

WEST WINDSOR PLANNING COMMISSION

Draft Minutes

September 15, 2010

Present: Hal Pyke, Elvin Kaplan, Barbara Truex, Mark Isenberg, Tom Kenyon, Martha Harrison

1. Call to Order – Chair Hal Pyke called the meeting to order at 6:38 PM.
2. Changes or Additions – None
3. Discuss possible changes to zoning regulations – Hal said part of this will be to reconcile the zoning regulations with the town plan, but he suggested doing that part later. Hal suggested starting with Martha's list of possible changes. Hal said there are some sections of the zoning regulations that need to be clarified rather than changed. The Planning Commission talked about whether or not to add a waiver provision to the zoning regulations. Hal noted that there is a waiver provision in the subdivision regulations. Hal said the zoning regulations do have exemptions, which are basically waivers. Hal noted Section 1.7(7) specifically. Martha said she thinks a waiver provision would be a more general authorization for the DRB to waive certain requirements under certain circumstances. Martha added that there would have to be some guidelines on the circumstances or everyone would want a waiver. Martha said if the PC wants a waiver provision in the zoning regulations, she could research it and get some language from other towns. Elvin asked if we need waivers if we already have exemptions. Barbara asked if you need a waiver provision with zoning regulations. Martha said right now, the DRB can only issue a waiver for a subdivision. Martha said it would be impossible to anticipate all the situations in which you might want to use a waiver and include them all as exemptions. Barbara asked if the waiver language from the subdivision regulations could be used in the zoning regulations. Martha said she thinks the subdivision language is too broad for zoning. Hal agreed and said waiver language could be helpful with regards to wetlands. Martha said West Windsor's wetland regulations are stricter than the state and federal government regulations. The PC agreed to consider waiver language after Martha provides some examples. The PC agreed to add language to the zoning regulations, similar to the language in the subdivision regulations, allowing the independent technical review of applications per 24 V.S.A. §4440(d). The PC talked about relaxing restrictions on accessory dwelling units. Martha said in situations where the size limit or the limit on the number of bedrooms is a problem, the property owner can always convert a single-family house to a duplex. Barbara asked if you can convert a single-family house to a duplex and have an accessory dwelling unit. Martha said she will look into that. Barbara said the regulations should allow a duplex or an accessory dwelling unit, but not both. Hal said there are companies that make tiny prefabricated houses. Hal said these houses have to have a foundation and be hooked up to water and sewer. The PC agreed that the regulations should allow one-bedroom accessory dwelling units up to 40% of the size of the single-family house, not to exceed 750 square feet. The PC talked about revising the subdivision regulations to require DRB review for boundary line adjustments involving 3 or more lots. Martha said she was uncomfortable with a 17-lot boundary line adjustment (BLA) application that was submitted last year and would rather not have administrative approval as an option in a situation like that. Mark noted that the subdivision regulations already allow the Administrative Officer to refer any application to the DRB. Martha said the DRB did an informal review of the 17-lot BLA and agreed with the applicant that it was just a boundary line adjustment and referred it back to her. The PC agreed to add "Boundary line adjustments involving three or more lots shall be reviewed by the DRB" to the first paragraph of Section 2.2 of the Subdivision Regulations. The PC discussed the definition of frontage and agreed to specify that it includes the distance along private, as well as public, rights-of-way. Tom said that could get messy if a private right-of-way turns into a town highway. Mark said the same language would apply; it would just become a public road instead of a private road. The PC talked about whether the filling in of previously permitted swimming pools should be exempt. Elvin asked why the proposed wording excludes ponds. Martha said filling in a pond could get someone in a lot of trouble because ponds are considered wetlands. Barbara asked about little water garden ponds. Martha said she hopes no one asks about those. Martha said she supposes that the language should specify the type of fill as sand,

