



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

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**Planning Board Approved Minutes**

May 3, 2023

7:00 pm at Community Development Meeting Room  
3 North Lowell Road

**Attendance:**

- Chair Tom Earley, Present
- Vice Chair Derek Monson, Present
- Jennean Mason, Present
- Jacob Cross, Present
- Matt Rounds, Present
- Alan Carpenter, Present
- Pam McCarthy (alternate), Excused
- Roger Hohenberger, Board of Selectmen ex Officio, Present
- Bruce Breton, Board of Selectmen ex Officio (alternate), Excused
- Alexander Mello - Director, Community Development

Initial Draft Minutes submitted by Renee Mallett

The meeting opened at 7:00pm with the pledge of allegiance and the introduction of members.

**Case 2022-37 – 72 Range Road (Parcels 17-H-30); Major Final Site Plan, WWPDP Special Permit, WPOD Site Plan / Subdivision Land Development Application, and Final Subdivision; Zone – Gateway Commercial District, WWPDP, and WPOD**

The applicant, Karl Dubay of the Dubay Group, Inc., representing property owner Crystal Ball Enterprise, LLC, is submitting a Major Final Site Plan, WWPDP Special Permit, WPOD Site Plan / Subdivision Land Development Application, and Final Subdivision to construct a new 8,364 SF multitenant commercial building (proposing the following uses: deli, professional office, personal service establishment, and retail sales) with associated parking, access, and site improvements.

On April 28, 2023 the applicant requested a continuance until May 17, 2023. Mr. Rounds said this case had already been heard many times and that the board had a plethora of information on every detail of the case. He also noted that the applicant had made the same request for a continuance that was granted in January, with the warning that the case must be ready to be heard on the requested date. Mr. Carpenter asked why the continuance was again being requested. Mr. Mello said the applicant's wetlands scientist was not able to attend the meeting. Mr. Rounds said the wetlands scientist in question had submitted previous reports and that two additional experts, one hired by the town and the other in the employ of the abutters, had been heard from regarding this application. Mr. Cross questioned what additional information could be brought to light at this point in the proceedings. He feared that extending the case to accommodate the applicant's wetlands scientist would result in the abutters then asking for

43 more time in order to rebut whatever that consultant testified to. Mr. Rounds noted that the parking  
44 waiver granted by the ZBA would expire in August, as this case had already been heard and continued so  
45 many times.

46 Attorney Panciocco, representing the applicant, explained that the original work done on the  
47 parent parcel had been completed by Luke Hurley while under the employ of Gove Environmental services.  
48 Since that time Mr. Hurley has moved on to a different position with another employer, which has created  
49 a disconnect as the file is owned by Gove Environmental and not Mr. Hurley. The person who was hired to  
50 replace Mr. Hurley has been catching up on many case files previously under the management of Mr.  
51 Hurley. Attorney Panciocco said that Mr. Hurley was the person who could answer the board's questions  
52 about the report and how it was crafted. Because Mr. Hurley had previous commitments he was unable to  
53 attend tonight's meeting but was prepared to meet with the board at a future date.

54 Attorney Reimers, under the employ of abutters Patrick Nysten and Jacques Lopez, said the reasons  
55 given for the requested continuance were not compelling and that their position was that the case should  
56 not be continued. He quoted a letter from the applicant which said Mr. Hurley needed time to finish the  
57 remaining work. Attorney Reimers maintained that at this point all work should be complete. Attorney  
58 Reimers said the board had received reports from Mr's Quigley, Seekamp, Hurley, and Danforth- all  
59 certified wetlands scientists. He also disputed some of the resolutions proposed by Mr. Mello in response  
60 to outstanding items listed in an April 2023 memo regarding this case.

61  
62 **Chair Earley opened the session to public comment. Mr. Rounds asked that comments be limited**  
63 **only to the question of the continuance at this point.**  
64

65 Patrick Nysten stated, as he had at a number of previous meetings, his opinion that the wetlands  
66 were not fully delineated until a year after this case was initially heard. He also restated his wife's  
67 previously made comment that the plan was missing a signature on one of the plan set pages. He thought  
68 the applicant had been given far too much latitude throughout this process.

