

Town of Windham

Planning Department
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Windham, ME 04062

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MEMO

DATE: February 5, 2019

TO: Windham Town Council
THROUGH: Don Gerrish, Interim Town Manager
FROM: Amanda Lessard, Planner *ALL*
Cc: Highland Lake Leadership Team (HLLT)

RE: Planning Board Recommendation - Ordinance Amendment – Sections 800 Site Plan Review and 900 Subdivision Review, related to Independent Review of development in watersheds of a lake most at risk from new development.

At the Planning Board's meeting on January 28, 2019, a public hearing was held on the proposed ordinance changes to Section 800 Site Plan Review and Section 900 Subdivision Review to require the Staff Review Committee and the Planning Board to have a qualified independent professional review applications for projects located in the watershed of a lake most at risk from new development to ensure compliance with the site plan or subdivision performance standards for stormwater management, erosion control, sewage disposal, groundwater protection, and water quality protection. Maine DEP Chapter 502 designates the following lake watersheds in Windham as most at risk from new development: Chaffin Pond, Forest Lake, Highland Lake, Little Duck Pond, Little Sebago Lake, Pettingill Pond, and Sebago Lake.

One member of the Highland Lake Leadership Team spoke in favor of the amendment and one member of the public expressed concern that the proposed language appears to delegate the Planning Board's review authority to the third party.

During Planning Board discussion members of the Board commented that these additional requirements didn't address the conditions on existing properties that contribute to lake water quality concerns and that the proposed additional review costs may not add value to the process. Some members also commented that there are better ways to address the problems of licensed design professionals not meeting their professional responsibilities, and that the DEP should also be held accountable to do their job of reviewing applications.

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

To recommend approval of the proposed amendment to Sections 800 and 900 of the Land Use Ordinance related to independent review of site plan and subdivision applications in watersheds of a lake most at risk from new development, with comments that there should be a process to

collect data to determine if there is value to the review process and in 4 years the policy should be reviewed to determine if it is still necessary.

Motion: Bill Walker
2nd: Michael Devoid

Vote: 4-3 (David Douglass, Keith Elder and Drew Mayo opposed)

The Planning Board also discussed the Council's request that the Board consider how to add environmental review to the amendment and if the independent review should be required town wide. The Board commented that reviewers attending site walks was an important part of the review and no additional language was necessary at this time. The Board also commented that independent review town wide was not necessarily needed right now, and the Town could wait and see how it works in lake watersheds.

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MEMO

DATE: January 23, 2019

TO: Windham Planning Board

FROM: Amanda Lessard, Planner *AL*

Cc: Highland Lake Leadership Team (HLLT)

RE: Ordinance Amendment: Sections 800 Site Plan Review and 900 Subdivision Review, related to Independent Review of development in watersheds of a lake most at risk from new development
Planning Board Meeting & Public Hearing – January 28, 2019

The attached proposed ordinance revisions were developed by staff and members of the Highland Lake Leadership Team's Ordinance Committee. This is one of four ordinance/policy amendments the HLLT recommended and presented to the Town Council on December 18, 2018.

As drafted, the proposed change requires the Staff Review Committee and the Planning Board to have a qualified independent professional review an application for a project located in the watershed of a lake most at risk from new development to ensure compliance with the site plan or subdivision performance standards for stormwater management, erosion control, sewage disposal, groundwater protection, and water quality protection. Maine DEP Chapter 502 designates the following lake watersheds in Windham as most at risk from new development: Chaffin Pond, Forest Lake, Highland Lake, Little Duck Pond, Little Sebago Lake, Pettingill Pond, and Sebago Lake.

At the December 4, 2018 meeting, the Council also requested that the Planning Board consider how to add environmental review to the amendment and if the independent review should be required town wide.

A public hearing is scheduled for the Planning Board meeting on January 28, 2019. After the public hearing and discussion by the Board, the Planning Board may vote on a recommendation to the Town Council similar to the following:

MOTION: To (**recommend/recommend with comments/not recommend**) approval of the proposed amendment to Sections 800 and 900 of the Land Use Ordinance related to independent review of site plan and subdivision applications in watersheds of a lake most at risk from new development.

