



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

PO Box 120, Windham, New Hampshire 03087  
(603) 432-3806 / Fax (603) 432-7362  
[www.WindhamNewHampshire.com](http://www.WindhamNewHampshire.com)

**Planning Board Minutes**  
**May 18, 2011**

**Roll:**

Ruth-Ellen Post, Chairwoman, Excused  
Margaret Crisler, Vice-chair, Present  
Pam Skinner, Member – Present  
Kristi St. Laurent, Member – Present  
Jonathan Sycamore, Member – Present  
Carolyn Webber, Member – Present

Ross McLeod, Selectman Member – Present  
Lee Maloney, Alternate – Excused  
Sy Wrenn, Alternate – Present  
Kathleen DiFruscia, Selectman Alternate, Excused  
Vanessa Nysten, Alternate - Present  
Rob Folan, Alternate – Present

**Staff:**

Laura Scott, Director of Economic Development – Present  
Mimi Kolodziej, Planning Assistant – Present

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

Vice-chair Crisler, seated for Chairwoman Post, called the meeting to order at 7:03 p.m. followed by the Roll Call and the Pledge of Allegiance.

Vice-chair Crisler appointed Mr. Wren to be seated as Alternate.

**Public Hearings:**

**Case#2010-20 Open Space Subdivision/Site Plan**

An application for an Open Space Subdivision and Site Plan, as well as a WWPD Special Permit, have been submitted for Lots 6-C-1, 6-C-100, 6-C-2000A, & 6-C-2000B, which are located in the Rural District, the Wetlands and Watershed Protection District, and the Floodplain District.

The applicant, Peter Zhodi of Edward N. Herberts Associates, Inc., on behalf of the owners, Dennis Butterfield 2001 Revocable Trust, Timothy Butterfield 1997 Revocable Trust, Gary Butterfield, and Mako Development, is proposing to merge Lots 6-C-100 and 6-C-2000A and then re-subdivide the lot into 18 single-family lots and 3 open space lots. Lots 6-C-1 and 6-C-2000B are to remain as open space lots with this development.

The WWPD Special Permit application is to allow the instillation of a waterline from 2 wells on the property to the 18 residential lots within the subdivision. The proposal includes an extension of Sheffield Road, which is a town maintained road, and will run over Pine Hill Road, which is a discontinued Town Road.

Ms. Skinner read the hearing notice into the record.

Ms. Scott drew the Board's attention to their packet which included six (6) new items addressing this proposal which join a current list of outstanding items, a 4/13 memo from Mr. Zohdi regarding the length of Sheffield Rd, and a followed-up 4/28 memo of a meeting Ms. Scott had with Police,

Fire, and Highway regarding road lay-out, cisterns, and the “ears” of the cul-de-sac. Additionally, there is testimony from the Levesque’s of 19 Sheffield Road and a revised plan set. Ms. Scott highlighted the outstanding items listed in their packet.

Mr. Peter Zohdi of Herbert Engineering, Inc. addressed the Board and reminded them of the April 30th site walk and the question of the cul-de-sac which Highway Safety suggested would be better to remove. Over the past 11 days one well has been deepened from 500’ to 1,000’, and he is pleased to inform the Board that both wells are producing 5-7 gal/min where they are required to produce 3 gal/min. At the next meeting, Mr. Bruce Lewis will address the Board to certify the quantity and quality of water from the two wells. Regarding sound proofing, the house lots abutting Rte 93 will be soundproofed. In response to Mr. McLeod’s question from the previous meeting about the distance from the beginning of Sheffield to the cul-de-sac, Mr. Zohdi said that from center line to center line it is 3,259.72’. Mr. Zohdi explained that he is here tonight to inform the Board of the status of the project and is willing to go item by item should the Board like.

Mr. McLeod questioned Mr. Zohdi on the calculations for station 3600 which appear to be different than measurements represented on the map. Mr. Zohdi explained that the map calculations were based on the initial design of the road which was later changed.

Mr. Sycamore asked for clarification about the permanent/temporary status of cul-de-sacs. Ms. Scott explained that cul-de-sacs are always considered temporary where there is abutting, buildable land. Mr. McLeod asked Ms. Scott to double check that. He thinks it is the general practice, but not always the specific practice. Mr. Zohdi recalled that he was part of the Camelot and Lancelot development, and that there is a recorded, permanent right-of-way to the backland on question. He will be happy to provide documentation regarding this at the next meeting. At the time, the Planning Board’s desire was to eventually extend the road. This is not an easement, but a right-of-way. Ms. Scott interjected stating that it is represented as a right-of-way on the Town’s tax map.

