



July 27, 2026

Stephen Puleo, Planning Director
Town of Windham
8 School Road
Windham, ME 04062

Re: PB 26-048
Comments Regarding Proposed Land Use Ordinance Amendments

Dear Steve:

We have reviewed the proposed Land Use Ordinance Revisions contained in Planning Board Item PB-26-048 related to Conservation Subdivisions, Country Estate Subdivisions and the associated Zoning Standards. Based on our experience working within the current ordinance language to design residential subdivisions in Windham, it is our opinion that additional measures should be taken to create appropriate rules and guidance that will result in the best subdivision layouts that will achieve the goals of maintaining rural character, protecting natural resources and creating desirable neighborhood settings for the residents of Windham. The following is a list of our suggestions for the Town's consideration:

Conventional Subdivision as an alternative to Country Subdivision

A Country Subdivision is not a practical method for subdividing land and should be abolished, or at least removed as the only alternative to a Conservation Subdivision in the Farm and Farm Residential zoning districts. A Conventional Subdivision consisting of 60,000 sf lots with 150 feet of road frontage in the Farm Residential Zone, or 80,000 sf lots with 200 feet of frontage in the Farm Zone can be designed and constructed in a manner that will preserve more vegetative buffer between lots and allow for a greater flexibility in building envelopes for each lot. The proposal to only allow Conventional Subdivisions on smaller lots of 5 acres in the Farm Residential Zone or 8 acres in the Farm Zone could potentially encourage improper development of larger lots to be first divided into smaller lots to make them eligible for the Conventional Subdivision option.

Consider an example where a landowner has a 15 to 17-acre lot in the Farm Residential Zone that has not been previously subdivided. The options for subdividing this land would be as follows, and it is clear to see that a Country Subdivision is not a viable option.

1. Conservation Subdivision – construct around 1,200 ft of road and create 12 to 16 lots with 8 to 9 acres of open space.

2. Country Subdivision – the 6-acre minimum lot size does not allow for 3 lots to be created, so the lot can only be divided into two lots which does not constitute a subdivision, so the Country Subdivision standards do not apply and the lot would just be split utilizing conventional standards.
3. Conventional Subdivision - Divide the lot to create a 5-acre lot and a 12-acre lot. Convey the 12-acre lot and then apply for a Conventional Subdivision on the 5-acre lot to divide it into 3 or 4 lots as a Minor Subdivision. The 12-acre lot, whether sold or conveyed to an LLC, can wait 5 years and then do another split and create another 5-acre minor subdivision.

Instead of just allowing conventional subdivisions on smaller lots, I would encourage the Planning Board to create performance standards that would apply to all conventional subdivisions and allow lots to be developed utilizing the conventional subdivision standards regardless of lot size.

Conservation Subdivision Building Envelope

The proposed ordinance creates a definition of a Building Envelope, but includes the language “site improvements and associated development” as being required to be located within the building envelope, which is somewhat vague. It is still unclear to me if the land outside of the building envelope is intended to be a no-disturbance area. With lot sizes of 20,000 sf in the Farm Residential zone and 75 feet of road frontage, it is nearly impossible to build on the lots without disturbing land outside of a Building Envelope which is defined as being located at least 75 feet from all primary conservation areas and at least 40 feet from all secondary conservation areas. I would recommend that the building envelope only regulate placement of structures, and not land disturbance which could also include landscape enhancements.

Definition of Primary Conservation Areas

The proposed revisions remove forested wetlands, small isolated freshwater wetlands, drainage channels and roadway right-of-way from the definition of a Primary Conservation Area. We recommend that steep slopes also be removed from Primary Conservation Areas since they can be reasonably built over if proper soil stabilization methods are utilized (riprap, walls, etc.) and they provide no essential environmental benefit.

There is also a rule that reads “Buffers that are required by ordinance along these protected resources shall also be considered primary conservation areas.” The interpretation of this ordinance could result in excessive area of the property being classified as Primary Conservation Areas if the 75-foot buffers around wetlands, floodplains and steep slopes are also classified as Primary Conservation Areas, which would make it extremely difficult to meet the Minimum Open Space requirements and site Building Envelopes within the lots.

