees.

Mr. Alan Carpenter addressed the Board and wants the Town to understand that Workforce Housing did not originate in Windham rather the State of NH, i.e. Concord, passed this law. Mr. Carpenter believes that Concord's intentions are valid and sound and are a significant contribution to the State. He thinks the key is how the law is implemented and we, as a Town, do not know what we are going to get and we are not certain how the economy will react to Workforce Housing. He wondered if the homes that were being presented in the sideshow could be constructed and sold as Workforce Housing in today's economy.

He went on to say that after reading the RSA regarding Workforce Housing and reading the Citizens Petition ordinance and the Town's proposed ordinance he said the Board would be better off voting down both plans and bringing in an unbiased arbitrator to

weigh in on Workforce Housing applications. Mr. Carpenter noted that specifically, in the Citizen's Petition, residential A district is removed from Workforce Housing and in the Planning Boards version, single family Workforce Housing it is allowed. Mr. Carpenter noted that Residential A is a small portion of the community and surrounds some of the major ponds, and he is concerned with the current distress of Cobbetts Pond, building around this area would further take away from the Pond. Mr. Carpenter indicated that Workforce Housing is not allowed in the Citizen's Petition in the Village Center District but in the Planning Boards version it is allowed. He said that the Village Center District in the Planning Board's version is irrelevant because the Village Center District, as a zone, allows a density that is equal to or greater than the Workforce Housing Density; therefore, there is no benefit for builders. He also noted that the Historical protection in the Planning Board's version is not in the Citizen's Petition. Mr. Carpenter went on to say that an area of concern is the Rural District, and it is in the vicinity of 80% of our community. And he noted that 80% of our community is open to all versions of Workforce Housing per the Planning Board's proposed ordinance. In the Citizens Petition, multifamily is removed from the Rural District. Mr. Carpenter went on to say that Board's version is too flexible and the Board will have no legal standing over the plans that are submitted by a developer.

He asked the Board if there was a natural reason why Rural was added to the Planning Board's version and Mr. LoChiatto responded that the Rural District was included in the first draft of the ordinance. Ms. Scott went through her records and noted for the audience and for the Board that the Rural District was included in the 11/11, 12/2, 12/16 and 12/30 drafts of the ordinance. Mr. Carpenter noted that the addition of multifamily to the rural district was added during the meeting of 12/30 when most citizens couldn't attend due to the holidays. The Board replied that the Town was well represented by citizens at the 12/30 meeting and to keep his comments to the point at hand and to please maintain a professional demeanor when addressing the Board.

Mr. Carpenter read NH RSA 674 to the Board and indicated the State was very clear about becoming compliant with Workforce Housing. Mr. Carpenter read part of the RSA that states "this paragraph shall not be construed to require a municipality to allow for the development of multifamily housing in a majority of its land zoned permitting residential uses". Mr. Carpenter interprets this RSA to mean the Town does not need to do this in a majority of the land but the Town does need to do it in 'some' of the land. Mr. Carpenter wondered why the Board would take an approach in their version of Workforce Housing so far beyond from what the RSA indicates.

In addition, Mr. Carpenter is concerned about the percentage allowed for Workforce Housing and discussed the incentives provided to the developers. Mr. Carpenter compared the Citizen's Petition vs. Planning Board proposed ordinance with regard to density and discussed the percentage of homes a developer could build as Workforce Housing and the percentage of market rate homes. Mr. Carpenter does not understand why the Board would provide such a windfall opportunity to the developers

by allowing the developer to build 25% Workforce Housing and leaving the remainder of the land to build market rate homes.

Mr. Kolodziej addressed the Board and requested that the public concentrate the discussion to Workforce Housing in general and not on a particular development in Town. Mr. LoChiatto agreed and asked the public to discontinue discussing the development at 130 Range Road and focus on Workforce housing as a whole and not one particular development. Ms. Prendergast made note that the Board did not see the plans of the development mentioned and therefore does not know the specifics of the development in any way and how it may or may not relate to the ordinance. Mr. LoChiatto agreed that the Board did not accept the plans nor did they discuss any of the details of the plan.