Ms. Nysten asked about soundproofing and if there was tax-payer protection should additional soundproofing or barrier sound protection be requested by the homeowners in the future. Attorney Cronin addressed this issue and said that a warranty to the quality of construction would not be appropriate in a deed but might better be addressed in a bargain-for-warranty item. Vice-chair Crisler asked about soundproofing information should someone want to remodel. Ms. Scott said there would be a note on the plan recorded at the registry and referenced on all deeds; the new building file at the Planning Board office will be flagged; and the Munis computer system will also indicate a flag.

Ms. Webber inquired about opening up Pine Hill Rd to provide a second access. Mr. Zohdi explained that Environmental had suggested not opening Pine Hill Rd., and the Board of Selectman agreed to open only a certain section of road. Conservation also chose not to recommend opening up the right-of-way that connects to Jackman Ridge.

Mr. Sycamore asked Ms. Scott why the Town set a cul-de-sac length of 2400’. Ms. Scott replied that she was not in the Town’s employ when this decision was made; but that historically it was a decision based on the length of a fire hose where there was no other water source. The decision to

extend cul-de-sacs or not is a Planning Board regulation issue and cannot be a variance/waiver request through the Zoning Board. During meetings with Design Review, TRC, Highway Safety, and Police, all agreed that they did not know what to call it, but that it was not a cul-de-sac; and these departments had no issue with the length as proposed; they had no issue with the layout as proposed; and they did not feel it was a safety concern. They would rather see something like this as opposed to the traditional cul-de-sac that Sheffield is. They would rather have the loop that would allow entrance from both entrances. The applicant is working with the Fire Department on the location of cisterns to mitigate water supply concerns. Ms Scott suggested it could be an issue the Board might want to consider in the future.

Mr. McLeod was curious why Fire and Safety did not feel that the turn-around is not a cul-de-sac. Ms. Scott explained that a typical cul-de-sac is a one way in; one way out design. All deciding parties, Police, Fire, Safety, and Highway, were unsure of the name of the design, but were confident it was not a cul-de-sac. They prefer to have access from 2 directions rather than the traditional cul-de-sac. Mr. McLeod claimed that it was semantics and insisted that the design in question is a cul-de-sac.

Vice-chair Crisler asked if there were comments from Conservation on this issue. Ms. Scott said that Conservation through TRC had no outstanding concerns with one exception. They wanted to keep the existing trails which actually are existing Class VI roads; and the applicant is not allowed to put an easement on Class VI roads.

Ms Webber, in reference to Ms. Levesque's earlier comments, asked what impact the new development would have on the current Sheffield Road water supply. Mr. Zohdi does not feel qualified to address this question and deferred to Mr. Lewis who will be attending the meeting next week.

Ms. Webber questioned the number and placement of trees on the plan. Mr. Zohdi said they would comply with the specified number of trees on both sides at one hundred feet apart. Replying to Mr. McLeod's concern about trees in the middle of the road, Mr. Zohdi explained that the road is 50' wide and the trees will not create an obstruction; he also referred to the width of the Town's tree-studded rail-trail at 12 feet.

Vice-chair Crisler mentioned that the possibility of wild fires and other dangers would be made more difficult by a single access cul-de-sac. Road design should not attempt to block residents from a second exit route. Attorney Cronin reminded the Board that loop design roads are favored by Public Safety Departments; they allow a double entrance/exit. For the record, Attorney Cronin asked Ms. Scott's to clarify her perception of a cul-de-sac. Ms. Scott reminded the Board that the Fire Chief, Police Chief, the Road Agent and she do not consider this a cul-de-sac.

Mr. Zohdi, addressing Mr. McLeod's concern of last week, noted that the applicant had requested a change in the 8% grade to a 7% grade. He also requested a 30-day continuance to receive and respond to Town Engineer and Water Evaluation reports.

Vice-chair Crisler asked if any of the 22 house lots were located in wetland or WWPD. Mr. Zohdi will show her the layout plan at the next meeting which indicates they are not.

Vice-chair Crisler opened the hearing to the public.

Mr & Ms. Levesque of 19 Sheffield St. submitted into the record a number of concerns regarding the Sheffield Street extension and stated that as abutters they are opposed to the plan.

