



PLANNING BOARD MEMO • AMENDED MAJOR SUBDIVISION

DATE: November 20, 2024

TO: Windham Planning Board
FROM: Steve Puleo, Planning Director
Cc: Tim Michaud, Terradyn Consultants, LLC (Agent)
Cairra Chase, Blessed by Four, LLC, John F. Chase Trust (Applicant)

RE: #11-06 – Amended Major Subdivision – Canada Hill Second Amended Subdivision –
Highland Cliff Road – John F. Chase Trust
Planning Board Meeting: November 25, 2024

Overview –

The proposed amendment to the Canada Hill Subdivision focuses on completing unbuilt stormwater management features from the 2012 approval, such as berms, level spreaders, and culvert repairs. It also includes modifications to an underdrained filter pond to prevent overflow onto Highland Cliff Road.: Tax Map: 4; Lots: 9 - 1, 2, 3, 8, 10, 11, 12, and 13; Zone: Farm (F) zoning districts; Zone: Farm (F) zoning district and located in the watershed.

A Development Review Team is not required for an amended subdivision. Comments received during the meeting are reflected in the memo below.



Figure 1. Aerial view of the subject parcel relative to surrounding properties and street network.

BACKGROUND:

The Canada Hill Subdivision consists of a 15-lot residential subdivision located at the northern end of the intersection of Canada Hill Road and Highland Cliff Road. The development includes 13 single-family residential lots and two open space lots. The applicant, Blessed by Four, LLC, received subdivision approval on June 25, 2012, and was recorded at the Cumberland County Registry of Deeds (CCRD) on April 30, 2015, in Plan Book 215 and Pages 140 and 141. The developer had created the required Homeowners' Association

All the single-family homes are owned by individual residents. Chase Custom Homes and Finance, Inc. (CCHFI) is currently the owner of the fee within the rights-of-way (ROW) Highland Cliff Road. In 2022, CCHFI assets went into John F. Chase Trusts due to the death of John Chase, the owner of CCHFI. In 2012, Blessed by Four, LLC, a subsidiary of CCHFI, became the owner of the plan approval and MeDEP. The development's MeDEP Stormwater Permit Order issued in May 2012 permitted a stormwater management system that consisted of a roadside swale, directing runoff to an under-drained soil filter (UDSF), a wet pond, and four (4) wooded meadow buffers located on Lots #8, 10, 11, and 13.

At the time of Mr. Chase's death, there were several "punch-list" items (see pages 2 through 4 in the attached application: [#11-06_AMD_MJR_SUB_APP_CanadaHill_103024.pdf](#)) of the approved site improvements that were not complete, such as final pavement application of Highland Cliff Road and 14 uncompleted stormwater BMPs, including level spreader for vegetative buffers. Due to the length of time the developer was taking to complete the subdivision-approved improvements, the Town requested a performance guarantee from the developer's bank to complete the construction of Highland Cliff Road. The proposal includes addressing the punch list items with minor pond modifications to the existing UDSF located within the existing drainage easement area on Lot 1 to correct stormwater overtopping the existing pond and spilling onto Highland Cliff Road. The modification will extend to the pond's filter bed, riprap spillway, and maintenance road in the open space next to Lot 1.

AMENDED SUBDIVISION REVIEW

PLEASE NOTE: The staff memo is a reference guidance document, and suggested topics for board discussion are listed; ~~the strikethrough text is items for the final review; bold and italic text represent unaddressed existing and/or new staff comments; or plain underlined text are items that have been addressed by the applicant; and italic text is for information or previously reviewed and/or approved items.~~

Staff Comments:

1. Complete Application: N/A

MOTION: ~~[I move] the Amended Major Subdivision application for project #11-06 Canada Hill Second Amended Subdivision project is found complete in regard to the submission requirements based on the application checklist, but the Planning Board retains the right to request more information where review criteria are not fully addressed.~~

2. Waivers:

Limitation of Waivers. The granting of a submission requirement waiver or site waiver may not conflict with, nor negate, any State Statutory requirements for the subdivision of land. Per [§120-908B\(2\)](#). The Board is not required to use any criteria in making its determination on the granting of a waiver of the submission requirements. Per [§120-908C](#). The Planning Board may waive the requirements of [§120-911](#) Performance and Design Standards when the applicants demonstrates that the performance standards of these regulations and the criteria of the subdivision statute have been or will be met, and the public health, safety, and welfare are protected and provided the waivers do not have the effect of nullifying the intent and purpose of the land use ordinance. In granting site waivers, the Planning Board shall utilize the criteria in [§120-908C\(2\)](#).

