



Town of Windham

Town Offices
8 School Road
Windham, Maine

Meeting Minutes - Final

Planning Board

Monday, June 28, 2021

6:30 PM

Remote via Zoom

To join the meeting remotely, use this link: <https://us02web.zoom.us/j/143936937>. You may also call

1-646-558-8656 and enter meeting ID: 143 936 937.

1 Call To Order

2 Roll Call and Declaration of Quorum

The meeting was called to order by Chair, Keith Elder. Other members present were: Marge Govoni, Colin Swan, and Rick Yost.

Planning Director, Amanda Lessard, and Town Planner, Steve Puleo were also present.

3 [PB 21-036](#) Approval of Minutes: June 14, 2021

Attachments: [Minutes 6-14-21 - draft](#)

Marge Govoni made a motion to approve the minutes of the June 14, 2021, meeting.

Seconded by Colin Swan.

Roll Call

Keith Elder – In favor

Colin Swan – In favor

Marge Govoni – In favor

Rick Yost – In favor

Vote: All in favor.

Public Hearing and Continuing Business

4 [PB 21-032](#) 21-08 Gambo Road Marijuana Cultivation Facility. Major site plan final plan review. S&N Investments LLC to request review of a 7,488 sq ft Tier 3 Marijuana Cultivation Facility. The property in question is located at 24 Gambo Road and identified on Tax Map: 41, Lot 4, Zone: Industrial (I).

Attachments: [21-08 FINAL MAJOR SP ApplResponse 24GamboRoad 6-22-2021](#)
[21-08 FINAL MAJOR SP Appl\(full\) 24GamboRd 060721](#)
[21-08 FINAL MAJOR SP Plans\(rev\) 24GamboRd 06-22-2021](#)
[21-08 FINAL MAJOR SP PlanSet 24GamboRd 060721](#)
[Final Completeness Letter 061721](#)
[EngineersWaiverSupport](#)
[EngineeringComments_062421](#)
[21-08 Gambo Cultivation Memo Final 06-25-21](#)

David Sinclair, of Sinclair Associates, was present representing the applicant. He explained:

- They proposed an 74,088 square foot cultivation facility, located in an Industrial District, adjacent to Gambo Road and the Mountain Division Trail. The building would be metal with limited doors and windows.
- Currently the property was partly field and partly wooded with mapped wetlands on site. Some filling of the wetlands was proposed.
- The facility would have three full-time staff and a visiting manager. Hours of operation would be 7:30 to 4:30 Monday through Friday, and 9:00 to 2:00 on Saturday.
- The site would include a parking area, and fire lane to the back of the building.
- The site would be served by public water.
- A private septic system would be installed.
- Electric service would be underground from a pole at the property line.
- A soil filter would provide stormwater management.
- Buffering to adjacent properties and the trail would be provided via arborvitae and plantings along the parking area and northwest property line.

Public Comment:

Judy Tubbs, Gambo Road – She had a property that was currently for sale and under contract. The buyer had found out about the project and wanted her to drop the price, or they would back out. The price had already been reduced once. She requested that the Board extend the time for approval to give her an opportunity to contact an attorney.

She had been told the project would negatively impact the value of her's, and other's, properties and that was not fair to them. She had been a property owner in Windham for 30 years and was just asking for some time to see what her options were.

Don Toms, Gambo Road – He was sympathetic to Judy and suggested it might be helpful to have a 20' X 50' buffer beyond the tree line to help shield the project.

The Board commented:

- How tall would the arborvitae be? A reasonable height would be seven to eight feet to start. They would make a good shield, but not until they were full grown. How far away from the trail would they be?
- Could anything be done to make the building less unattractive?
- Would there be any signage?
- More specifics regarding the air filtration system had been expected. What side of the building did it go to? They should be sure there was no smell going forward.
- What was the process if there was some smell? It was a permitted use, but the smell would not be good to deal with in the soccer field area with kids.
- The landscaping and lack of signage was good.
- The building was ugly, but it was in industrial and that was what the zone was for.