Their unanswered questions from the April 20, 2011 meeting are:

1. They take issue with the definition of a cul-de-sac,
2. They questioned the length of Sheffield Street and the extension and feel there is a safety issue not being addressed. The width of Sheffield is 28' and the extension is designed to be 24' wide. They should be consistent;
3. They expressed concern the additional 22 homes will have a negative impact on the water problem already in existence on Sheffield Street;
4. Work vehicles parked on her property have left residue behind, and they hope this is not typical;
5. The plan offers one stop sign to be erected with a stop bar( painted line). There should be discussion of a speed bump or signage to control speed;
6. With wetland and vegetation in the area the question should be asked, "What kind of disturbance will there be to local wildlife?;" and
7. There seems to be confusion about # of house lots and open space lots proposed; different plans offer different lot numbers.

Mr. Levesques inquired about when the covenants would be brought up for review. Mr. Zohdi explained that during his 30-day continuance, he will submit an open-space covenant which will be done with Council and with sufficient time for evaluation.

Ms. Scott explained that there were always 18 residential lots with 5 open space lots; however, discrepancies occurred with staff's reading of the plans and inaccurate handwritten memos.

In response to a question from Mr. Sycamore about the depth of the community well, Mr. Clayton Brannon of 17 Sheffield Rd. explained he has 3 total wells to which 11 homes are tied into two of the wells, and it is not sufficient year round. Between the 3 wells which pump 30 gal/min, it is not enough for 11 users 5 of whom have private wells. Mr. Brannon has a 25,000 gal. storage tank, and still experiences year round problems.

Mr. Zohdi will request that the professional company that services these wells to attend and explain the quality and quantity of water available at the next meeting. Also, he will ask them to explain what well connects to how many and what homes.

Ms. Gaiero of 15 Sheffield St. asked what soundproofing would be available to the existing abutters who will be affected by tree removal. Mr. Zohdi and Vice-chair Crisler could not address that question.

Mr. Zohdi had approached Mr. Wayne Morris of the Trail's Committee about attending tonight's meeting to explain what he envisions for this area. Mr. Morris explained he is hoping to connect through to County Rd. via a raised boardwalk across the edge of a portion of State land and wetland. This is a vision for the future after requesting an easement from the State. Mr. Zohdi agreed that the applicant's plan will leave in a 10' connecting road to County Road.

Vice-chair Crisler closed the Public Hearing.

**Ms. Skinner made a motion to continue Case#2010-20 for 30-days to the June 15 meeting to allow the applicant time to receive and respond to Town Engineer and Water Evaluation reports. Seconded by Mr. McLeod.**

Ms. Scott highlighted the outstanding items on her 6/13 memo adding the following:

- Street trees,
- Showing the trail on the plan,
- Conventional subdivision.

Mr. Sycamore confirmed that Mr. Zohdi's water consultant, who was the consultant for the Sheffield St. wells, will discuss the current 3 wells and the 2 new wells. Mr. Zohdi acknowledged.

**Motion passed: 7-0.**

**Case#2010-46 Workforce Housing Site Plan/Subdivision Application.**

An application for Site Plan/Subdivision has been submitted for Lot 19-A-300 (66 Mammoth Road), which is located in the Rural and Aquifer Protection Districts. The applicant, Peter Zohdi of Edward N. Herbert Assoc. Inc, on behalf of Sun Coast Properties LLC, is proposing a 10-unit residential condominium development, consisting of 5 duplex buildings with 4 units to be Workforce Housing, per NH RSA 674:58-61.

Ms. Skinner read the hearing into the record.

Mr. McLeod interjected that he had previously spoken critically of this application with respect to the variance request at the recent Zoning Board meeting and proceeded to recuse himself.

There was no selectman alternate present to sit for Mr. McLeod.

Ms. Scott reviewed the contents of the Board's packet. She explained that the applicant had gone to the Zoning Board to ask for a variance to the Rural District ordinance which allows one building on one lot. This is a Workforce Housing application seeking to place five building with 10 units on a lot. The Zoning Board denied the application 4-1; the applicant is seeking re-consideration which will be heard at the 6/13 Zoning Board meeting.