Bob Leonard addressed the Board and asked what the options were at this meeting and what changes could be made based on the public input from the meeting. Mr. LoChiatto explained to Mr. Leonard that this hearing is limited to the type of changes they can make to the ordinance because there is not time to make substantive changes and hold another hearing due to time constraints. In addition, Mr. LoChiatto noted that this ordinance has gone through several workshops and several amendments and the Board is not allowed by State statute to have another public hearing and therefore no substantive changes can be made to the document.

Ms. Scott responded that the ordinance will be on the ballot for Town meeting for the residence to vote on and it would not become law tonight.

Mr. Leonard wondered if the Planning Board's ordinance could be voted down by the public and Mr. LoChiatto indicated the Board will vote to take it to ballot or not during tonight's meeting. Mr. LoChiatto also noted that this decision will be based on tonight's public hearing and all previous public hearings regarding Workforce Housing.

Mr. Leonard mentioned that he is dead set against this ordinance and he can't see where any one with any type of cognitive reasoning would want the Town's ordinance to pass because he believes this is giving carte blanche to the developers. Mr. Leonard believes that the Town needs controls over the developers and builders otherwise they will do what they want and he does not think the builders will have the best interest of the Town in their sights. He went on to say the Town's ordinance needs constraints and he thinks down the road the Board will not be able to say they made the right decision by bringing this ordinance to Town vote because it gives the builders free rein to come into Windham and build anything they choose.

Mr. LoChiatto asked Ms. Prendergast if she wanted to discuss his concerns. Ms. Prendergast indicated that if the Board does not pass an ordinance then the Board is opening the door for developers to have more freedom and the Board is trying to write an ordinance that does have limitations and controls and allows the Board to approve

an application with conditions and restrictions and by having this process the Board can notify the applicant of the conditions and restrictions and the applicant can come forward and either meet or not meet the criteria that the Planning Board will be imposing along with the public input. Ms. Prendergast went on to say that if the applicant cannot meet the conditions and restrictions then the applicant needs to come forward to submit evidence to establish the cost of complying and provide the Board with information that the stringent types of conditions is not cost effective for them to deliver Workforce Housing. She went on to say these are the types of conditions that are written into the law.

Mr. Prendergast discussed how she became involved in Workforce Housing and explained by the Town adopting an ordinance it gives the Town more control.

Mr. Leonard stated that he thinks the restrictions need to be tighter. Ms. Prendergast said allowing 25% of a development to be Workforce housing is the tradeoff for the type of quality of the Workforce Housing the Town desires. Ms. Prendergast went on to say that the developer is likely not making money on workforce housing and by allowing mixed use developments the developer can build market rate homes to offset the cost of the workforce housing. She went on to say that originally the percentage was higher but considering input from the Board and the public the percentage was lowered because the consensus was that Windham would not get the quality type of Workforce housing it deserves if the ratio was higher.

Mr. LoChiatto discussed with Mr. Leonard that property is still valuable in Windham but the homes have lost value. Mr. Leonard does not want to see the character of Windham change and he is in support of Mr. Carpenter's comments and his statements regarding the cost of a Workforce House. Mr. LoChiatto indicated that this was the formula that the state came up with and by law the Town must make it available.

Mr. Kolodziej mentioned that the Planning Board through the years has been a responsible Board and no one in town or on the Board will allow the Town to go down hill. He wants to maintain property values along with everyone else and the Board does not want to bring something to Town that will reflect negatively on the Town. He went on to say the Board is doing their utmost to do what they can to keep the character of the Town and not have shabby construction and builders need to keep in mind that what there needs to be a market for what they build and he does not believe a builder will come to Town and build an inferior dwelling. He believes that the Workforce Housing will be built in the same vein as all other homes but of a smaller nature.

Mr. Leonard said he would do more research between now and when this goes to Town vote but for now he is against the Planning Board's ordinance.