- *Would the facility ever have the opportunity for retail sales?*
- *There was no plan for maintenance of the stormwater.*
- *A sprinkler system was not mandated. How much of a fire hazard was in the building?*

Mr. Sinclair responded:

- *4 foot arborvitae were proposed and would be planted 7.5 feet on center. They would be 10 to 15 feet from the trail.*
- *There would be no signage. Lights would be security level at the doors.*
- *They would have a Clean Leaf filtration system. Air was brought into the system; filters would clean the air before it exited the building.*
- *Inside of the building there were a couple of growing rooms, a drying room, a small kitchen, an office, and a couple of small storage rooms. The nearest fire hydrant was about 750 feet from the facility.*

Amanda Lessard explained:

- *Smell was a performance standard and part of Planning Board review. If there was a complaint, the Code Enforcement Office would provide a period of time for compliance. The license would also be in jeopardy. She did not think there had been complaints about other facilities with similar filtration systems.*
- *Retail sales were not a permitted use in the zoning district. If the Town Council wanted to change that the Planning Board would have the opportunity to review it.*

Steve Puleo explained:

- *The applicant was requesting two waivers to DEP requirements:*
 - o *A 5% reduction for treatment of 95% of impervious areas.*
 - o *A 5% reduction for treatment of 80% of developed areas.*
- *They had added a filter sock around the perimeter of the parking area and another at the toe of the slope at the fire lane. The town engineer supported the waiver reductions.*
- *Prior to signing the final plans, the Planning Board would receive the maintenance plan and it would be reviewed for compliance by the town engineer.*
- *The open space would have to comply with open space requirements.*

There was no more public comment. The public hearing was closed.

Amanda Lessard explained that the property values on abutting properties were not subject to Planning Board review.

Mr. Sinclair had contacted the applicant who agreed to:

- *Provide 6 to 8 foot arborvitae and a second row, staggered, as infill landscaping to protect the trail.*
- *Vent the building towards the wooded area, not the trail.*

Marge Govoni made a motion to grant the waiver requests.

Seconded by Colin Swan.

Roll Call

Keith Elder – In favor Colin Swan – In favor
Marge Govoni – In favor Rick Yost – In favor

Vote: All in favor.

Marge Govoni made a motion that the application for project 21-08 Gambo Road Cultivation Facility was found complete in regard to the submission requirements based on the application checklist, but the Planning Board retained the right to request more information where review criteria were not fully addressed.

Seconded by Colin Swan.

Roll Call

Keith Elder – In favor Colin Swan – In favor
Marge Govoni – In favor Rick Yost – In favor

Vote: All in favor.

Marge Govoni made a motion that the application for 21-08 Gambo Road Cultivation Facility on Tax Map: 41, Lot 4 was to be approved with conditions with the following findings of fact and conclusions.

FINDINGS OF FACT

Utilization of the Site

- The subject parcel is approximately 1.07 acres and is currently undeveloped. The site is relatively flat and abuts the Mountain Division Trail.
- No wetlands or other natural resources are shown on the sketch plan.
- The site is in the Presumpscot River watershed.
- The applicant is proposing a new 7,488 sf single story building for a marijuana cultivation facility, and associated development.

Vehicular and Pedestrian Traffic

- The subject parcel has approximately 100 feet of frontage on Gambo Road.
- A 24' wide entrance is shown on the sketch plan. The maximum curb cut allowed by the ordinance is forty (40) feet in width.
- A driveway entrance permit from Public Works will be required prior to construction.
- The sketch plan shows a total of six (6) parking spaces - five (5) regular spaces and one (1) handicap accessible space. No minimum number of parking spaces are required by ordinance. The applicant should demonstrate that the number of spaces provided onsite will meet the needs of the anticipated uses on the property. 30% of these spaces must measure 10'x20'.
- The sketch plan submission states that the facility is anticipated to have a total of 4 employees with operating hours to be 7:30AM-4:30 PM Monday-Friday and Saturday 9:00 AM-2:00PM.
- The sketch plan submission states that one small truck visits the site periodically, up to once a week during normal business hours.
- A traffic impact study is not required as the project will not generate fifty (50) or more trips during the a.m. or p.m. peak hour.
- A 5-foot-wide paved walkway is shown on the west side of the building.
- At the Development Team meeting on April 29, 2021, Fire Brent Libby requested access to 3 sides of the building that should be at least 14 feet wide. Fire apparatus cannot access the property via the Mountain Division Trail.

