

# Town of Windham

Planning Department  
8 School Road  
Windham, ME 04062

voice 207.894.5960

fax 207.892.1916

## MEMO

DATE: August 13, 2014

TO: Windham Town Council

THROUGH: Tony Plante, Town Manager

FROM: Amanda Lessard, Planner 

Cc: Ben Smith, Director of Planning

RE: Planning Board Recommendation - Ordinance Amendment – Staff Review

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At the Planning Board's meeting on July 14, 2014, a public hearing was held on the proposed amendments to Section 800 of the Land Use Ordinance to change the classification of Minor Site Plans to allow the Staff Review Committee to review site plan applications for projects within approved subdivisions, and site plans for development between 25,000 square feet and one (1) acre when no buildings are proposed.

No members of the public spoke for or against the proposed amendment.

During Planning Board discussion, it was noted that there was one instance where the word "disturbance" had not been replaced with the word "development". Staff reviewed the proposed amendment and presented a correction of the oversight to the Board at a meeting on July 28, 2014.

During Planning Board discussion some members expressed concern that the Staff Review process was not as transparent and took away responsibilities that are the jurisdiction of the Planning Board. Other members commented that the amendment was a common sense approach for regulating smaller development.

Following discussion of the proposed changes, the Board made the following motion:

To send the proposed standards regarding staff approval of site plans within approved subdivisions to Town Council with a recommendation not to approve.

Motion: Scott McDonald  
2<sup>nd</sup>: James Hanscom

Vote: 3-4 (Margaret Pinchbeck, Keith Elder, David Douglass, AIA, and James Hanscom opposed)

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## MEMO

DATE: June 13, 2014

TO: Windham Planning Board  
FROM: Ben Smith, Planning Director *BWS*  
Cc: Amanda Lessard, Planner  
Land Use Ordinance Committee (LUOC)

RE: LUOC recommended ordinance changes to Section 800 –  
Staff Review Committee approval of Site Plans within approved subdivisions

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The Town Council has tasked the LUOC to draft ordinance amendments that would allow for the Staff Review Committee to review site plans within approved subdivisions. The LUOC is recommending the attached changes to Section 800 for approval.

Currently, the ordinance makes the Staff Review Committee responsible for review of site plans with anywhere two thousand (2,000) up to five thousand (5,000) square feet, cumulatively over a five (5) year period, which are classified as Minor Site Plans. Once the site adds five thousand (5,000) or more square feet, or disturbs more than twenty-five thousand (25,000) square feet of land, it is classified as a Major Site Plan, which the Planning Board reviews.

The changes recommended by the LUOC include the following:

- Change of “disturbance” and “installation” terms to “Development” as defined in Section 300.
- All site plans within approved subdivisions are to be classified as Minor Site Plans.
  - Regardless of the size of the building or area of Development, a site plan for a lot in an approved subdivision that “plugs in” to the assumptions for that lot during the subdivision approval, such as traffic and impervious surface thresholds, is classified as a Minor Site Plan.
  - Note that if lots within the approved site plan need to be reconfigured or combined to accommodate the proposed Development, a subdivision amendment would be required, which must be approved by the Planning Board.

- Site plans for non-residential uses that have no buildings or structures, but result in the Development of between twenty-five thousand (25,000) square feet up to one acre are to be classified as Minor Site Plans, rather than Major Site Plans as they are today.
  - These projects do not require DEP permitting, and the change would potentially mean a given project would not require engineered stormwater calculations. There are also differences in between Minor and Major site plans related to GIS and utility plan, and landscaping submission requirements.

Note that the changes recommended for approval by the LUOC do not include the ability for the Staff Review Committee to grant waivers from the site plan performance standards, as suggested in the attached from Tom Bartell, Executive Director of WEDC, meaning that any project requesting such waivers would be reviewed by the Planning Board, as they are today.

At its meeting on June 11, 2014, the Land Use Ordinance Committee (LUOC) made the following motion:

“To recommend the proposed changes to Section 800 of the Land Use Ordinance, to allow the Staff Review Committee to review all site plans within an approved subdivision, as presented in the staff memo dated June 4, 2014.”