Ted Dyer addressed the Board asking why the Board seems to be concerned with a developer making money on Workforce Housing. Mr. Kolodziej responded saying that

the Board was not trying to help the developer make money but to provide an opportunity to have Workforce Housing blend in with the rest of the community.

Ms. Post offered another explanation saying that her understanding of the law is by proposing this ordinance it will allow a realistic opportunity available to build Workforce Housing and there needs to be some degree of a profit margin built to make it realistic. Mr. Dyer thinks the Town should do a minimum of what the State wants us to provide.

Mr. Dyer also inquired as to why the Board was waiving impact fees and he believes this will have a negative impact on the Town. Mr. Kolodziej said everything is based on the soil and the soil only allows a certain amount of homes. Mr. Kolodziej went on to explain that he is against impact fees for Workforce Housing because it removes a barrier for individuals who qualify for Workforce Housing. Mr. Kolodziej explained to Mr. Dyer that the Board has looked over the plan and what is before him today is what the Board has determined to be the most equitable plan for everybody involved.

Ms. Post asked for a point of order and recommended that Board should listen while the public speaks and respond later to the public's comments.

Mr. Michael Rosen, Council for Joe Faro, addressed the Board and commented that the Planning Board was doing their job and doing what has been mandated by the State of NH. He went on to say that Workforce Housing is good for the economy and getting people to come to the community. He said there is no perfect bylaw and if the terms and condition of the proposed bylaw are such that the citizens won't be in favor of it then the Town runs the risk that there won't be a bylaw. He went on to say that if there is no bylaw then the Boards of this Town lose their say and jurisdiction over Workforce Housing projects. He encouraged the Board not to compete with the citizen's petition and asked the Board to withdraw their version of Workforce Housing. He would like the Board to withdraw the Town's petition and have only one petition on the ballot when it comes to Town vote in March.

Albert Aeed addressed the Board stating he agrees with Attorney Rosen and stated that he believes it is critical to pass an ordinance that is written in Windham otherwise the State's version will be imposed. He went on to say that if this occurs an arbitrator will be evaluating the plans one by one and they will be arbitrators that have nothing to do with the Town of Windham.

Mr. Aeed said he does disagree with Attorney Rosen in that he does not believe that a small majority of the Town should speak for the entire Town and he believes the Town of Windham citizens are intelligent enough to look at both versions of the ordinance and have them cast their vote accordingly.

Mr. Aeed pointed out what he considered a few critical differences between the two ordinances. He pointed out that Workforce housing is not poverty housing, this is for

middle class people who according to the state, currently cannot afford to purchase homes in Windham. Another concern as he sees it is density and that there seems to be a consensus among the citizens that the Citizen's Petition will not allow as much density because it does not allow multifamily in the Rural District. He went on to clarify that the Citizen's Petition does not limit the density it only limits the structure type. Mr. Aeed believes there are constraints in both versions of the ordinance and the limits are based on soil and similar to the limits based on Housing for Elderly persons. Mr. Aeed mentioned that he used to be a social worker and that it is important to note that this is not a charity ordinance but an ordinance for people who provide essential services in the Town. He also mentioned that it is important to have mixed use construction in order for a developer to recoup their building costs.

Ms. Scott addressed the construction quality and noted that the Town holds the same construction requirements through the building code process regardless of what type of development is presented. She went on to say a builder must meet the same requirements as any other house regardless of what type of house.

Carol Pynn addressed the Board and wondered if the state could step in and impose their own ordinance and regulations if the Town does not pass its own ordinance. Mr. LoChiatto responded saying that if the Town did not have an ordinance in place then the State statute would be in effect and the Board would not have say over architectural features or setbacks etc.

Ms. Pynn thinks the Town's ordinance is an outrageous overkill and goes far beyond the State's RSA's. She is extremely against Workforce Housing in the Village Center District because there are a lot of historic buildings. Ms. Pynn read section 615.3.2 of Towns version regarding Conditional Use Permits and wanted to understand what constituted 'realistic and reasonable measure to prevent the loss of those historic resources". Ms. Scott responded to Ms. Pynn saying that if the developer goes through the demolition delay ordinance procedures and the 30 days passes and they demolish a structure then the Planning Board, as far as granting the project, must be presented with proof that the developer has gone through realistic and reasonable measures to save the structure.