69  
70 Jacques Lopez said the continuances had been done for the benefit of the applicant and at the  
71 expense of the residents. He agreed that multiple experts had opined on the application at this point and  
72 added that the applicant had been given the opportunity to walk the property in question with the town's  
73 independently hired expert, so they had already had the chance the participate in fact finding.

74  
75 Mr. Seekamp, a certified wetland's scientist under the employ of the abutters, said he shared the  
76 same certification as Mr's Hurley, Danforth, and Quigley. He said it was not unusual for scientists to change  
77 jobs and agreed that the files stay with the originating company. He said Mr. Quigley was perfectly capable  
78 of reading the casefile and that he was qualified to offer his expertise on the case without the assistance of  
79 Mr. Hurley. Mr. Seekamp said his report was written in January and that Mr. Danforth and Mr. Quigley had  
80 written reports on March 9<sup>th</sup> and 10<sup>th</sup>, which meant the applicant had already had a significant amount of  
81 time to contact Mr. Hurley and have him answer any outstanding questions. Mr. Seekamp said all of the  
82 assorted experts had agreed on a majority of the items, with the only question surrounding a small piece of  
83 the parcel.

84  
85 Attorney Panciocco said that no more flagging needed to be done but, in response to Attorney  
86 Reimer's comments regarding her letter, that attending Planning Board meetings and answering their  
87 questions was the work that still needed to be competed. Attorney Panciocco said there was no reason not  
88 to hear the information from Mr. Hurley, unless there was a bias on the part of the board to resist hearing  
89 that information. Mr. Rounds wanted it on the record that he took exception to that remark.

90

91 **Chair Earley closed the session to public comment.**

92  
93 **Ms. Mason made a motion to continue Case 2022-37 to June 7, 2023 at 7:00pm with the**  
94 **condition that the Planning Board expected to hear the case that evening and that no further**  
95 **continuances would be granted. At public objection Chair Earley paused the motion to allow an**  
96 **additional session of public comment.**

97  
98 Bill Myers said that the case had been heard at least five times, often with the warning about it  
99 being the last time. He said a new application needed to be submitted.

100  
101 Vanessa Nysten also said that the board had said this previously. She thought the board had  
102 enough information to rule on this case right now. She questioned if the applicant was delaying in order to  
103 wait for the weather more conducive to their application or if they were waiting for the abutters to get  
104 worn down. Ms. Mason said if Ms. Nysten's consultant had not been able to attend a meeting, she was sure  
105 that she would want the opportunity to have them heard.

106  
107 Attorney DiFruscia, formerly a Planning Board member and one of the authors of the WPOD  
108 ordinance, asked that the continuance not be granted. She said scientists from all sides had been heard  
109 from and she did not think the applicant being dissatisfied with the information they had supplied was  
110 reason to grant a continuance. Attorney DiFruscia said the abutters were able to have their experts attend  
111 and that it was not grounds for a continuance as the applicant had more than enough time to have  
112 whatever consultants they wanted at the meeting.

113  
114 Ms. Mason restated her **motion to continue Case 2022-37 to June 7, 2023 at 7:00pm with the**  
115 **condition that the Planning Board expected to hear the case that evening and that no further**  
116 **continuances would be granted. Vice Chair Monson seconded the motion for discussion.** Mr. Cross  
117 thought Mr. Seekamp and Attorney Reimers had made many good points. Mr. Cross said he had faith that  
118 any certified wetlands scientist at Gove Environmental was qualified to respond to this case and that there  
119 was no need for the board to wait to hear from Mr. Hurley. Mr. Cross said Attorney Panciocco was correct  
120 when she said no one in the room was privy to the workings of Gove Environmental but said it was not the  
121 responsibility of the board to continue the case because of this. Mr. Cross said the applicant had already  
122 had a preponderance of time to supply any number of reports from any expert they wanted, and he did not  
123 think it was the responsibility of the board to continue the case again due to their mistakes. Mr. Cross  
124 further said that he would not expect the board to continue a case if the abutters wanted to hire an expert  
125 and they could not attend a meeting. He did not think the process was fair if the board made concessions to  
126 the applicant that was not extended to residents. Mr. Cross stated his willingness to be fair to the applicant  
127 but thought this should not be at the expense of the residents. Both Mr. Cross and Mr. Rounds felt there  
128 was more than enough information on this parcel and the parent parcel for the board to make an educated  
129 and informed ruling on this case at this point. Mr. Carpenter agreed with much of what Mr. Cross and Mr.  
130 Rounds said but reminded the board that there was a standard process that had been in place for decades  
131 which clearly stated that all information be submitted by the Friday before a Wednesday meeting. Mr.  
132 Carpenter said this continuance had been requested by that Friday deadline and he could not remember a  
133 time that a reasonable continuance, asked for in a timely way, was not granted. Mr. Carpenter said the  
134 board should grant a continuance, with the expectation that the case would be heard on the specified date.  
135 Many abutters interrupted the proceedings, saying that this consideration had already been granted once  
136 to the applicant.