No waiver requests

3. Public Hearing: The planning board shall schedule with applicant a public hearing .
4. Site Walk: The planning board shall determine if a site walk is necessary.

Findings of Fact, Conclusions, and Conditions of Approval for the Windham Planning Board:

MOTION: [I move] the Amended Major Subdivision application for the #11-06 Canada Hill Second Amended Subdivision identified on Tax Map: 4; Lot: 9 - 1, 2, 3, 8, 10, 11, 12, and 13; Zone: Farm (F) and located in the watershed is to be **(approved with conditions/denied)** with the following Findings of Fact, Conclusions, and Conditions of Approval.

FINDINGS OF FACT

Jurisdiction: The Mystic Woods project is classified as an Amended Major Subdivision, which the Planning Board is authorized to review and act on by [§120-913\(A\)](#) of the Town of Windham Land Use Ordinance.

Title, Right, or Interest: The applicant has submitted a copy of a Quitclaim Deed Without Covenant between People's United Bank and Chase Custom Homes and Finance, Inc., dated May 25, 2011, and recorded on June 1, 2011, at the Cumberland County Registry of Deeds in Book 28733 and Page 118. The Planning Board approved the final plan on June 25, 2012 and the Canada Hill Subdivision was recorded at the Cumberland County Registry of Deed (CCRD) on April 30, 2015 in Plan Book 215 and Pages 140 and 141. **Missing deeds for the property owners of Tax Map: 4; Lot: 9 - 1, 2, 3, 8, 10, 11, 12, and 13**

ARTICLE 4 ZONING DISTRICTS

- As shown on the Town of Windham [Land Use Map](#) approved by the Town Council, date April 9, 2024, Tax Map: 4; Tax Map: 4; Lots 9 - 1, 2, 3, 8, 10, 11, 12, and 13.
- The property is located in Farm (F) zoning district.

ARTICLE 5 PERFORMANCE STANDARDS

§120-541 – Net residential area of acreage

B) The net residential area or acreage of a lot proposed for subdivision, as defined, shall be calculated by subtracting the eight (8) items listed in the subsection from the gross acreage of a lot and dividing the resulting net residential area of the parcel by the net residential density standard of the appropriate zoning district (see [Article 4](#), Zoning Districts). The eight (8) deductions shall be subtracted from the gross acreage of the lot.

§120-911 - SUBDIVISION PERFORMANCE STANDARDS

§120-911A – Basic Subdivision layout

- (1) The property has 28.07 acres or 1,222,729 SF, exceeding the minimum lot size in the Farm (F) zoning district, per [§120-406E\(1\)](#).
- (2) The applicant **has shown** where all the existing subsurface wastewater disposal systems, wells, and underground electric and communications are installed.
- (3) The applicant **has shown** the locations of the subdivision monuments based on survey conducted in December 2021. The applicant has permanently marked forested and meadow stormwater buffers in the development site.

§120-911B – Sufficient water; water supply.

- All lot are served by individual wells.

§120-911C - Erosion Control and sedimentation control

- (1) The applicant **has provided** a soil erosion and sediment control plan showing the use of erosion and sediment control best management practices (BMPs) at the construction site consistent with the minimum standards outlined in the Maine DEP Stormwater Rule Chapter 500 Appendix A – Erosion and Sediment Control, Appendix B – Inspections and Maintenance, Appendix C – Housekeeping. Erosion and Sedimentation Control. BMPs shall be designed, installed, and maintained in accordance with the standards contained in the latest revisions of the following Maine DEP documents.
 - Requirements for inspection and maintenance of the stormwater management systems during and after construction are provided in the project specific Inspection and Maintenance of Stormwater Facilities Plan with the Me DEP Stormwater Amendment application.
 - The applicant has developed a Post-construction Stormwater Management System Maintenance Plan that outlines anticipated inspections and maintenance for the erosion and sedimentation controls and stormwater management devices for the project was included in the MeDEP Stormwater permit amendment.
- (2) The applicant's engineer has provided a statement for the Maine licensed professional civil engineer preventing soil erosion and sedimentation from entering water bodies, wetlands, and adjacent properties.
- (3) **The applicant has considered** the topsoil as part of the subdivision is not to be removed from the site.
- (4) Except for normal thinning and landscaping, existing vegetation shall be left intact to prevent soil erosion. The Board may require a developer to take measures to correct and prevent soil erosion in the proposed subdivision.