Ms. St. Laurent explained the intent of the demolish delay meant only to delay the demolition for 30 days adding an extra layer of protection which a developer does not have to do if they build under a different type of zoning. But if they get the bonus of added density in their project, then the Planning Board wants them to show they have considered adapting and reusing the structures. Ms. St. Laurent went on to say that in other words, the builder must show a reasonable intent to repurpose the structure and anyone that buys a parcel that includes a historic structure must make a good faith effort for adaptive reuse.

Mr. LoChiatto indicated that this language offers another level of review and protection for historic buildings.

Mr. Kolodziej said that if people are realistic and they look at the Town map and see that in 80% of the town there is very little land to be developed. Most of the land in town is already developed which leaves very little land for Workforce Housing.

Ms. Pynn asked the Board to consider removing their version of the ordinance and leave only the citizen's petition version of the ordinance.

Bob Poole addressed the Board and questioned the 30 year affordability language in the ordinance. Mr. LoChiatto responded that is a deed restriction to keep the property within the parameters set by the State and it will be adjusted based on the income as determined by HUD and by our metropolitan income and the affordability will be adjusted over time as income changes.

Mr. Poole asked how existing housing stock is taken into consideration and what defines the region for existing housing. Mr. LoChiatto explained that the region is defined by HUD. Ms. Scott responded that with current housing stock from the Assessing Department, Windham has 278 single family year-round homes that would qualify. In addition, Windham also has 91 qualified condos and 174 seasonal structures that are questionable as to their qualifications. Based on numbers from our Assessors information based on the HUD numbers, Windham has 543 homes available that qualify for Workforce Housing. Ms. Scott went on to explain that according to the Regional Housing Needs Assessment study done by the Regional Planning Commission, estimates that in 2006, Windham needed 1,992 homes available for Workforce Housing. Ms. Scott went on to explain that by the estimates for 2015 Windham will need 2,241. These numbers are based on population, existing housing stock, and employment base.

Betty Dunn addressed the Board and said she believes that even without a study, Windham has a minimal supply of existing structures that would qualify for Workforce Housing. Ms Dunn asked the Board if they could provide any information about what percentage of housing had to be market rate in order to make a real incentive for builders to do this kind of project. Ms. Prendergast responded explaining how the Board arrived at the density and the approach the Board taking input from Mr. Keach regarding soil and also input from the public and Ms. Scott trying to determine a realistic percentage . Mr. LoChiatto said he recalls several meetings where density was determined based on soils based lot sizing and the Board discussed removing barriers by using State standards.

Mr. Okerman arrived and was seated at 8:37 p.m.

Mr. LoChiatto posed the question to Ms. Scott and asked her for input on how the Board arrived at the 25% density for Workforce Housing. Ms. Scott said it had

originally been a higher percentage in a mixed development and nothing precludes a developer from building more than 25% or even an entire Workforce Housing development. Ms. Scott explained that the Board did consider having the State standards for soil density apply only to Workforce Housing but after consideration the Board determined this would be a laborious paperwork process and it seemed to make sense to have a uniform standard for the mixed use developments. Ms. Scott explained that Windham already does soils based lot sizing and our requirements are more stringent than the states standards.

Ms. Dunn wanted to know if there was an analysis to ensure the builder would make money on Workforce Housing and if there was a breakeven point that was used in figuring out the percentage. Ms. Scott answered that no there were too many variables such as roads, etc. to make this determination. Ms. Dunn thought a few scenarios would be helpful.

Ms. Dunn went on to say that she felt the Power Point presentation that was shown earlier were buildings that went above and beyond with extra trim etc. that a builder could realistically afford to build.

Mr. LoChiatto responded to Ms. Dunn's questions regarding the density issue by explaining that an average buildable lot of around 2 acres for a 4 bedroom house and if only 4 bedrooms can be build on two acres then the same applies for Workforce Housing. Mr. LoChiatto commented that he finds it interesting that the percentage is an issue because the 25% is a small portion.