137 Mr. Hohenberger said the number of hearings of this case was a miscarriage of justice and wildly  
138 unfair to the abutters. On the other hand, Mr. Hohenberger noted that the abutter's wetlands scientist was

139 not permitted to walk the property in question, and he said he would like to see a site walk happen, with all  
140 of the associated wetlands scientists in attendance. Mr. Hohenberger was troubled that this debate was  
141 happening without the applicant and his engineer in attendance. As an alternate Mr. Hohenberger said he  
142 had last heard this case in March and that many of the questions regarding the wetlands and the differing  
143 opinions of the consultants and the need for them to confer had been discussed at that time. He did not  
144 know why these things had not been resolved prior to this point. Mr. Hohenberger was leaning towards  
145 voting in favor of the continuance with the hope that a lawsuit could be avoided.

146 Mr. Rounds said his motion for a continuance in January had been conditioned on the case not  
147 being continued again. He said the board had an obligation to help an applicant resolve their property but  
148 he said they had obligations to the abutters as well. Chair Earley said the same group of abutters had  
149 attended every meeting, with their consultants and attorneys in attendance, and with the applicant  
150 unprepared to have the case be heard. He said the lack of preparation by the applicant, or their ensings,  
151 should not be a burden on the residents and board. Vice Chair Monson said Mr. Quigley had stepped into  
152 Mr. Hurleys role and had done work on this site, so he did not see why the board needed to wait to hear  
153 some other information from Mr. Hurley. Mr. Rounds asked if any new information or changes had been  
154 submitted since this case was last heard. Mr. Mello said he was not aware of any changes.

155  
156 **After this discussion, Ms. Mason amended the motion to include that staff request the**  
157 **applicant’s approval of a publicly posted site walk and that any and all interested parties be invited to**  
158 **attend. Mr. Round wanted to know if the applicant or town could be tasked with covering the legal and**  
159 **consultant fees of the abutters. Mr. Carpenter and Chair Earley said the board did not have authority to**  
160 **do such a thing. Ms. Mason said she would not amend her motion to include the town paying costs**  
161 **incurred by the abutters. Ms. Mason asked Chair Earley to call the vote on her motion. The motion**  
162 **passed with the following roll-call vote:**

163 **Chair Earley, opposed**  
164 **Vice Chair Monson, aye**  
165 **Ms. Mason, aye**  
166 **Mr. Rounds, opposed**  
167 **Mr. Carpenter, aye**  
168 **Mr. Cross, opposed**  
169 **Mr. Hohenberger, aye**

170  
171 Ms. Mason stated for the record that she was disappointed with the way Chair Earley handled her  
172 motion and that the board had a history of treating female members unfairly. She did not think any other  
173 member of the Board making the motion would have been treated the same way by the Chair and that the  
174 digressions by the board members would not have been allowed.

175  
176 As a point of process Mr. Mello, for the edification of the board, said members could have a non-  
177 meeting legal consultation with Town Counsel then ruminate privately and come prepared with personal  
178 notes for when the case was to be heard again.

