

Town of Windham

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MEMO

DATE: February 10, 2016

TO: Windham Town Council
THROUGH: Tony Plante, Town Manager
FROM: Ben Smith, Planning Director *BWS*
Cc: Natalie Burns, Town Attorney
Doug Fortier, Director of Public Works
Heather McNally, Director of Code Enforcement
RE: Options for Private Road improvements

On January 5, the Town Council held a special meeting to discuss issues associated with private roads in Town. After discussing issues that have arisen in Windham and reviewing ordinance language regarding private road construction and development from several other communities, consensus was reached on the most pressing of the range issued discussed. Specifically, the Town Council has directed staff to present the Council with options to address public safety issues presented by new development on existing grandfathered private roads. These safety issues include:

- inadequate road width for vehicles to pass safely,
- inadequate depth of road gravels that could lead to impassable conditions related to rutted and muddy roads,
- lack of adequate water supplies for firefighting purposes,
- poor maintenance of stormwater infrastructure such as culverts and ditches which could impact the integrity of the road,
- inadequate winter maintenance, which includes plowing, salting and sanding,
- lack of connections to the existing road network which could provide alternative or emergency access to homes on private roads.

Staff met with Town Attorney Natalie Burns on January 15 to discuss the issue and a list of options was generated as follows, listed below in no particular or prioritized order. Note that combinations of these interventions can be chosen for further ordinance development if desired.

1. Private Road Length

a. Limit Private Road Length

There is currently no length limit for private roads created after October 2009, as long as there is a hammerhead turnaround provided every 1,000 feet (pages 5-38 and 5-39).

b. Require additional access points if Private Road is over the length limit

Connectivity requirements are currently based on the number of lots on a single road. Wording in Section 500 should be clarified to remove reference to “subdivision” in the section pertaining to Private Roads not Part of a Subdivision Application (pages 5-39 and 5-40).

2. Require new lots to have frontage on road that meets Private Road standards

This could require individual house lots built along an existing Private Road to upgrade the portion of road providing frontage for that lot, as opposed to full length improvements. The Town might give an applicant the opportunity demonstrate, or have the Town Engineer verify, that any given existing Private Road or portion of a Private Road, meets the standards prior to the issuance of any permits.

3. New Private Roads or extensions of existing Private Roads could be...

a. Limited to connecting to Roads that meet a new lower standard for grandfathered streets

This could be either a new Road Type in addition to the 5 types listed in Appendix B, or it might be a subset of the existing Private Road standards.

b. Limited to connecting to paved streets

This is a version of meeting a lower standard than is listed in the ordinance today, but would require the paving of the existing Private Road if not already paved. The Town should consider the advantages and disadvantages of requiring a substandard road base to be paved versus requiring a well-built gravel surfaced road.

c. Limited to streets that meet standards existing Private or Public Street standards, as applicable

The Town could require existing roads, whether public or private, to meet today's standards prior to any extensions or new rights-of-way connecting to them.

d. Limited to connecting to Public Streets

This would mean no more Private Roads off Private Roads.

e. Not allowed in Windham

Prohibiting the practice of building Private Roads would likely assist most in avoiding the maintenance and title issues that are often seen with Private Roads in the community. Additional thought should be given to how this would work when there are one or more Private Roads between the new road or road extension and the nearest Public Street.

4. Remove or amend the Backlot standards in Section 500
 - a. Today, a 50-foot right-of-way is required for the extension of a right-of-way providing access to a backlot. However, it can take the form of a 50-foot access easement over private property, rather than having the road in its own dedicated right-of-way. This situation has led to title and maintenance issues with roads in town.
5. Amend the existing Street Standards so that
 - a. It is clear that grandfathering of existing Private Streets only applies to Private Streets in their existing condition; upgrades could be required if new development is proposed
 - i. on an extension of the right-of-way, or on a new right-of-way that gets access from that street, or
 - ii. along the length of the existing right-of-way

A “grandfathered” building or use is one that does not meet the existing standards but was legally established prior to the existing standards. The premise behind grandfathering is that it is not fair to compel someone to make changes to structures or uses when they were playing by the rules of the time. However, once the use changes or the building is modified, the owner must ensure that the building or use meets current standards. This is not how it has worked with Private Roads in Windham. The practice since October 2009, has been to require no upgrades to a road that preexisted that date, even if the amount of development using the road has changed. The ordinance could be changed to make the expectation explicitly clear that even Private Roads (or a subset of Private Roads) that existed prior to October 2009, must be upgraded to meet today’s standards if the amount of development on that road or road network increases.
 - b. All Private Streets must be designed by a Professional Engineer or have to go to the Planning Board for review and be subject to performance guarantees and construction observation.

Currently, Private Roads that are not part of a subdivision must be certified by a design professional that the road has been constructed in general conformance with the plans approved by the Code Enforcement department (page 5-37 and 5-38).

Staff looks forward to a discussion on the range of options provided. The goal of the discussion should be to select the option or options to more fully develop with proposed ordinance language, and to determine who should be responsible development of that ordinance language. Options for the group to carry out the work could include a municipal staff team, an existing committee like the Land Use Ordinance Committee, or a new ad hoc committee with membership to be determined. Any committee assigned this work will require staff support.