Motion: Jim Cummings  
2<sup>nd</sup>: David Nadeau  
Vote: 3-0 in favor

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## MEMO

DATE: July 17, 2014

TO: Windham Planning Board  
FROM: Ben Smith, Planning Director *BWS*  
Cc: Amanda Lessard, Planner  
Land Use Ordinance Committee (LUOC)

RE: LUOC recommended ordinance changes to Section 800 –  
Staff Review Committee approval of Site Plans within approved subdivisions

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A public hearing was held for the proposed ordinance changes to allow Staff Review Committee approval of site plans within approved subdivisions at the Board meeting on July 14, 2014.

During Board discussion of these changes, it was noted that the replacement of the term “disturbance” was replaced by the term “Development” in all instances but for the italicized text on page 8-3, directing readers to refer to Chapter 142 – Surface Water Protection Ordinance.

This exclusion was an oversight, and updated red-lined ordinance language is attached. No other changes have been made to ordinance wording from the staff memo dated June 13, 2014. These changes to Section 800 of Chapter 140 have no impact on the standards of Chapter 142, and no conflicts are created with the proposed changes.

After further discussion of these changes, the Planning Board may consider a motion similar to the following:

**MOTION:** To send the proposed standards regarding Staff Approval of site plans within approved subdivisions to the Town Council with a recommendation (**to pass/not to pass/to pass with additional changes**).

## 801 Purpose

The site plan review provisions set forth in this Section are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential and multifamily construction is designed and developed in a manner which assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of stormwater, erosion, and sedimentation; protection of the groundwater; protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

## 802 Applicability

- A. A person who has right, title, or interest in a parcel of land shall obtain site plan approval prior to commencing any of the following activities on the parcel, obtaining a building or plumbing permit for the activities, or undertaking any alteration or improvement of the site including grubbing or grading:
1. The construction or placement of any new building or structure for a nonresidential use, including accessory buildings and structures, if such buildings or structures have a total area for all floors of all structures of two thousand (2,000) square feet or more measured cumulatively over a five (5) year period.
  2. The expansion of an existing nonresidential building or structure, including accessory buildings, if the enlargement increases the total area for all floors within a five (5) year period by more than twenty (20) percent of the existing total floor area or two thousand (2,000) square feet, whichever is greater.
  3. The conversion of an existing building in which two thousand (2,000) or more square feet of total floor area are converted from residential to nonresidential use.
  4. The establishment of a new nonresidential use even if no buildings or structures are proposed, that involves the ~~disturbance-Development~~ of more than twenty-five thousand (25,000) square feet of land. This includes uses such as gravel pits, cemeteries, golf courses, and other nonstructural nonresidential uses.
  5. The conversion of an existing nonresidential use, in whole or in part, to another nonresidential use if the new use changes the basic nature of the existing use such that it increases the intensity of on- or off-site impacts of the use subject to the standards and criteria of site plan review described in Section 812 of this Section.

6. The construction of a residential building containing three (3) or more dwelling units.
  7. The modification or expansion of an existing residential structure that increases the number of dwelling units in the structure by three (3) or more in any five (5) year period.
  8. The conversion of an existing nonresidential building or structure, in whole or in part, into three (3) or more dwelling units within a five (5) year period.
  9. The cumulative ~~disturbance-Development~~ of an area equal to, or greater than, one (1) acre within any three (3) year period. The applicability of this section does not include the construction of streets that are reviewed as part of a subdivision application under the standards of Section 900 of this Ordinance. *For ~~disturbances Developments~~ of less than one (1) acre, the standards of Chapter 142 Surface Water Protection Ordinance may apply.*
- B. The following activities shall not require site plan approval. Certain of these activities will, however, require the owner to obtain a building permit, plumbing permit or other state or local approvals:
1. The construction, alteration, or enlargement of a single family or two-family dwelling, including accessory buildings and structures.
  2. The placement, alteration, or enlargement of a single manufactured housing or mobile home dwelling, including accessory buildings and structures on individually owned lots.
  3. Agricultural activities, including agricultural buildings and structures.
  4. Timber harvesting and forest management activities.
  5. The establishment and modification of home occupations.
  6. Activities involving nonresidential buildings or activities that are specifically excluded from review by the provisions of this section.