Sewage Disposal, Water Quality and Groundwater Impacts

- The project will be served by a private subsurface wastewater disposal system (septic).
- Test pit soil analysis should be submitted with the final plan. The test pit location

must be shown on the plan.

- A groundwater impact analysis is required for projects involving on-site sewage disposal facilities with a capacity of 2,000 gallons per day or more.
- The applicant should specify how water used in the cultivation process will be managed.

Stormwater Management

Per Section 812.E., a stormwater plan needs to be submitted that meets the standards DEP Chapter 500 Stormwater Management.

- Any required Maine Department of Environmental Protection (DEP) permits must be submitted as part of the Final Plan.
- This project is in the NPDES (National Pollutant Discharge Elimination System) MS4 urbanized area as designated by the Environmental Protection Agency for the Town of Windham. As a result, there will be additional construction inspection requirements and ongoing requirements for reporting of stormwater infrastructure maintenance if is more than one (1) acre of development proposed.

Erosion Control

- A soil erosion and sediment control plan must be submitted as part of the Final Plan submission.

Utilities

- The development must be served by underground utilities.
- The project will be served by public water.
- A written statement from the Portland Water District indicating that there is adequate water supply to service the use must be submitted with the Final Plan.
- The project will require a road opening permit from the Town where public right of way is disturbed.
- The closest fire hydrant is approximately 700 feet to the east of the property on Gambo Road.
- Based on the size of the proposed new building (less than 7,500 sf), a sprinkler system is not required. The building does require a fully addressable alarm system.

Technical and Financial Capacity

- Evidence of financial capacity must be provided as part of the final submission.
- Evidence of technical capacity must be provided as part of the final submission.

Landscape Plan

- A landscaping plan must be submitted as part of the final plan set.

Conformity with Local Plans and Ordinances

1. Land Use

- The proposed use is a Marijuana Cultivation Facility which is allowed as a Permitted Use in the Industrial (I) District. Cultivation facilities may be of the following types: Tier 1, Tier 2, and Tier 3. The proposed use is defined as Tier 3 (not more than 7,000 square feet of plant canopy) as shown on the Grow Facility Floor Plan dated November 5, 2020.
- This project meets the minimum lot size requirements and minimum lot frontage requirements of the I zoning district.
- The dumpster shown on the sketch plan does not comply with the 100 feet front and 25 foot side setback requirements of the I zoning district.
- All non-residential uses in the I zoning district must provide two (2) square feet of open space for every one (1) square foot of floor area. The applicant should quantify the floor area and open space on the property and add a note to the final plan.
- Marijuana Businesses Performance Standards, Section 537

- o *The Marijuana Business is not to be located within 1,000 feet of a public or private school.*
- o *The business shall not have any odor of marijuana detectable beyond the area controlled by the business.*
 - *The sketch plan submission notes that odors are controlled by the use of an air scrubber (AirGrow #AG6K). Specifications of the air scrubber should be submitted with the final plan application.*
- o *Marijuana shall be grown indoors only.*
 - *The development is subject to the following Section 1200 Impacts Fees, to be paid at with the issuance of a building permit: Public Safety Impact Fee, and Municipal Office Impact Fee.*

2. *Comprehensive Plan*

- *This project meets the goals and objectives of the 2017 Comprehensive Plan.*

3. *Others:*

- *Chapter 160 Marijuana Business Licensing Ordinance: A Marijuana Business shall not begin operations unless it has received and is in possession of a license issued pursuant to this Ordinance.*
- *The development is located within 1,000 feet of the Mountain Division Trail and the Gambo Road youth soccer fields which were designated as drug free safe zones under Title 17A MRSA Section 1101, subsection 23 by the Town Council on February 14, 2006. The Town Attorney's opinion is that marijuana cultivation will not be a violation of the safe zone statutes as the cultivation is authorized by the medical marijuana and adult use statutes. Staff has requested an opinion from the Maine Office of Marijuana Policy.*