Ms. Dunn responded that the concern is if we are going to have Workforce Housing then we want to have some equality in the decision. Mr. LoChiatto said the soil will show scientifically how many bedrooms the land will hold.

Mr. Aeed addressed the Board and wanted to commend everyone for there good ideas tonight and he thinks it is a pity they can't be incorporated into either ordinance. Mr. Aeed thinks those who are advocating the Planning Board ordinance be dropped would like us to believe that it is important to pass an ordinance and it would be easier with one ordinance on the ballot otherwise it may split the decision in town and neither ordinance will be passed. He went on to say it is not an either or proposition.

Mr. Farrell discussed both ordinances and the risk of the State taking over if one of these ordinances is not passed. Mr. Farro asked the Board what residential zones are allowed in the State ordinance. Mr. LoChiatto responded that the State Statutes says the Town must allow for the opportunity for workforce Housing in a majority of zones that allow residential structures. Ms. Scott also commented that there is not a state ordinance but a state statute and if there is no ordinance on the books in Town and a developer/builder submits a Workforce Housing proposal she will not have a way to review the proposal and it will immediately go to court. In the state statute there is a

builder's remedy. Ms. Scott explained the ramifications the town will face if the town does not have a Workforce Housing ordinance and the courts will take over and the Town will lose control.

Mr. Farro went on to discuss the amount of land available in Town for Workforce Housing and he understands there is a limited amount of land available. Mr. Farro discussed the scenario of tearing down an existing single family home and building Workforce Housing. Mr. LoChiatto answered that it is unlikely that this scenario would happen. Mr. Farro responded indicating that a scenario with a single family home on five acres creates a scenario to tear down the home and build Workforce Housing.

Mr. Farro went on to say that he has heard citizens in favor of moving slowly and prudently and the only citizens he knows of who are moving faster are the citizens who are proposing to develop Workforce Housing. He went on to ask the Planning Board why we need Workforce Housing in every residential area in Windham.

Ms. Post responded to the question that a tear down can happen right now even if we do not enact an ordinance on this subject because this is what state law allows. Ms. Post went on to say that if we do not have an ordinance in place then Workforce Housing becomes developer driven. Ms. Post sees great urgency in taking management over this process and as difficult and imperfect as it has been this is what the Board has proposed. She went on to say that having an ordinance in place is better than not having one at all and if we do not have an ordinance in place builders will have right to build anywhere in town where residential is permitted and they will be able to build what ever the soils will allow.

In closing Mr. Farro said he appreciates the time put into this ordinance and he would urge the Board to go slowly and act prudently and he urged the Planning Board to drop their version of the ordinance.

Mr. Alan Carpenters addressed the board regarding tear downs and building more generated revenue buildings. Mr. Carpenter discussed age restricted housing with shared leach fields shared wells that take away from the radiuses and with that he does not want the Board to lose sight that we will be losing the soils based lot sizing the Town has used to build our community. He does not think that we should use State Standards for Workforce housing because it is less restrictive and if the state standards change then we are bound by the new state standard. Mr. Carpenter went on to note that the State does not say how much Workforce Housing Windham must provide, just that we must provide it. Mr. Carpenter closed by requesting that the Board pull their petition.

Mr. Karl Dubay addressed the Board and asked for clarification between the Citizen's Petition and the Planning Boards version. Mr. Dubay asked in the Citizen's Petition multi family homes were allowed in. Ms. Prendergast responded in Zones B & C. Mr.

Dubay went on to say that if the petitioners are indicating multi family housing in Zones B & C and there is evidence that indicates there is minimal land available for development then the Citizens Petition is not providing reasonable opportunity for Workforce Housing. Mr. Dubay indicated he does not want the Board to drop their petition. Mr. Dubay thinks the Town warrant and citizen's petition should move forward. Mr. Dubay said he likes the Planning Board's warrant article because it allows single family detached homes in Residential A and the Citizen's Petition does not allow it at all. Mr. Dubay believes that the mentality with the Citizen's Petition is a "not in my backyard" syndrome and urges the Board to move forward with their article and show their leadership.