§120-911D – Sewage disposal

- All lots are severed by individual subsurface wastewater disposal systems.

§120-911E – Impact Natural Beauty, Aesthetics, Historic Sites, Wildlife Habit, Rare Natural Areas, or Public Access to the Shoreline

(1) State agencies have provided letter to the applicant with information that no significant wildlife/fisheries habits, historic, or natural areas are located on or with the immediate vicinity of the site.

- The majority of the open space will remain intact, preserving the natural beauty and aesthetics.

(2) The applicant has provided reservation or dedication and maintenance of open space, common land, facilities such as the stormwater management system, among others, and service in the form of homeowner's association (HOA) documentation. Although, the applicant intends to offer Highland Cliff as a public street, per §120-911M(6).

§120-911F – Conformance with Land Use Ordinances

Comprehensive Plan:

- The plan does meet the goals of the 2017 Comprehensive Plan.

Land Use Ordinance:

- There is a net residential density in the Farm zoning district of 60,000 SF.

Subdivision Ordinance

- The subdivision plan was approved by the Planning Board in 2012.
- Standard notes, the standard conditions of approval, and approved waivers are not shown on the plans or the recording plan.
- A digital transfer of the subdivision plan data has not been submitted for inclusion with the Town's GIS as well as drawings file with the final plan application.

§120-911G – Financial and Technical Capacity

(1) For the amended plan review, the applicant has estimated the cost of the modification of stormwater systems at \$85,500.00. The applicant is in good standing with Norway Saving and has shown a settlement agreement with appropriate borrowing capacity.

(2) The applicant has provided technical capacity by contracting Terradyn Consultants, LLC. to prepare civil engineering plans and permit applications. Terradyn provides permitting technical assistance to developers and contractors for commercial, residential, and industrial developments.

§120-911H – Impact on Ground Water Quality or Quantity

- The states the proposed modification will not negatively impact the Ground Water Quality or Quantity.

§120-911I – Floodplain Management

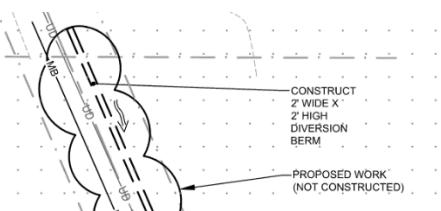
- The subject property is within a mapped FEMA Floodplain boundary of the Small Brook and does not affect the subdivision Net Residential Density, per §120-541.

§120-911J – Stormwater

- The engineer representing the applicant submitted a Stormwater Amendment application to the Maine Department of Environmental Protection (MeDEP) for the proposed stormwater modifications in accordance with Chapter 500 of the Stormwater Management Law. The engineer indicates that a Site Location of Development Act permit application was filed on behalf of CCHFI for the second phase of the Canada Hill Subdivision on May 17, 2022. The review process for this application is currently on hold at the request of the applicant, and it is expected to resume based on the status of the current stormwater permit amendment application.

Town Engineer

I have a few comments on the Canada Hill Amended Subdivision Plan as detailed below:

- There are a couple of notations on the plan set (see example below) where it says “construct.....”, but then there’s another note saying proposed work (not constructed). Based on some of the other explanation in the application, I think these items were not previously constructed and the Applicant doesn’t intend to construct them as part of the Phase I Plan Amendment or Phase 2 Application. The way its presented on the plans is confusing and should be clarified.
- 

The proposed plan includes the reconstruction/enlargement of the existing underdrain soil filter in response to heavy rain events which have exceeded the capacity of the as-built UDSF and flooded onto the roadway. The hydraulic analysis performed indicates that the 24-hr, 25-yr peak flows from the proposed redesign of the UDSF will be less than those from the existing, as-built UDSF, and that based on modeled elevations will be released via the broad-crested weir (riprap emergency overflow) rather than onto the road. In order to provide some surety that the UDSF will handle peak stormwater flows without overtopping onto the road even if the 4" underdrain is plugged, the model should be run with zero outflow from the underdrain. Please confirm whether the proposed plan includes installation of new underdrain, filter and drainage media or just slightly enlarging the USDF? Please also confirm what the as-built elevation of the UDSF berm is adjacent to the Highland Cliff Road.