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MEMO

DATE: January 7, 2019

TO: Windham Planning Board
FROM: Amanda Lessard, Planner *ALZ*
Cc: Jon Earle, Town Engineer
Highland Lake Leadership Team (HLLT)

RE: Ordinance Amendment: Sections 800 Site Plan Review and 900 Subdivision Review, related to Independent Review of development in watersheds of a lake most at risk from new development
Planning Board Meeting – January 14, 2019

At their meeting on December 4, 2018, the Town Council voted to forward the enclosed proposed ordinance change to the Board for review and recommendation. The proposed ordinance revisions were developed by staff and members of the Highland Lake Leadership Team's Ordinance Committee. This is one of four ordinance/policy amendments the HLLT recommended and presented to the Town Council on December 18, 2018.

As drafted, the proposed change requires the Staff Review Committee and the Planning Board to have a qualified independent professional review an application for a project located in the watershed of a lake most at risk from new development to ensure compliance with the site plan or subdivision performance standards for stormwater management, erosion control, sewage disposal, groundwater protection, and water quality protection. Maine DEP Chapter 502 designates the following lake watersheds in Windham as most at risk from new development: Chaffin Pond, Forest Lake, Highland Lake, Little Duck Pond, Little Sebago Lake, Pettingill Pond, and Sebago Lake.

At the December 4, 2018 meeting, the Council also requested that the Planning Board consider how to add environmental review to the amendment and if the independent review should be required town wide.

Zoning Amendment Process

The Planning Board must hold a public hearing prior to making a recommendation on this item to the Town Council. The Town Council will need to vote on the proposed changes to the Land Use Ordinance for the changes to be officially approved. A public hearing has been scheduled

for the Board meeting on January 28, 2019. After the public hearing and discussion by the Board, the Planning Board may vote on a recommendation to the Town Council.

Four Highland Lake Leadership Team recommendations being brought forward for consideration:

- a. Initiate shoreline photography as a town wide Code Enforcement tool**
- b. Require 3rd Party review of all non individual home development within lake watersheds**
- c. Require minimum manure management requirements for large farm animals within the watershed**
- d. Require follow-up BMP inspections within lake watersheds**

Discussion

Photograph all the lake shorelines for baseline for shoreline development:

Windham is already using this technology on Sebago Lake through photographs taken by the Portland Water District. The first round of photographs would create a baseline, while subsequent surveys would determine if there were violations. This information would stay with the Code Offices for their use only, and be used for the review of permits and as an enforcement tool. This has been successful in making staff time more efficient where this has been used. The Lakes Environmental Association (LEA) does this already and has been for years in western Maine lakes.

Require 3rd Party Review of all major developments within great pond watersheds.

This is intended to close any loopholes as well as enhance third party reviews in both towns. The HLLT recommends that the Towns of Falmouth and Windham adopt mandatory third party review of all storm water plans including phosphorus mitigation plans for all subdivisions within the Great Pond watershed of their respective communities. To ensure that third party reviews are effective, HLLT further recommends that the towns determine the qualifications reviewers must possess to conduct the reviews and to develop a specific scope of work for conducting the reviews.

Establish manure policies for both Towns

The State threshold for manure management is 50,000 lbs, or 50 horses. Even a few horses can be very significant phosphorus sources for a lake. The ordinance for manure policies for five or more large animals should include manure storage in an area with a roof and designed to prevent any stormwater flow into or out of the storage area. Additionally, appropriate BMP's would be required for field paddock areas to prevent the movement of phosphorus to great ponds.

BMP inspection discussion for both subdivision BMPs and 319 grant BMPs to determine status and whether maintenance is recommended

It was learned through the DEP staff that DEP leadership considers following up on required five-year BMP recertifications to be lower priority, and when the reminders are sent out, those who don't respond see no follow-up. The concept is that if required inspections aren't being followed up at the DEP level, it is water bodies at the local level that suffer the consequences.

There are two kinds of BMP's, those overseen by the State/Town, and those built with EPA 319 grants. The latter have no follow-up at all, and should be subject to some periodic review as well to assure that the protections that were expected by the original design are long lasting for the health of the respective great pond.

3. The applicant shall stake the centerline of the access drive, the corners of any proposed structures, and provide a sketch plan (on an 11"x17" sheet) of the project for each member of the Staff Review Committee at the site walk.