Mr. Attorney Rosen addressed the Board regarding the density and outlining the available parcels in the Town.

Mr. LoChiatto closed the public hearing at 9:15.

Mr. LoChiatto addressed the board and summarized the input from the public and discussed the citizen's petition and the Planning Board petition. Ms. Post wants to understand how if both versions are on the ballot as presented, and both pass, what the ramifications would be. Ms. Post discussed withdrawing the Boards version in order to address the issue squarely. Ms. Post made a motion to withdraw the Planning Boards version of the Workforce Housing Overlay District Amendment. Seconded by Mr. Breton.

Ms. Prendergast mentioned that the Citizen's Petition was drafted very similar to the Planning Boards version and they differ in applicability and addressing historic structure and percentage. Ms. Prendergast pointed out that the applicability of having multi family in only Zones B & C and based on input from Attorney Campbell who thought the Board would be challenged on that decision, the Board added in Residential A. Ms. Prendergast went on to say that the Board has had multiple public hearings and lots of citizen input all of which is what formed the ordinance. Ms. Prendergast explained with regard to Residential A in the ordinance it was heavily discussed in several meetings where it was added in and taken out and ultimately it was decided it should be included. In addition, there were concerns of what type of Workforce Housing would look like and protecting Cobbetts Pond. The Board took into consideration what housing would look like in Residential A and it was decided that single family detached dwellings would be included in Residential A. In addition, in December during these discussions the Board had public input and it was discussed that by allowing 45% workforce housing in mixed development, the Town would not see what Windham wants to see at because in order to get the quality looking developments with all the bells and whistles the percentage needed to be reduced to 25%. Ms. Prendergast went on to say that at 45% we are limiting builders and developers financially and they may not be able to do it. Ms. Prendergast recommended Planning Board option move forward.

Mr. Kolodziej commended Ms. Prendergast for her time and effort on this ordinance. Mr. Kolodziej said the Board has gone very slowly on drafting this ordinance and we have a very good plan that offers the most protection and he thinks the Board should support their plan.

Ms. St. Laurent mentioned that the Citizen's Petition would not offer a builders remedy situation. Ms. St. Laurent explained that the Board has certain controls over Workforce Housing and even though we are permitting Workforce Housing we are not giving builders carte blanche. She supports the Planning Board initiative.

Ms. Scott addressed the issue of what would happen if both versions passed and explained that applicants can proceed with whatever ordinance is most advantageous to them. In essence, developers could pick and choose from either ordinance.

Ms. Post indicated she saw problems with both versions and her opinion is to put both versions on the ballot.

Mr. Breton noted that he was one of the first proponents to suggest taking Residence A from the ordinance because even without Residence A the ordinance would be covering 92% of the Town land. He went on to say that this is because Residence A is all around the water bodies and they are all small lots and he does not think a judge would throw out the ordinance because even without Residence A, Windham still has 92% of the land offered.

Motion by Ms. Post to not move Planning Board article to Town Warrant. Second by Mr. Breton. **Motion failed 2-5.** Mr. Okerman and Mr. Breton were in favor of not moving the warrant to Town vote.

Mr. Kolodziej motioned to move the Planning Board Workforce Housing Zoning Amendment to Town warrant as written. Seconded Ms. Prendergast.

Motion passed 5-2.

Opposed were Mr. Okerman and Mr. Breton to move the Planning Board to Town vote.

Ms. Prendergast left at 9:30 p.m. and Mr. Wrenn seated in her place.

Mr. LoChiatto called for a 10 minute recess from 9:30-9:40.

Section 719 Small Wind Energy Systems

Create a new ordinance for the regulation of small wind energy systems in accordance with NH RSA 674:62-66. Develop a Purpose Section, as outlined in NH RSA 672:1-II-a; a Definitions Section of applicable terms; detail the procedures for review for non-residential use and residential use of small wind energy systems; develop the standards

for review; what to do if the structures are abandoned; as well as sections on violations and penalties.