Impacts to Adjacent/Neighboring Properties

- *A dumpster is shown on the sketch plan. Section 812.T requires that dumpsters shall be screened by fencing or landscaping. Dumpster enclosure detail should be included in the final plan set.*
- *Site lighting must be shown on Final Plan, and details of fixtures must be included in the submission. Lighting fixtures shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings and so that they do not unnecessarily light the night sky. Direct or indirect illumination shall not exceed 0.5 footcandles at the lot line or upon abutting residential properties.*

CONCLUSIONS`

1. *The plan for development reflects the natural capacities of the site to support development.*
2. *Buildings, lots, and support facilities will be clustered in those portions of the site that have the most suitable conditions for development.*
3. *Environmentally sensitive areas, including but not limited to, wetlands; steep slopes; flood plains; significant wildlife habitats, fisheries, and scenic areas; habitat for rare and endangered plants and animals; unique natural communities and natural areas; and sand and gravel aquifers will be maintained and protected to the maximum extent.*
4. *The proposed site plan has sufficient water available for the reasonably foreseeable needs of the site plan.*
5. *The proposed site plan will cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.*
6. *The proposed use and layout will be of such a nature that it will make vehicular or pedestrian traffic no more hazardous than is normal for the area involved.*

7. The proposed site plan will provide for adequate sewage waste disposal.
8. The proposed site plan conforms to a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.
9. The developer has adequate financial capacity to meet the standards of this section.
10. The proposed site plan will not alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
11. The proposed site plan will not provide for adequate storm water management.
12. The proposed location and height of buildings or structure walls and fences, parking, loading, and landscaping shall be such that it will not interfere or discourage the appropriate development in the use of land adjacent to the proposed site or unreasonable affect its value.
13. On-site landscaping does provide adequate protection to neighboring properties from detrimental features of the development that could be avoided by adequate landscaping.

CONDITIONS OF APPROVAL

1. Approval is dependent upon, and limited to, the proposals and plans contained in the application dated April 19, 2021 and supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board and any variation from such plans, proposals and supporting documents and representations are subject to review and approval by the Planning Board or the Town Planner in accordance with Section 814.G. of the Land Use Ordinance.

Seconded by Colin Swan.

Roll Call

Keith Elder – In favor Colin Swan – In favor
 Marge Govoni – In favor Rick Yost – In favor

Vote: All in favor.

- 5 [PB 21-033](#) Amendments to Town of Windham Shoreland Zoning Ordinance Chapter 199, and the Official Land Use Map related to freshwater wetlands.

- Attachments:** [PB Memo Shoreland Zoning 06-24-2021.pdf](#)
[TC Memo ShorelandMap 05-07-21.pdf](#)
[TC memo NRAC Shoreland Surface Water 04-06-21.pdf](#)
[Shoreland Zoning - Chapter 199 revised 04-05-21.pdf](#)
[shorelandzoningmap_wetlands 05-19-2021.pdf](#)
[Lynda McDonald Concerning PB 21-33 \(34 35\) 07-26-2021.pdf](#)

Amanda Lessard explained:

- All of the proposed amendments were the result of recommendations from the Natural Resources Advisory Committee to Town Council.
- Changes to the ordinances involved:
 - o Clarifying language to replace the term “Shoreland Zoning Map” with “Land Use Map”
 - o The addition of language to reference the shoreland zoning districts that were areas designated on the Land Use Map
 - o Clarifying the setback measurement for keeping animals in a shoreland zone
- Changes to the map were intended to:
 - o Bring it into compliance with the State’s minimum Shoreland Zoning Act, which required municipalities to zone freshwater wetlands that were ten acres in size as Limited Residential (LR).

- o Add a wetland area on Albion Road that was an inland waterfowl and wading bird habitat, as designated by Inland Fisheries and Wildlife (IF & W) as a Resource Protection (RP) District.
- o RP was the most restrictive district. No new structures would be allowed; there were some limited uses to allow access to the resource.
- o Both districts included wetland boundaries and 250 feet from the upland edge.
- o Property owners had received notice of the public hearing. There was no written comment.
- o The Commissioner of DEP was required to approve the changes before they would become effective.