Vice-chair Crisler explained to the Board that it is asked to accept this application for consideration although it has been denied a variance from the Zoning Board. The Board is not allowed to grant

variances. Vice-chair Crisler sees this as similar to the refusal to accept the recent Cricket Ridge WFH application. She asked the Board's pleasure. Mr. Sycamore said that the Board needs to be consistent with its decision on the previous WFH application on 4/6. Ms. Scott explained that the applicant is not asking the Planning Board to waive zoning. They are in the Planning Board process and expecting the Zoning Board to address that. Vice-chair Crisler said that the Board is not allowed to accept an incomplete application.

Attorney Cronin addressed the Board citing previous cases regarding WFH and advised the applicant there was no need for a variance; in contrast to Ms. Scott's recommendation to seek a variance. His view of the WFH statute is to allow opportunities for WFH which do not currently exist on a regional level. The statute specifically talks about density. The legislature recognizes that to make meaningful opportunities for WFH, towns may need to overlook density. An earlier statute talks about the enabling power of the Planning Board, and states that no ordinance should be used to diminish WFH opportunities. It is his belief that the Board has jurisdiction to accept this application under Britton vs. Chester because the Town has not adopted a WFH ordinance and there is a regional need. With WFH in the \$260K range, this allows the Town's workforce the opportunity to stay within their community. He asked the Planning Board to accept jurisdiction and go forward to accept this application on its merits.

Vice-chair Crisler asked the Board's feeling. Mr. Sycamore responded that he thought the Town was going to court and so might as well go twice. Ms. Webber voiced a wish to be consistent and wait for the ZBA appeal. Vice-chair Crisler asked for consistency and suggested moving the application forward to a later date in order to seek legal counsel and see if Town Council still agrees not accept anything that does not meet zoning, as was advised in the past. Attorney Cronin asked the Board, out of consideration for his client, to make a decision tonight.

The Board and Attorney Cronin discussed what reasonable development opportunities mean. Attorney Cronin stated that although the Village District allows for multi-family opportunities, an acre of land might cost \$600K and is not a reasonable opportunity.

Ms. Nysten asked where Mr. Cronin got his \$600K price for one acre. Mr. Cronin deferred to Mr. Zohdi. Mr. Zohdi addressed the question citing a 1.3 acre land and home that sold 3-4 years ago for \$600K and the Fellows house and barn, 6-7 acres, which sold for \$1.1 million or about \$150K/acre. Vice-chair Crisler asked what a buildable lot in Windham goes for. She and Mr. Zohdi agreed that ¼ million dollars is an accurate average.

Vice-chair Crisler cited a NH RSA which clearly states that existing housing stock should be taken into consideration. The Town assessor says our existing housing stock is at 23%. According to HUD purposes, they say 46% should be WFH. In order to meet that goal, each application before the Board should be 50% WFH to be considered.

Ms. Webber requested that the Board continue the application to hear the ZBA decision. Ms. Scott explained, the application would return to the ZBA for the rehearing request on 6/14. Vice-chair Crisler said that because of the 30-day application time period, continuing is not an option.

Ms. St. Laurent suggested that the Board hear the application and make it conditional on ZBA approval. Can the Board do its part with parameters and conditions to get the process moving? Vice-chair Crisler said that if the Board denies the application, the applicant may go to the court for a builder's remedy which would put it up to the applicant and the judge to remove the local jurisdiction from making any decision by being part of the process. Vice-chair Crisler feels reluctant to ignore the Town attorney's advice.

Ms. St. Laurent, who has been following this issue for awhile, offered that the court might consider if are trying to block WFH or are we making a good effort. Here the applicant is working with the Town to seek variances and ZBA approval. What can we, the Board, do to give them a chance within the time frame?

Vice-chair Crisler does not think the Board can accept jurisdiction and suggested waiting one week in order to receive legal advice. Mr. Wren stated that because we do not have WFH rules, if we accept, where are we going? What are our criteria? Ms. Webber suggested we could use the State RSA.

The Board continued to discuss the pros and cons of this application and the legal time frame.

Ms. Nysten asked what would happen if Planning Board heard the case and granted approval with conditions? Would Planning Board conditions remain in effect in the event that ZBA denies the variance, and applicant later prevailed in a court action?

Ms. Scott answered that there is no way to know because courts haven't made that determination yet. It's an unknown with WFH. Ms. Scott has not seen it yet.

Attorney Cronin stated that if the Planning Board approves it, he'll have the applicant pull his building permit. If the applicant is told he needs a variance first, a third party will make that decision. He doesn't know how that will come out. Unlike the variance law in planning board cases, we don't have guidance on WFH statutes from the Supreme Court as of yet.