Mr. Okerman read the wind energy system into the ordinance. Ms. Scott summarized for the Board and the public explaining the intent of the law and that the major change in the revised ordinance was removing the building mounted language.

Mr. LoChiatto opened the meeting to the public.

No public comment.

Meeting closed to public.

Mr. Breton made a motion to move Section 719 Small Wind Energy System to Town warrant. Seconded by Ms. Post.

Motion passed 7-0.

Public Hearing - Impact Fees

Public hearing to adopt "Procedure for the Computation of Impact Fees for the Windham Public School District Revision Year 2009 (October 2009).

Mr. LoChiatto read the hearing notice into the record.

Mr. Hohenberger addressed the board indicating there were no changes on his document from the last meeting. In addition, he showed his previous PowerPoint presentation outlining in detail how he arrived at the impact fee calculation.

Mr. LoChiatto asked regarding how the fees are collected and released. Ms. Scott responded explaining how impact fees are allocated and how the fees are paid. Mr. Hohenberger explained the mechanics of the allocation of impact fees and how from an accounting standpoint the money is managed.

The Board discussed the PowerPoint presentation regarding state aid on the Principle amount of the bond.

Mr. Breton noted a discrepancy in the spreadsheet with a number of Certificate of Occupancy's issued and the number of students living a certain street. Mr. Hohenberger will analyze the data and make the necessary corrections.

Mr. LoChiatto opened the discussion to public hearing.

Mr. LoChiatto asked Ms. Scott if the Board did not adopt the Impact Fee document what the ramifications would be. Ms. Scott indicated that we are currently collecting

money for school bonds that have been paid off. This could leave the Town open to being challenged as to the validity of collecting Impact Fees. Mr. Hohenberger indicated that the Town can collect for encumbered costs. Ms. Scott explained to the Board the issues if this is not adopted.

Mr. LoChiatto opened the Computation of Impact Fees public hearing to the public.

No public comment.

Mr. LoChiatto closed the public hearing on the Computation of Impact Fees to the public.

Mr. LoChiatto indicated that in his opinion to be safe the Board needs to move forward with adopting this methodology.

Motion by Ms. Post to adopt the Computation of Impact fee Methodology as presented.

Second by Mr. Wrenn.

Mr. Kolodziej made his position known that he opposed the increase in Impact Fees and he thinks that the Impact Fees the Town has now are onerous and not warranted. Mr. LoChiatto said he agrees with Mr. Kolodziej on principal but believes it is prudent to adopt the methodology.

Motion passed 6-1. Mr. Kolodziej opposed.

Motion by Mr. Okerman to waive bylaws and hear new business after 10 p.m.

Seconded by Mr. Wrenn.

Motion passed 7-0.

Conditional Approval Extension Request

1 Wall Street (11-C-701) CVS/Park & Ride/Commercial Building

Ms. Scott addressed the Board regarding the notice of decision and extension request on their application. The applicant is still waiting on NH DOT and the applicants are working though the process.

The applicant, Bryant Anderson, of Vanasse Hangen Brustlin, Inc., addressed the Board and said he has new comments from NHDOT regarding the driveway permit and they do not anticipate they will be able to meet the 2/15/10 deadline. They are requesting an addition 60 days to secure the permit needed.

Mr. LoChiatto opened for public discussion. No public comment.

Mr. LoChiatto closed to the public.

Mr. Mesiti addressed the Board regarding the extension and would like to change his request from 60 days to 90 days.

Mr. Breton made motion for additional extension to 90 days from date of expiration of 2/15/10.

Second by Mr. Kolodziej. **Motion passed 7-0.**

Mr. Breton motioned to move financial guarantee and minutes to Feb 3, 2010 agenda.

Second by Mr. Kolodziej. **Motion passed 7-0.**

Motion by Mr. Kolodziej to adjourn at 11:00 pm. Second by Mr. Breton. **Motion passed 7-0.**

Submitted by Tracy Mulder
Planning Board Administrative Assistant