Public Comment

Dorothy Maxwell, Albion Road – She asked what this would do to the value of her land? Would the value be decreased? What was the benefit to her? She had been there for 62 years and was sure it had been in Farm Residential longer than that. She did not see any reason why it had to be changed.

What could and couldn't she do with the property? If she sold the entire property, she couldn't do it? The value would be underestimated. If she wanted to do some improvements around the house, could she do that? It was still in FR, but it was going to be turned into a wetland. She didn't approve of it.

Amanda Lessard responded:

- *Her understanding was that with the RP District, where development was significantly limited, the Assessor did reduce the land valued for the area within the district. The land value would be decreased.*
- *It was a wetland and it was required by the State to protect that significant habitat for wading birds and waterfowl.*
- *These map changes were a requirement of the State's shoreland zoning.*
- *She was not able to answer specific questions about the property at the meeting but was happy to look at the property or Ms. Maxwell could speak with the Assessor at another time.*
- *RP had very limited uses: non intensive recreational uses within the district; some fire prevention activities; wildlife management activities; agriculture and aquaculture, with Planning Board approval. If the area were not developed, other activities would be very limited. It was the most restrictive district.*
- *Other uses were limited to what was necessary to gain access to the wetland itself.*
- *The entire property could be sold. The assessment, from the town's perspective would be adjusted if the zoning were changed.*
- *She didn't think the house was located in the area that was proposed to be rezoned. It was only a portion of the property that was proposed to be rezoned.*

William Decormier, Nash Road – Note: Mr. Decormier's property was in a proposed Stream Protection District (SP). Please reference that section of these minutes.

Brian Maynard, Nash Road - Note: Mr. Maynard's property was in a proposed Stream Protection District (SP). Please reference that section of these minutes.

John Wilson, Brand Road - Note: Mr. Wilson's property was in the proposed Pleasant River Stream Protection District (SP). Please reference that section of these minutes.

Board Comment

- *It sounded as if this would bring the town into line with the State. It might affect some people, but it was not seen as an issue with this proposal.*
- *One Board member hated restricting shoreland zoning but guessed it was good to get in line with the State.*
- *Would the Board be getting more water test readings?*
- *Another Board member agreed and did not like to restrict things. Unless it was a mandate from the State, that member thought he would be opposed.*
- *What was the penalty from the State if the town voted it down? What kind of a problem would they be in?*
- *It wasn't fair to take someone's property without notice and to say, "Now you can't sell a lot off. You don't have any value, but you have less value in your property than you did before a vote takes place. So not in favor of it either, especially without any warning.*

There was no other public comment. The public hearing was closed.

The Board discussed:

- *The next scheduled Board meeting would be open to public attendance. Could this be postponed until then? There were people who seemed very confused, and they could come before the Board and the Board could get a better idea of their concerns.*
- *Of all the people who had contact the Board Chair, one third of them had asked it to be tabled. They wanted to come and see the map and talk about it.*
- *This affected people's value, their retirement and property. They had a right to have some concern about it. If people wanted to come to a public meeting to defend the property that they were paying taxes on, the Board should give that to them.*

Amanda Lessard explained the Board should be specific about continuing the item at the July 12th meeting so it was clear that this would be the only notice the meeting was being continued.

Marge Govoni made a motion to continue 21-033 Amendments to Town of Windham Shoreland Zoning Ordinance Chapter 199 and the Official Land Use Map related to freshwater wetlands to July 12, 2021.

Seconded by Colin Swan.

Roll Call

<i>Keith Elder – In favor</i>	<i>Colin Swan – In favor</i>
<i>Marge Govoni – In favor</i>	<i>Rick Yost – In favor</i>

Vote: All in favor.

- 6** [PB 21-034](#) Amendment to Town of Windham Official Land Use Map, Pleasant River Resource Protection District.