179  
180 **New/Old**  
181 **Board of Selectmen seeking PB comment on the Town’s right of first refusal of**  
182 **state-owned excess right-of-way abutting 17-H-30**

183

184 The board has received a letter from DoT regarding a potential land sale to a third party, as the  
185 Town Selectmen have already express not interest in the land. The area in question is a discontinued right  
186 of way that is part of the parcel related to Case 2022-37.  
187

188 **Mr. Rounds made a motion to recommend to the Board of Selectman that the town purchase this**  
189 **lot. Mr. Cross seconded the motion.** Ms. Mason questioned how spending tax-payer money on this small  
190 .062 acre of land, that was fully surrounded by state and privately owned interests, served the best  
191 interests of residents. Mr. Carpenter said in the past the board had either recommended a land purchase  
192 based on a specific reason or said no comment. He said it was not usual for the board to recommend a land  
193 purchase for no reason. Mr. Hohenberger said he thought the Selectmen has not made a decision, but he  
194 would like to hear if the Planning Board had a specific interest in the surplus land. Vice Chair Monson said  
195 he thought the town was being offered the land as a Right of Way for Range Road.  
196

197 **Chair Earley opened the session to public comment.**  
198

199 Patrick Nysten said he had attended the board of selectmen meeting and that he thought there was  
200 a question about the title of the land, as there seemed to be overlapping right of ways. Mr. Nysten said his  
201 interpretation was that the land was under question, and it would take some time for the question to be  
202 resolved. Mr. Mello agreed with this assessment but said the Board of Selectmen were still asking for  
203 Planning Board input for the future sale. Mr. Nysten lives across the street and said he has seen wildlife on  
204 this sliver of land and he thinks it's a sensitive area from a wildlife perspective.  
205

206 Jeanne Schipelliti asked if a culvert could be placed across the parcel in question to Range Road to  
207 mitigate flooding. She further questioned if the land could be used in some way for run-off from the road.  
208

209 Jacques Lopez asked how selling this land could impact future land conveyances. He called it a  
210 complicated situation and said it was worth it to the town to buy the property. He said the town could then  
211 consider selling the land to an abutter across the street. Ms. Mason asked Mr. Lopez about his offer to the  
212 state to buy the land. Mr. Lopez said he was not happy with the state's position that they would not  
213 consider his offer, as they were already in the process of selling the land and that he was not a direct  
214 abutter.  
215

216 Attorney Panciocco clarified some of the questions about the land sale and explained the history,  
217 dating back to the 1800s. She explained the land was shown in two parts, as one of the sections had been  
218 part of a Right of Way that had been discontinued in 1964 by the town.  
219

220 Ms. Mallett, taking the minutes, said abutter comment was not normally taken during the  
221 discussion of a motion. Mr. Cross and Mr. Rounds said they were withdrawing their motion and second in  
222 favor of hearing public comment.  
223

224 Vanessa Nysten said the land in question was "very wet" and "looked to be wet" so she thought the  
225 Conservation Commission would want to buy that area in lieu of it being sold to the applicant.  
226

227 Diane Lemenager, a business owner in Windham, asked how purchasing this land would benefit all  
228 of the taxpayers. Vice Chair Monson suggested that it might be bought to protect the potential tributary  
229 streams that ultimately lead to Canobie Lake.  
230

231 Mr. Rounds said \$6.2 million had been earmarked for conservation land purchases so he thought he  
232 board should recommend that the Conservation Commission consider buying it. Mr. Cross and Mr. Rounds  
233 debated the ability of the town versus conservation to purchase land.  
234

235 **Chair Earley closed the session to public comment.**  
236

237 Mr. Cross said his personal reasons for why it was a no brainer for the town to buy the land was  
238 because the town lacked conservation land, and that small parcels like this could have three parking spaces  
239 and a swing set for resident use, and that given the lack of planning around this site that it might be useful  
240 as a safety clause for the town to keep their options open. Mr. Cross further said that it would protect  
241 millions and millions of dollars in property values for the homeowners on Edgewood Road. He said that  
242 even if left undeveloped it could be a benefit to the homeowners on Edgewood Road by as much as 1%.