Secondary Conservation Areas

The ordinance does not create a precise method for identifying Secondary Conservation Areas on a property, but it requires precise setbacks to those areas. The ordinance attempts to define specific widths and distances from things that are difficult to define such as a “wildlife travel corridor”, “landmark”, “unfragmented habitat blocks”, “recreational trail corridor”, “fields”, “aquifer recharge areas”, and “deer yards”. As currently proposed, the ordinance would require all Building Envelopes to be located 40 feet from all Secondary Conservation Areas as an unwaivable dimensional standard, which is not practical.

Alterations to Natural Resources

The ordinance only allows the alteration of Primary and Secondary Conservation areas, along with their associated buffers and setbacks, for the construction of stormwater facilities, road crossings, and water dependent uses such as boat ramps or docks. The ordinance prohibits the disturbance of any land that is classified as a Primary or Secondary Conservation areas, including the associated buffers and setbacks, for any lot development or the construction of common amenities. Due to the broad definition of Secondary Conservation Areas and the excessive setback dimensions to both Primary and Secondary conservation areas, it is unreasonable to impose this restriction on a Subdivision and expect that the lots will be as functional as they could be otherwise.

Open Space to be considered for meeting the minimum amount of open space

The ordinance states that Open Space areas less than 50 feet in the smallest dimension or less than 10,000 square feet in size are not allowed to be counted towards the minimum amount of open space provided for the project. This rule creates an unreasonable restriction that creates difficulty when trying to meet the minimum open space requirements, which are now proposed to be unwaivable.

The ordinance states that the perimeter buffer yard “shall only count towards the required project open space if the area is a primary or secondary conservation area, or if additional land is required after to meet the minimum area percentage requirements for open space after primary and secondary conservation areas have been incorporated into the open space.” I believe the last part of this rule makes the first part irrelevant, so this standard should be deleted.

Open Space Requirements for Conservation Subdivisions

It would seem to be more appropriate for the Planning Board to take a general policy stance on not waiving Open Space minimum requirements, as opposed to adding language in the Ordinance that states the Open Space requirements are specifically “non-waivable”. The Planning Board is under no obligation to grant any waivers, so it would seem unnecessary to remove this option from the Planning Board’s authority for one particular ordinance.

The proposal as presented would still require more than 50% of the gross land area to be dedicated as open space. In the Farm District, the minimum amount of open space would be 100% of Primary Conservation Areas and all associated buffers from those resources, added to 50% of whatever land is left outside of the Primary Conservation areas. This will always add up to more than 50% of the gross land area, and often substantially higher. It is unlikely that the open space portion of a subdivision that preserves 45% as open space would function much differently than the open space portion of a subdivision that preserves or 60% as open space, but the layout and functionality of the lots will be completely different. The Subdivision that has 45% open space will likely have more traditional shaped lots that place the building envelopes on the most suitable areas of the site, while the subdivision that is mandated to preserve 60% open space will have many narrow and odd-shaped lots that are difficult to build on with very tight building windows and often very small outside spaces for the homeowners. In the end, the homeowners will be better served having a little more land that they own around their house, and a more traditional shaped lot with a little extra road frontage to work around site features that need to be preserved or protected. The extra 5% to 15% of open space will go virtually unnoticed by the residents of the subdivision and the neighborhood at large.

Closure

The primary issue with this ordinance is that the language and format is more typical of a Purpose Statement or Comprehensive Plan for Subdivisions in a rural area. When the idea of an ordinance actually becomes an ordinance, it needs to be clear and measurable so that the rules can be adequately implemented and enforced, with predictable outcomes for the Town and Landowners. Too much of this ordinance is rooted in ideals and preservation, and more emphasis needs to be on the standards for responsible development.

I hope you consider my comments as you deliberate and make recommendations to the Town Council for these ordinance changes.

Sincerely,

DM ROMA CONSULTING ENGINEERS

Dustin Roma

Dustin M. Roma, P.E.
President