Attachments: [PB Memo Pleasant Map Amend 06-24-2021.pdf](#)
[shorelandzoningmap Pleasant 05-19-2021.pdf](#)
[TC Memo ShorelandMap 05-07-21.pdf](#)
[TC memo NRAC Shoreland Surface Water 04-06-21.pdf](#)
[Windham Watershed Basemap 11x17.pdf](#)
[Windham Watershed Inventory FINAL 20180316.pdf](#)
[Pleasant River Watershed Mgmt Plan - FINAL 2011.pdf](#)
[2021 Recommendations for Prioritizing Windham's Waterbodies.pdf](#)
[PB memo NRAC Shoreland 07-01-2021.pdf](#)
[Dennis Brown Pleasant River E coli Graph 07-12-2021.pdf](#)
[Clayton Haskell PBcomment 07-26-2021.pdf](#)

Amanda Lessard explained:

- This was a recommendation to increase the zone to 250 feet from the point where Ditch Brook went under Route 302, north to the Gray town line. It would be consistent with the depth of the zone south of Ditch Brook as it flowed to the Presumpscot.
- The Pleasant River was considered a stream, and so only required Stream Protections (SP) under current zoning. The recommendation was more restrictive than the State required. The RP District would limit development within 250 feet of the river.
- The objective was to protect water quality. The Pleasant River Watershed Management Plan had identified areas that were threatening the river. Recommendations to correct those had been ongoing. Town staff had worked with Cumberland County Soil and Water Conservation District to look at the areas of concern and prioritize work to improve water quality.

Dennis Brown, chair of the Natural Resources Advisory Committee explained:

- The Committee had been reenacted in 2018 to look at watersheds in Windham, which had more impaired streams than any other Maine community.
- They had an active grant, and the Committee was working on ways to best apply the funds.
- The Pleasant River was the largest stream in town, with its headwaters in the town of Gray.
- For the past two years, they had been testing at the Windham/Gray town line, and had reached out to Gray for cooperation.
- They were attempting to prevent the water quality of the stream from deteriorating further. Erosion was also an issue, and a larger setback would help that.
- They were not looking for ways to take people's land but wanted to work with them to minimize problems.
- The issues had been going on for a long time. If the town committed to doing something it would take one to two decades for the results, but how bad did it need to get before changes were made?

Public Comment

Sarah Bronson – She was hoping for an article about the amendments to be in the local paper.

Clayton Haskell, Harriet Road – He owned 1, 400 feet along the Pleasant River. He had a nutrient management plan which dictated how close and how far from the river he could be. It dictated how much he could put into the river. DEP told him how much he could

do and when he could do it, along with four other farms on the river. He was so far over organized with government it was unreal.

They needed to start looking at some of the development along streams coming into the river. He appreciated what they were doing, but they were taking away valuable land from agriculture, which was already governed.

All three of the waterbodies they were talking about affected him. He had gotten calls daily. He was also the chairman of the Farm Service Agency for York and Cumberland County, which was an overseer of ideals.

They had only shown water tests and needed better documentation of everything. They needed to test the ground, runoff, contaminants in different places. Without that they were not proving anything, but labeling agriculture as a cause.

John Wilson, Brand Road – Was there any proof or statistics that the 250 foot setback was better than 100 feet? What made them think 250 feet was better? He was all for cleaning up the river and preserving things for his kids and the future but he questioned restricting land use. Testing showed the e coli levels being less along the river with the current 100 foot zone.

Mr. Brown responded that e coli bacteria did not last for a long time and there were feeders in the river that would eat it. Clearly there were other things going on.

William Decormier, Nash Road – He said it was an issue of standards. How many parts per million were they looking at?

Mr. Brown stated it was not parts per million but an estimated number per liter, or milliliter. Some of their meters only went up to 2,500 and the samples exceeded that. He believed it was 256 for e coli and assumed the highest was after rainstorms when things were washed into the river.

Art Green, William Knight Road – Was the 250 feet from the center of the river or the bank? Were the results reflective of a normal season, or a low water season?

Amanda Lessard clarified that the setback was from the high water mark, 250 feet each way.

Mr. Brown explained most of the sampling had been done by volunteers, for the past ten years, every two weeks, May to September, rain, or shine, before 8 am. It included the Presumpscot River and all the feeder streams that went into it.

Lou Zambello, Dundee Road – He was a recreational fly fisherman and registered Maine Guide. He guided people on the Pleasant River and fished it. He was stating his support to try to at least maintain, if not improve the condition of it in the throes of climate change, where they had more and more drought and then big rain events that washed everything into the river.