243 Mr. Rounds said the town should ask DoT for additional time to investigate their potential interest  
244 in buying the land, and also that Conservation should look at buying the land. Ms. Mason questioned the  
245 legal exposure that this could open the town up to, as purchasing the land would stop the proposed  
246 development on the abutting parcel. Mr. Hohenberger strongly suggested that members attend the  
247 Conservation Commission meeting when this was heard as a member of Conservation had already attended  
248 the Board of Selectmen meeting regarding this land and stated it was not of interest to them.  
249

250 **Mr. Cross made a motion to recommend to the Board of Selectmen that they purchase the land**  
251 **for the purposes of conservation and protecting the tributary that flows into Canobie Lake, public safety,**  
252 **and to prepare for future water needs. Mr. Rounds seconded the motion. The motion passed with Mr.**  
253 **Hohenberger abstaining as he needs to consider the item when it comes before him as a Selectmen:**

254 **Chair Earley, aye**  
255 **Vice Chair Monson, aye**  
256 **Ms. Mason, aye**  
257 **Mr. Rounds, aye**  
258 **Mr. Carpenter, aye**  
259 **Mr. Cross, aye**  
260 **Mr. Hohenberger, abstain**  
261

## 262 **Release of Financial Guarantee / Road Acceptance: Sheffield Street** 263 **(Walker's Woods)**

264 Chair Earley said a letter received from Mr. Senibaldi noted approximately five outstanding items  
265 that were addressed on April 22, 2023, with the exception of granite bounds to delineate the property lines  
266 and right of way. Mr. Senibaldi said granite bounds had been used for the Right of Way but the approved  
267 plan specified that granite bounds also be used for the property lines, while instead iron pins had been  
268 utilized. Mr. Carpenter said the plan could not be deviated from and if the iron markers were to be used  
269 than the applicant could have it posted for public hearing or could swap them out for the granite bounds.  
270

271 **Vice Chair Monson made a motion to recommend that none of the funds be released until the**  
272 **site was brought up to plan. Mr. Rounds seconded the motion. The motion passed with the following roll-**  
273 **call vote and Mr. Hohenberger abstaining as he had to consider the matter when it came before the**  
274 **Board of Selectmen:**

275 **Chair Earley, aye**  
276 **Vice Chair Monson, aye**  
277 **Ms. Mason, aye**  
278 **Mr. Rounds, aye**

279 **Mr. Carpenter, aye**  
280 **Mr. Cross, aye**  
281 **Mr. Hohenberger, abstain**  
282

### 283 **Housing Opportunity Planning (HOP) grant**

284  
285 Mr. Mello said the town had been awarded a Housing Opportunity Planning Grant for \$25,000. Part  
286 of this grant involves a five-session workshop on housing. Mr. Mello said the town could send three people  
287 to attend the workshop, and that the Board of Selectmen appointed Mr. Mello and Ms. Kristi St. Laurent to  
288 attend, but that the third person should come from the Planning Board itself. Mr. Rounds questioned why  
289 Ms. St. Laurent had been selected. Mr. Hohenberger said it was due to her work on the Windham Housing  
290 Authority. Mr. Rounds cautioned that accepting this money would dictate the town's future housing. Mr.  
291 Carpenter said the most recent iteration of the Housing chapter of the Master Plan had expressed the  
292 desire to do what this grant was making possible. Mr. Rounds disputed this. Mr. Hohenberger corrected  
293 him and noted that language had been crafted at a previous meeting. Mr. Mello explained to the board that  
294 they were not being asked to approve the process, or the acceptance of the grant, but that they were being  
295 asked to nominate a member.

296  
297 **Mr. Carpenter made a motion to appoint Ms. Mason to the HOP workshop, stipulating that if a**  
298 **fourth person was allowed to attend, that Mr. Rounds would be that person. Vice Chair Monson**  
299 **seconded the motion. The motion passed with Mr. Hohenberger abstaining and Mr. Cross opposed, as he**  
300 **did not think the board should take part in the workshop or accept the grant:**

301 **Chair Earley, aye**  
302 **Vice Chair Monson, aye**  
303 **Ms. Mason, aye**  
304 **Mr. Rounds, aye**  
305 **Mr. Carpenter, aye**  
306 **Mr. Cross, opposed**  
307 **Mr. Hohenberger, abstain**  
308

309  
310 Vice Chair Monson said he would like to see all conditions of approval noted on the mylars going  
311 forward. Mr. Carpenter explained how he had done this previously as the Chair. Mr. Rounds said he would  
312 like relevant ZBA variances to be part of the packet going forward. Vice Chair Monson said that information  
313 was included in the staff reports. Mr. Mello showed where the information was in the packet besides it also  
314 being included in the staff report.