D. Staff Review Committee Meeting

1. The applicant and/or his/her representatives shall be allowed to make a presentation on the application, address any comments made by the staff or public, and present any proposed revisions to address these issues.
2. The Staff Review Committee shall determine whether to hold a public hearing on the application.
 - (a) If a hearing is not scheduled, the Committee may choose to accept comment on the application during any scheduled meeting.
3. If the Committee decides to hold a public hearing, it shall:
 - (a) Notice of the time, place and date of such hearing shall be sent not less than seven (7) days before the hearing to the applicant and to owners of all properties within five hundred (500) feet of the property(s) involved. Owners of properties within five hundred (500) feet of the property under review shall be those listed in the most recent tax records of the Town of Windham. Failure to receive notice shall not invalidate the public hearing.
 - (b) Notice shall also be published in a newspaper of general circulation in the Town of Windham at least two (2) times, and the first date of publication shall be at least seven (7) days prior to the public hearing.
4. The Staff Review Committee shall make findings of fact on the application, and approve, approve with conditions, or deny the application. The Committee shall specify in writing its findings of facts and reasons for any conditions or denial.

(a) (a) The applicant, Chair of the Planning Board, and any abutters who commented on the application or attended the Committee meeting shall be notified in writing of the Committee's action. An approval letter from the Planning Department shall constitute adequate notification.

5. The Staff Review Committee shall require qualified independent geotechnical, hydrogeologic, site evaluation, engineering, and similar professional consulting services to determine adherence to best practices in planning and engineering when any portion of the development is within the direct watershed of a lake most at risk from new development as designated in Chapter 502: Direct Watersheds Of Lakes

Most At Risk From New Development, And Urban Impaired Streams of the Maine Department of Environmental Protection. The project shall be reviewed in compliance with the stormwater standards included in the Maine Department of Environmental Protection Chapter 500 including basic, general, phosphorus, flooding, and other standards. The review shall also ensure compliance with performance standards contained in Sections 812.E, 812.F, 812.H, 812.J, and 812.K of this ordinance.

E. Appeal to the Planning Board

1. Any party aggrieved by the decisions of the Staff Review Committee may seek an appellate review by the Planning Board.
 - (a) The appellant shall have ten (10) days in which to file such an appeal with the Chair of the Planning Board. The appeal shall be submitted in writing to the Planning Department and shall specify why the appellant believes the action of the Staff Review Committee was in error.
2. If an appeal is filed, the application shall be placed on the agenda in accordance with the most current Rules of the Planning Board.
 - (a) The appeal shall be placed on the agenda in the order it was received in relation to other applications filed with the Board.
 - (b) The appellant, applicant, and any interested parties who provided written comments or attended a Committee meeting shall be notified in writing of the Board meeting.
 - (c) The Planner shall provide members of the Board with copies of the application, supporting material, any staff review comments, abutters' comments, and minutes of the Staff Review Committee meeting at which the application was considered.
3. The Board shall review the existing record of materials on an appellate basis and shall determine if the application conforms to the approval criteria and standards.
 - (a) If the Board finds that the application conforms to the standards, it shall approve the application, otherwise it shall deny the same.
 - (b) The Planner shall give notice of the Planning Board's action to the appellant, applicant, and any interested parties who participated in the review.

807 Review Procedures for Major Developments

- A. Pre-application Conference. Applicants for site plan review of a major development are required to schedule a pre-application conference. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, and approval criteria, and to familiarize the Town with the nature of the project.

- (a) Upon receipt of a formal site plan review application, the Planner shall give a dated receipt to the applicant.
 - 4. Within thirty (30) days of the receipt of a formal development review application, the Planner shall review the material and determine whether or not the submission is complete.
 - (a) The Planner shall notify the applicant in writing of this finding. If the Planner determines that the application is incomplete, the notice shall specify the additional materials required to make the application complete and shall advise the applicant that the application will not be considered by the Board until the additional information is submitted to the Board.
 - 5. When the Planner determines that the application is complete, the Planner shall:
 - (a) Notify the Planning Board,
 - (b) Provided Town staff and Town consultants with the Final Plan application material.
 - (c) Place the item on the Planning Board's agenda.
 - (d) A determination of completeness under this subsection does not preclude the Planning Board from requiring the submission of additional materials that it finds are necessary for review of the project.
 - 6. Town staff, including Town consultants, may review the application and make recommendations to the Board. The Planner shall require qualified independent geotechnical, hydrogeologic, site evaluation, engineering, and similar professional consulting services to determine adherence to best practices in planning and engineering when any portion of the development is within the direct watershed of a lake most at risk from new development as designated in Chapter 502: Direct Watersheds Of Lakes Most At Risk From New Development, And Urban Impaired Streams of the Maine Department of Environmental Protection. The project shall be reviewed in compliance with the stormwater standards included in the Maine Department of Environmental Protection Chapter 500 including basic, general, phosphorus, flooding, and other standards. The review shall also ensure compliance with performance standards contained in Sections 812.E, 812.F, 812.H, 812.J, and 812.K of this ordinance.
 - 7. The Planner shall give written notice of the date, time, and place of the meeting at which the application will be considered, to the applicant.
 - 8. The Planning Board shall determine whether to hold a public hearing on the Final Plan.
- G. Final Site Plan, Public Hearing Procedures