**Ms. Webber made a motion, the language which was offered by Mr. Sycamore, to not accept this site plan for Public Hearing given that the applicant has failed to procure the substantive and material variance necessary for him to develop his plan in conformance with Windham's zoning ordinance, specifically, a variance from section 602.1 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit construction of 5 duplex residential buildings – 10 residential units in total, when that is not a use permitted in the Rural District. Seconded by Mr. Sycamore.**

Ms. St. Laurent suggested working with the applicant utilizing conditions and restrictions. She referenced NH RSA: 674.2 which allows that to occur and still not constitute a final decision. She feels the court does not want to take control of Town development and would like to see the Planning Board make the effort with this issue. It might give the Town a better standing should it go to court. Vice-chair Crisler would like a week's postponement to discuss the issue with Attorney Campbell. Mr. Wren explained that, although we do not have an ordinance, this application

complies with all of the Board's other criteria, except density. He thinks that functionally and esthetically it is not a bad development. He would lean toward taking the risk and moving forward.

Vice-chair Crisler again asked for a week's postponement to seek legal council.

The Board took a 5 min recess reconvening at 9 p.m. Vice-chair Crisler reminded the Board that there was a motion currently on the floor, and there should be no discussion in the meantime.

Attorney Cronin, after conferring with his applicant, agreed to a one-week extension to allow the Board time for discussion with Council.

**Ms. Webber withdrew the previous motion of denial; Mr. Sycamore withdrew his seconding of it.**

**Ms. Webber made a motion to continue the hearing of Case#2010-46 pending discussion with Town Counsel and place it on the agenda for the May 25 Design Review Workshop Meeting. Mr. Wrenn Seconded. Motion passed: 6-0.**

Mr. Sycamore inquired about Town counsel's availability. Ms. Scott responded that Town counsel would probably not be able to meet within a week and the room will not be available.

Ms. Crisler suggested meeting with Counsel on another night at another Town location. Ms. Scott said she did not know if Council needed to meet with the Planning Board. She would ask Counsel if the Planning Board could take jurisdiction. Vice-chair Crisler said it was her preference to meet with Council. Ms. Scott said she would check Counsel's availability and e-mail the Board his schedule. If it didn't work out, she would get something in writing.

Mr. McLeod returned to the Board at 9:07 p.m.

#### **Meeting Minutes – Review and Approval**

- April 27, 2011 – Ms. Maloney was not present to confirm the edits of her minutes. They were forwarded to the next meeting.
- April 30, 2011 site walk

Mr. Wrenn offered an amendment.

**Mr. Wrenn made a motion to approve the April 30 site walk minutes as amended. Ms. St. Laurent seconded. Motion passed: 4-3. Mr. McLeod, Ms. Webber, and Ms. Skinner abstained.**

- May 4, 2011 Public & Non-Public – Vice-chair Crisler, Ms. Skinner, and Mr. McLeod offered some edits. Ms. Kolodziej will correct.

**Ms. Skinner made a motion to accept the May 2, 2011 minutes as amended. Seconded by Ms. Webber. Motion passed: 5-2. Mr. McLeod and Mr. Wrenn abstained.**

## **Miscellaneous**

- Community Development Director April Staff Report – Mr. McLeod questioned the necessity of including thank you notes for Professional Day in the Director’s Staff Report.
- Member Binder Updates – Member List (Tab #1)  
Zoning Cheat Sheet (Tab #6)

Mr. McLeod asked why the “Employee Media Relation Policy” is included in the PB Binder

**Old/New Business** (Not to include discussion of pending applications or decisions on matters requiring public notice)

- Mr. McLeod would like the Planning board to extend an invitation to the school board to discuss impact fee. Ms. Scott explained that Chairwoman Post has placed that and tree-cutting on the 6/1 agenda. Ms. Crisler would like to see regulations on major tree cutting. Ms. Nysten would like to get some preliminary numbers from Mr. Steele.
- Vice-chair Crisler asked that the Board offer a workshop on how to read a plan.

## **Adjournment:**

**Ms. Skinner made a motion to adjourn. Mr. Wrenn seconded. Motion passed: 7-0.**

Meeting adjourned at 9:21 p.m.

Minutes are respectfully submitted for your approval by Mimi Kolodziej.