315  
316 Noting the time Chair Earley said he would normally table approval of the draft minutes but said a  
317 number of residents had stayed for the discussion. Ms. Nysten said she had stayed specifically for the  
318 minutes of 3-15-23, as she had previously submitted a rewrite of the draft supplied to the board. Ms.  
319 Mason suggested accepting Ms. Nysten's rewrite as correspondence in the file, but questioned the legality  
320 of approving them as accepted minutes. Ms. Mason had asked Chair Earley to address this question with  
321 the town's attorney but Chair Earley said he had not, as he had not understood the request. Ms. Nysten  
322 said the draft minutes as supplied by the minute taker were incomplete and incorrect and that they did not  
323 accurately reflect what happened at that meeting. Ms. Nysten said this would go to court and that there  
324 would be a problem if the minutes did not reflect what happened. Mr Carpenter thought the minutes  
325 should be edited down to bare minimums for legal reasons. Mr. Rounds disagreed, saying the HAB had

326 returned a case back to the board because they had not felt there was enough information in the minutes  
327 to support the board's denial of a case.

328 Attorney Reimers, under the employ of Patrick Nysten and Jacques Lopez, said the video of a  
329 meeting was not reviewed by courts and that objectively it was preferred that minutes be detailed. Vice  
330 Chair Monson said he could not approve the play by play of each action and sentence as submitted by Ms.  
331 Nysten. Chair Earley said the bulk of the edits were innocuous. Mr. Cross said 90% of the changes made by  
332 Ms. Nysten were to add context to her own comments. Ms. Mallett said that was not the case and that the  
333 rewrite was to the entirety of the discussion of Case 2022-37, including to statements made by other  
334 abutters, the applicant, and the applicant's representatives.  
335

336 Mr. Cross made a motion to accept the minutes of 3-15-23, accepting the "wholesale," entirety of  
337 the edits made by Ms. Nysten. Mr. Rounds seconded the motion for discussion purposes only. Upon  
338 objection from the minute taker and Ms. Mason, Mr. Cross suggested a line by line review and approval of  
339 the rewrites. When Ms. Mallett noted the time and number of edits Mr. Cross suggested a page by page  
340 review and approval. Ms. Mallett, speaking as a resident and also as an experienced minute taker and  
341 member of local and non-profit boards which were also required to take and approve minutes, questioned  
342 the judiciousness of having someone who was part of a case and had already threatened legal action being  
343 given so much sway over the legal record that would be used in court. Unrecognized by Chair Earley, Mr.  
344 and Ms. Nysten characterized the submitted draft minutes as a joke, ultimately approaching the podium to  
345 attack the length, completeness, and accuracy of the submitted draft. Ms. Mallett maintained that allowing  
346 abutters or applicants to litigate through the minutes was inappropriate and that the best interest of  
347 residents was served in having an unbiased account of the meeting.

348 Mr. Cross withdrew his motion. Ms. Mason asked that Attorney Campbell be consulted on the  
349 issue. The board agreed to table these minutes, along with the other outstanding draft minutes. Abutters  
350 continued to voice their disagreement over these actions and the quality of the submitted minutes. Ms.  
351 Mallett resigned her post as minute taker expressing concerns over the way Chair Earley was handling the  
352 meeting and abruptly left the meeting. At which point her contributions to these draft minutes now end.  
353

354 **Mr. Cross made a motion to adjourn the meeting. Ms. Mason seconded the motion. The motion**  
355 **passed with the following roll-call vote:**

356 **Chair Earley, aye**  
357 **Vice Chair Monson, aye**  
358 **Ms. Mason, aye**  
359 **Mr. Cross, aye**  
360 **Mr. Rounds, aye**  
361 **Mr. Carpenter, aye**  
362 **Mr. Hohenberger, aye**

363  
364