- (a) The notice shall be mailed to the applicant and property owners within five hundred (500) feet of the property under review. Notices must be sent at least seven (7) days prior to the meeting.
6. At the first meeting at which the final plan application is considered the Planning Board shall determine whether to hold a public hearing on the application.
7. The Planner shall require qualified independent geotechnical, hydrogeologic, site evaluation, engineering, and similar professional consulting services to determine adherence to best practices in planning and engineering when any portion of the development is within the direct watershed of a lake most at risk from new development as designated in Chapter 502: Direct Watersheds Of Lakes Most At Risk From New Development, And Urban Impaired Streams of the Maine Department of Environmental Protection. The project shall be reviewed in compliance with the stormwater standards included in the Maine Department of Environmental Protection Chapter 500 including basic, general, phosphorus, flooding, and other standards. The review shall also ensure compliance with performance standards contained in Sections 911.C, 911.D.2, 911.H.1, 911.J of this ordinance.

F. Public Hearing on Minor Subdivision Applications

1. If the Planning Board decides to hold a public hearing on an application for subdivision approval, it shall hold the hearing within thirty (30) days after determining it has received a complete application, or within any other time limit that is mutually agreed upon by the Board and applicant.
2. The purpose of the public hearing is to allow the applicant and affected property owners to provide information as part of the record that the Board will use in considering its action on the application. Testimony presented at the hearing should be related to factual information about the application and related submissions and the project's compliance with the review standards and other regulations and requirements of these regulations or other municipal ordinances.
3. The public hearing shall follow the procedures established in the Town of Windham's Planning Board Rules, as amended.

G. Final Action on the Application

1. Within thirty (30) days from the public hearing or within sixty (60) days of determining a complete application has been received, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact on the application, and approve, approve with conditions, or deny the final plan application. The Board shall specify in writing its findings of fact and reasons for any conditions or denial.

which shall not exceed an additional three (3) months. Such extension must be requested by the applicant before the initial six-month period has expired.

4. Review Procedures

- (a) All Preliminary Plan submission requirements shall be submitted to the Planning Department at least twenty-one (21) days prior to the meeting at which the application wishes to be heard by the Board.

- (1) Upon receipt of a Preliminary Plan, the Planner shall give a dated receipt to the applicant.

- (b) Within thirty (30) days of the receipt of a Preliminary Plan submission for a Major Subdivision, the Planner shall review the material to determine whether or not the submission is complete.

- (1) The Planner shall notify the applicant in writing of this finding. If the Planner determines that the application is incomplete, the notice shall specify the additional material required to make the submission complete, and shall advise the applicant that the application will not be considered by the Board until the additional information is submitted.

- (c) When the submission is determined to be complete, the Planner shall:

- (1) Notify the Planning Board that the application is complete,

- (2) Place the item on the agenda for review by the Board, and

- (3) Provide members of the Town's development review staff with the Preliminary Plan application material.

- (4) Require qualified independent geotechnical, hydrogeologic, site evaluation, engineering, and similar professional consulting services to determine adherence to best practices in planning and engineering when any portion of the development is within the direct watershed of a lake most at risk from new development as designated in Chapter 502: Direct Watersheds Of Lakes Most At Risk From New Development, And Urban Impaired Streams of the Maine Department of Environmental Protection. The project shall be reviewed in compliance with the stormwater standards included in the Maine Department of Environmental Protection Chapter 500 including basic, general, phosphorus, flooding, and other standards. The review shall also ensure compliance with performance standards contained in Sections 911.C, 911.D.2, 911.H.1, 911.J of this ordinance.

- (d) At the first meeting at which the application is considered the Planning Board shall determine whether to hold a public hearing on the Preliminary Plan application.