They had talked about dissolved oxygen and e coli. His other concern was the amount of phosphorous in the river. He would see, north of Route 302, and earlier every year, the green slime that covered rocks and made it impossible to fish. It was not just e coli and dissolved oxygen, but other nutrients.

He was just stating that the Pleasant River was important to lots of other folks, not just

earning some money, but it brought anglers into Windham from all over the state and they spent their money here. He hoped everyone, the farming interests, recreational interests, and people living along the river could figure out a way to improve the quality, given the threats that they were under. Consistent setbacks would help, but he wouldn't pretend that was the only solution as well. He was also on the Board of the Sebago Chapter of Trout Unlimited, so he guessed he was speaking for fly fishing interests on the river.

James Papi, Pipeline Road and Presumpscot Road – He couldn't help but notice that this was a regulatory move that looked, felt, and acted like a taking without just compensation to property owners abutting the river. It was stripping away the value and ability to use their land. As a citizen, it didn't seem that was working with property owners. He would like to see a more targeted manner of working with property owners for areas that were producing the phosphorus and failing septic systems.

Art Green, William Knight Road – How did the 250 foot setback from the highwater mark of the Pleasant River affect additions of houses and permitting within that boundary?

Amanda Lessard responded:

- If you had a structure that was located within the area proposed to be rezoned it would become a nonconforming structure and you would be limited to a 30% expansion of the footprint of the building as it existed when the zoning changed.
- You could continue to maintain cleared areas.
- You could continue to maintain agricultural uses up to the river.

Marge Govoni made a motion to continue 21-034 Amendment to Town of Windham Official Land Use Map, Pleasant River Resource Protection District to July 12, 2021.

Seconded by Colin Swan.

Roll Call

Keith Elder – In favor	Colin Swan – In favor
Marge Govoni – In favor	Rick Yost – In favor

Vote: All in favor.

- 7 [PB 21-035](#) Amendment to Town of Windham Official Land Use Map, Stream Protection District.

Attachments: [PB Memo Stream Map Amend 06-24-2021.pdf](#)
[shorelandzoningmap_streams_05-19-2021.pdf](#)
[TC memo NRAC Shoreland Surface Water 04-06-21.pdf](#)
[TC Memo ShorelandMap 05-07-21.pdf](#)
[Windham Watershed Basemap 11x17.pdf](#)
[Windham Watershed Inventory FINAL 20180316.pdf](#)
[2021 Recommendations for Prioritizing Windham's Waterbodies.pdf](#)
[Elizabeth Cummings SP Proposed 06-21-2021.pdf](#)
[Elizabeth Cummings SP 06-21-2021.pdf](#)
[Jennifer Potter SP Proposed Rezoning 38 Nash Rd 06-21-2021.pdf](#)
[PB memo NRAC Shoreland 07-01-2021.pdf](#)
[Joleen Rice SP Memo to Planning Board 07-12-21.pdf](#)
[Dennis Brown Pleasant River E coli Graph 07-12-2021.pdf](#)

Amanda Lessard explained:

- *The intent was to amend the Land Use Map in order to provide greater protections to impaired waterbodies by expanding the shoreland zone on tributaries to those waterbodies.*
- *The recommendation was to rezone all tributaries as 100 foot SP if they were shown on the USGS maps as significant.*
- *This was more restrictive than the minimum shoreland zoning standards.*
- *The exception to this was Outlet Brook from Chaffin Pond to Sebago Lake. It should be Stream Protection under the State's regulations.*
- *This was not a required element for the remainder of the streams.*
- *Any activity within 75 to 100 feet would be regulated under the Natural Resource Protections Act and require permits from DEP. Within that area there would be a requirement to maintain vegetation and limit cleared openings.*

Dennis Brown explained:

- *The town had six lakes and ponds at risk from new development. There were a number of streams that fed into the Pleasant River and lakes. It was important to protect those watersheds.*
- *More buffer gave nutrients a better chance of being grabbed by plants and the canopy would help stop the rain. Logic suggested the additional 25 feet.*

Amanda Lessard explained they were counting streams that were shown on the USGS topographic maps as significant, which was one threshold to be defined as a stream by DEP under the Natural Resources Protection Act. There were many more that could meet the stream definition; flow volumes varied. They still contributed when there was a heavy rain event and they flowed to other waterbodies.