The application acknowledges that the two diversion berms and three level lip spreaders proposed to be constructed at the rear of Lots, 8,9,10 and 11 were not built before these lots were sold, and based on this the percentage of impervious area treated by the wet pond, UDSF or buffers is only 90% compared to the 95% required under Ch. 500 General Standards. The application indicates that 3,000 ft² more area needs to be treated to get the percentage up to 95% and that to make up for the deficiency they proposed to treat an extra 3,000 ft² of area in their proposed Phase 2. Based on my review of the plans and analyses conducted by the Applicant, its not entirely clear that 3,000 ft² is an

accurate number to reflect what isn't being treated in Phase 1. It would be helpful if the Applicant could provide an overlay map showing what they are assuming for as-built impervious area in Phase 1 to confirm that 3,000 ft² is an accurate number

- The responsibility of maintaining the stormwater management system will be assigned to the future Homeowner's Association (HOA), as per §120-911N. The applicant has not provided transfer the stormwater permit to the HOA.

§120-911K – Conservation Subdivision

- (1) The subdivision was originally approved before conservation subdivision

§120-911L – Compliance with Timber Harvesting Rules

- The applicant stated the subdivision will not involve timber harvesting activity.

§120-911M – Traffic Conditions and Street

- No new building lots are being created with proposed stormwater modifications.

§120-911N – Maintenance of common elements.

- The applicant has provided HOA documentation with the amended plan review.

CONCLUSIONS (For Final Plan Review)

1. The development plan 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 subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision.
5. The proposed subdivision will not 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 subdivision will provide adequate sewage waste disposal.
8. The proposed subdivision conforms to a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan.
9. The developer has provided the adequate financial capacity to meet the standards of this section.
10. The proposed subdivision will not alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.
11. The proposed subdivision will provide for adequate stormwater 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.~~
- ~~14. All freshwater wetlands within the proposed subdivision have been identified on the plan.~~
- ~~15. Any river, stream, or brook within or abutting the subdivision has been identified on any maps submitted as part of the application.~~
- ~~16. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, or great pond as these features are defined in Title 38, section 480-B, none of the lots created within the subdivision has/do not have a lot depth to shore frontage ratio greater than 5 to 1.~~
- ~~17. The long term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.~~
- ~~18. For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will/will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.~~
- ~~19. The timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14.~~

CONDITIONS OF APPROVAL (REQUIRED)

1. Approval is dependent upon and limited to the proposals and plans contained in the application dated October 30, 2024 as amended TBD and supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board. Any variation from such plans, proposals, supporting documents, and representations is subject to review and approval by the Planning Board or the Town Planner in accordance with [§120-913](#) of the Land Use Ordinance.
2. The signed subdivision recording plan shall be recorded three years for the date of the final approval the Cumberland County Registry of Deeds (CCRD).
3. In accordance with [§120-914B\(5\)](#) of the Land Use Ordinance, the Construction of improvements covered by any subdivision plan approval shall be completed within two years of the date upon which the performance guarantee is accepted by the Town Manager. The developer may request a one-year extension of the construction completion deadline prior to the expiration of the period. Such request shall be in writing and shall be made to the Planner. The Town Manager may require an update to the schedule of values and the amount of the guarantee when accepting an extension of the construction period. If construction has not been completed within the specified period, the Town shall, at the Town Manager's discretion, use the performance guarantee to either reclaim and stabilize or to complete the improvements as shown on the approved plan.
4. Prior to pre-construction meeting with Town staff, the applicant shall obtain Soil and Erosion Control permits for each property, with the consent of the property owner, from the Town of Windham Code Enforcement Office and provide the permits to the Director of Planning.