### 803 Review and Approval Authority

- A. Application Classification. The review and approval authority for site plans shall depend on the classification of the project:
1. Major Developments. The Planning Board is authorized to review and act on all site plans for major developments. In considering site plans under this section, the Planning Board may act to approve, disapprove, or approve the project with such conditions as are authorized by this section.
  2. Minor Developments. The Staff Review Committee is authorized to review all site plans for minor developments and may approve, disapprove, or approve the project with such conditions as are authorized by this Section. In addition, the Committee may reclassify a minor development as a major development, due to the scope or

#### 804 Joint Application and Hearing

- A. If an application requires any combination of site plan review, subdivision review, or conditional use approval, the procedures for all applicable application reviews shall be met in order to initiate the fair hearing process. The procedures for the applicable reviews may occur simultaneously.

#### 805 Classification of Projects

- A. The Planner shall classify each project as a major or minor development. Minor developments are smaller scale projects for which a minor review process is adequate to protect the Town's interest. Major developments are larger, more complex projects for which a more detailed review process and additional information are necessary. The following thresholds shall be used by the Planner in classifying each project. However, the Planner may, due to the scope or anticipated impacts of a project, classify any project as a major development.
1. Minor developments shall include those projects involving:
    - (a) The cumulative construction or addition of fewer than five thousand (5,000) square feet of gross nonresidential floor area.
    - (b) Any individual or cumulative construction or addition of five thousand (5,000) square feet or more of gross nonresidential floor area within an approved subdivision.
    - (c) The establishment of a new nonresidential use even if no buildings or structures are proposed, that involves the Development of more than twenty-five thousand (25,000) square feet but less than (1) acre of land.
  2. Major developments shall include projects involving:
    - (a) The individual or cumulative construction or addition of five thousand (5,000) or more square feet of gross nonresidential floor area on a lot that is not part of an approved subdivision.
    - (b) Projects involving the creation of five (5) or more dwelling units in a five (5) year period,
    - (c) The individual or cumulative ~~installation-Development~~ of ~~twenty five thousand (25,000) or more square feet (1) acre or more~~ of ~~impervious surface(s)land~~, unless the Development is part of a site plan application in an approved subdivision (see Section 805 A.1.b. above).
    - (d) Projects that also require subdivision (*see Sec. 900*) or conditional use approval (*See. Sec. 500*), or
    - (e) Other projects requiring review which are not classified as a minor development.

3. An applicant may request that the Planner classify an application prior to its submission. In this case, the applicant shall make a written request for a classification. This request shall include the following information:
  - (a) The names and addresses of the record owner and the applicant and the applicant's legal interest in the property.
  - (b) The location of the project, including the tax map and lot number.
  - (c) A brief description of the proposed activities in such detail as to allow a classification to be made.
4. When the Planner classifies a project based upon a request for classification rather than an application, the subsequent application shall be consistent with the activities described in the request for classification.
  - (a) The Planner shall review such application to determine if the classification is still correct and may reclassify the application if the scope of activities has been changed.
- B. Within ten (10) working days of the receipt of a site plan application or a request for a classification, the Planner shall notify the applicant, and the Chair of the Planning Board of the classification of the project in writing.

### **806 Review Procedures for Minor Developments**

- A. Preapplication Conference. Applicants for site plan review of a minor development are encouraged to schedule a preapplication conference with the Planner. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, and approval criteria, and to familiarize the Planner with the nature of the project.
  1. Such review shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. §302. No decisions relative to the plan may be made at this meeting.
  2. To request a preapplication conference the applicant shall submit, at a minimum, a brief narrative describing the project, the location of the project on a US Geologic Survey (USGS) topographic map, and a copy of the Tax Map showing the development parcel.
- B. Application Procedure
  1. All Minor Site Plan submission requirements shall be submitted to the Planning Department at least thirty (30) days prior to the meeting at which the applicant wishes to be heard by the Staff Review Committee.