Public Comment

William Decormier, Nash Road – Their property contained Colley Wright Brook. It continued through their property and along the back edge. They had some wetlands and were not going to develop any of it. How would this affect them?

Their house was built in 1986. They had a barn and four-car garage that were not far from the brook. If the property was there now and being restricted, did it affect the

buildings on the property?

Jean Decormier, Nash Road – The brook did not flow heavily unless there was a lot of rain. What could they do to protect it? They would welcome testing on their property.

Mr. Decormier - They fed wild turkeys and there was a marsh near the brook where they nested. They left droppings and unless you eliminated the turkeys there would always be e coli in the brook.

John Harris, Anderson Road – His was one of the 501 properties that would be affected. Milliken Brook passed through his lots. He was concerned with the impact to property value and usage. He had read the May 7, 2021, memo from the Planning Director to Town Council which stated that this part was an optional proposal and stricter than state regulations. He asked the Board to please consider impacts to property values and usage and the fact that it was not required to meet state regulations. He liked that people were being more targeted with research and samples.

Brian Maynard, Wanderer's Way – He was not sure if the stream on his property had a name and was all in favor of preserving things. They could come and test the water if it helped.

Amanda Lessard explained they were not typically sampling headwaters because the flow volume was low in some parts of the season. The goal in choosing a sampling site was to objectively get samples in order to report out.

Clayton Haskell, Harriet Avenue – His property abutted Black Brook from Pope Road to Swett Road, and this would have quite an impact on his field. The field itself was tested, under DEP, every year for different things, the ground and so forth. He was not in favor of this and was getting hammered on all three fronts. There was no water at all in the brook now.

Bruce Elder, Antrim Drive – There had been no mention of the Presumpscot River. A lot of streams were tributaries of the Presumpscot. He understood it had improved tremendously in the last several years. It seemed a paradox that some of the tributaries were poor under testing, but the Presumpscot was improving. The other thing was that one size didn't fit all. If they implemented stricter regulations, there would be more restrictions along some of the tributaries that probably didn't contribute much at all.

Richard Hill, Katilyn Court – He didn't have a stream out back. 50 years ago the land was flooding so they ditched it to drain the fields. This didn't make sense to him. How did they define a stream?

Amanda Lessard said one definition was that it was shown as a stream on the USGS topographic maps, which it was. Sometimes those changed the area and they met other stream criteria.

Sarah Bronson, Lilac Drive – She had received a post card but was not aware of any streams on her property.

Keith Elder explained the stream just touched her property on the southwest side.

William Decormier, Nash Road – He had a four-car garage, septic and leach field, and barn all within 75 feet of the brook, which ran right past the buildings. He didn't think anything on the property contributed to e coli in the brook and he didn't see how

increasing protections in the zone would eliminate any e coli in the brook because it was contributed by wild animals. He expressed his concern that they were making arbitrary rules that would have absolutely no effect on e coli in the brook.

Amanda Lessard explained:

- Water quality concerns were varied, phosphorous and e coli were part of the reason to maintain the buffers. Water temperature had to do with moving sediment and all kinds of nutrients. Wildlife was a likely contributor, and also development in the proximity.
- It was not all about sampling. There were other specific planning for watersheds. They could look at the banks of streams and specifically identify issues.
- It wasn't just e coli. It was all the development along the corridor and lawn areas and maybe how they were being fertilized and many different things.

Marge Govoni made a motion to continue PB 21-035 Amendment to Town of Windham Official Land Use Map, Stream Protection District to July 12, 2021.

Seconded by Colin Swan.

Roll Call

Keith Elder – In favor	Colin Swan – In favor
Marge Govoni – In favor	Rick Yost – In favor

Vote: All in favor.

Other Business

8 Adjournment

Marge Govoni made a motion to adjourn.

Seconded by Colin Swan.

Roll Call

Keith Elder – In favor	Colin Swan – In favor
Marge Govoni – In favor	Rick Yost – In favor

Vote: All in favor.

Note

Note

Meeting went into Recess

Note

Note

Meeting Reconvened