gravel, soil, or the like. Hal said he thinks it's important to clarify that ponds cannot be filled. The PC looked at the zoning regulations on ponds. Mark suggested not referring to ponds in the swimming pool exemption. Barbara suggested specifying "in ground" swimming pools. Everyone agreed. The PC talked about providing for the removal of dead trees in buffer areas. Martha said West Windsor's regulations call for a 50' natural, undisturbed, vegetated buffer around streams and wetlands. Martha said other towns do have regulations that allow for the removal of trees in a buffer zone in certain situations. Tom said people shouldn't be restricted from taking a tree down in a buffer area. Martha said that's why she suggested that the PC consider adding a little more flexibility in the regulations with regard to buffers. Martha agreed to find some examples for the PC to consider. There was discussion about the definition of "high water mark" and whether it is always appropriate to measure distances from the high water mark. Tom said what you're trying to do is to make sure development doesn't affect stream flow under normal circumstances. Hal said you want to be able to clear out dead trees that might fall into the stream and clog it up. Tom said he would like an applicant to be able to act on a zoning permit immediately and not have to wait two weeks. Martha said she thinks the two weeks are required by statute to allow for an appeal. Tom said if the applicant's setbacks are more than adequate, he doesn't see why the applicant shouldn't be allowed to proceed with his or her project immediately. Martha said when people ask if they can start immediately, she tells them that technically they have to wait two weeks but if they're fairly certain no one is going to appeal, they can proceed at their own risk. Elvin said he doesn't think a 15-day appeal period is unreasonable and he wouldn't want to alter the regulations to accommodate someone who didn't do a little thinking and planning ahead of time. Tom said when there are a lot of other hoops to go through (e.g. state permits), two weeks can make a big difference. Martha said when an application comes in, she has 30 days to approve, deny or refer it. Usually, Martha said, she can get to it fairly quickly, but not always. Tom said some applications are complicated and take a lot more time to review so if a simple one comes in after a complicated one, it could take awhile before the simple one gets reviewed. Tom said there should be some way to expedite simple applications. Hal said the purpose of posting zoning permits is for public scrutiny. Barbara suggested holding off on changing the buffer language until we have more information on the changes that the state has made to their wetland regulations. The PC talked about variable road width standards. Tom asked what happens if someone applies for an access to serve one lot and then, several years later, wants the access to serve multiple lots. The DRB said the applicant would have to upgrade the road to meet the standard for the number of lots being served. Tom asked about the standard width of a right-of-way. Barbara said 50'. Tom said it should be clear that road width refers to the traveled portion of the road. Martha said this has to do with Section 3.2(E) in the zoning regulations. Martha said the existing regulations have a typographical error because the standard for small housing developments is the A-76 Standard, not the B-71 Standard. Martha said it seems excessive to require driveways that serve two houses to meet the A-76 standard. Barbara and Hal agreed. Martha said Jason Rasmussen suggested varying the width depending on how many houses are served. Barbara said she would agree with that. Barbara said a 50' right-of-way provides wiggle room to widen the road in the future if more lots are created, and provide power and utility easements. Barbara said she doesn't want to push for more road width than necessary. Martha said if the PC is in favor of the concept of variable road width, she will find and distribute Jason's email on the subject. Barbara asked if the A-76 and B-71 standards could be included as addendums to the regulations. Hal agreed. Barbara said she doesn't think two lots should trigger anything other than normal driveway standards, but if you get to three or more, then you should step it up. Hal said he doesn't think you need more than a 50' right-of-way. Tom agreed. Tom said he believes that the town, in the past, has required roads to be built to town standards if they serve three or more houses. Barbara noted that construction and maintenance costs increase quite a bit as road width increases. Martha said she will email the B-71 and A-76 standards to the Planning Commission. Barbara said the language of Section 3.16 is inconsistent with the new subdivision regulations. Martha suggested removing Section 3.16. Regarding ridgelines, Martha noted that Glenn Seward asked the Conservation Commission (CC) to work on the issue. The PC agreed to allow the CC to continue working on ridgeline recommendations for the time being. Tom said he thinks that ridgelines might need to be considered before a permit is granted. Barbara asked Tom if he is referring to houses built

on the side of a hill. Tom said there are some houses that have been built on the sides of hills that are just as offensive as they would be if they were built on the top of the ridge. Barbara said you can't legislate taste. Mark agreed. Barbara said there are many parcels of land that have no valley and the people who own them have a right to build on them without being told where to put the house. Martha said she thinks the ridgeline idea isn't to prohibit building on a ridgeline but to prevent people from clearing the whole ridge and building something that really sticks out. Tom said the condos at Quechee Lakes are a good example of that. Barbara said she thinks our definition of ridgeline isn't bad, but key ridgelines should be identified for protection with an overlay. Martha described some of the issues she has had with nonconforming structures, especially the allowance for maintenance but the restriction on reconstruction except in the case of destruction by fire. Hal said in Florida nonconforming structures that burn down can be rebuilt on the same footprint. Hal said Section 3.9(C) allows alteration if you're not adding to the degree of nonconformity. Tom said the Swallow House is a good example. Hal said he wouldn't worry about who does the burning; if someone wants to pay the fire department to run a test out there and they get permission, let them go ahead. Martha said if you're going to allow someone to let the fire department burn it down and you're going to allow someone to re-build piecemeal as "maintenance," why not just let them tear it down and rebuild it, unless there's a public safety issue. Martha noted the shed on the corner of Bible Hill and Sheddsville Road as affecting public safety by interfering with sight distance. Hal read Section 3.9(B)(2) and said if the shed burned down it could be rebuilt on the same footprint within one year. Martha agreed that the regulations would allow the shed to be rebuilt but said, in this case, it would be unfortunate. Elvin said he had a falling down bunkhouse on a lake and the town in question required him to either rebuild on the same footprint, or rebuild 100' further back, in conformance with the regulations; he was not allowed to make it less nonconforming (e.g. 10' further back). Martha said regulations don't always make sense. Barbara agreed. Tom said the shed at the intersection of Bible Hill and Sheddsville is in the highway right-of-way and he doesn't think it should be allowed to be rebuilt. Hal said the regulations refer to nonconforming structures "legally in existence." Tom said in the case of the shed, the road got moved. Barbara said that's a case where if the shed is rebuilt it should probably be moved back. Tom said he would not be against rebuilding as long as it's not in the right of way. Hal said when the road was put in, the shed was in an illegal position and should have been moved at that time. Martha described another case involving a non-conforming house on a pre-existing small lot. Hal said that's where you need a legal opinion. Martha said she told the person in this case that it's an existing lot so she is legally allowed to put a house on it and if she doesn't like the existing house, she can tear it down and find a house site that meets all the setbacks. Tom said in this case the applicant should be allowed to rebuild a structure that is "less nonconforming." Martha said it would have to be spelled out with favorable language about reducing the nonconformity. Mark said it sounds like the structure can be reduced in size as long as it's within the original footprint, but it can't be picked up and moved; if you're 10' off the lot line, you can't make it 20' off the lot line. Barbara said we should encourage that. Mark disagreed and said he thinks that allows people to take advantage of the allowance in contradiction to the zoning regulations. Barbara said it would only apply if the structure is non-conforming to start with. Mark said what if the opportunity exists for someone to rebuild in conformance with the zoning regulations, would that person be allowed to make an incremental move or is that contradictory to the intent of the regulations. Mark said he doesn't want to give people the option of "lesser nonconformities." Barbara said they might not be able to conform if it's a small lot. Hal said the regulations do not prohibit a structure from being moved provided that the enlarged or relocated portion is in conformance with the regulations. Martha said in this case the landowner wanted to tear down the non-conforming house and make it more conforming but our regulations will only allow reconstruction if it burns down. Barbara said what if they move it to the middle of the lot and they still can't meet the setbacks. Martha said in that case they could get a variance. Barbara said she thinks people should be encouraged to make structures less nonconforming. Mark said if the non-conforming house is a single story house and it burns down, can it be rebuilt as a two-story house on the same footprint. Elvin and Martha said no. Hal said he doesn't see why not. Barbara said it would depend on whether their septic system could support additional bedrooms. Martha said rebuilding a two-story house would increase the degree of

nonconformance. Mark said so you can't replace a nonconforming one-story house with a two-story house. Hal said you can as long as it meets the zoning regulations. Martha said you would be increasing the degree of nonconformance. Hal said the height of the house is not the nonconformance, the nonconformance is the distance from the boundary line. Hal said you could do a two-story house as long as it's on the same footprint. Tom said he hopes some of these things will be spelled out, along with the process to resolve them. Martha said Section 3.9(B)(3) would prohibit someone from turning a non-conforming single-story house into a two-story house because it says that a nonconforming structure may be enlarged provided that the enlarged portion is in conformance with these regulations. Hal said these regulations don't dictate the height of a house. Martha said they do dictate setback and if the house is 2' from the boundary line and you add a second story that is also 2' from the boundary line then the enlarged portion is not in conformance. Hal said the boundary line is vertical. Hal said if you're building on an existing footprint why can't you build it higher as long as it meets the height requirement. Martha said Section 3.9(B)(3) specifies that the enlarged portion has to be in conformance with these regulations so it would have to meet the setback. Hal said the regulations say that you can build a house 35' high. Martha agreed but pointed out that they also say that you have to be 50' from your boundary line. Hal said there are two different rules at play and that makes it difficult to understand. Mark said his interpretation is the same as Martha's – it can't be structurally enlarged or moved, so you can't build a second floor unless it can be in conformance. Mark read Section 3.9(B)(3) again. Hal said "these regulations" refers only to nonconforming structures. Martha said "these regulations" refers to the whole set of zoning regulations. Mark and Barbara agreed. Hal and Tom disagreed. Hal read Section 3.7(B) regarding the height of structures and said we'll have to discuss that at another time.

4. Other Business – None
5. Adjourn – The meeting was adjourned by consensus at 8:31 PM.

Respectfully submitted,

Martha Harrison