

Town of Windham

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MEMO

DATE: June 13, 2014

TO: Windham Town Council

THROUGH: Tony Plante, Town Manager

FROM: Amanda Lessard, Planner *AL*

Cc: Ben Smith, Director of Planning
Heather McNally, Director of Code Enforcement
Windham Planning Board
Windham Board of Appeals

RE: Planning Board Recommendation - Ordinance Amendments - Application
Submission Deadlines

At the Planning Board's meeting on June 9, 2014, a public hearing was held on the following proposed amendments to the submission deadlines in Chapter 140 Land Use Ordinance and Chapter 141 Wireless Telecommunications Facilities Siting Ordinance:

To reduce the submission deadline from thirty (30) days to twenty-one (21) days prior to the meeting date the applicant wishes to be heard by the Planning Board.

- §100 – General, Section 108 Conditional or Contract Zoning
- §800 – Site Plan Review, Section 806 Review Procedures for Minor Developments and Section 807 Review Procedures for Major Developments
- §900 – Subdivision Review, Section 906 Review Procedures for Minor Subdivisions and Section 907 Review Procedures for Major Subdivisions

To increase the submission deadline from fourteen (14) days to twenty-one (21) days prior to the meeting date the applicant wishes to be heard by the Board of Appeals or Planning Board.

- §500 – General, Section 514 Conditional Use
- Wireless Telecommunications Ordinance Section 6.2 Application Requirements

The purpose for the proposed amendments is to have a consistent submission deadline for applications that require staff review prior to Board meetings. The reduction in the submission

deadline would allow an applicant that has a current application before the Board to submit additional information and have the application continued at a meeting sooner than is currently allowed by the ordinance. The extension of the submission deadline would allow for sufficient time for staff to review the complex submission materials that are filed with wireless telecommunication facility and conditional use applications and comply with notification requirements of the ordinance. No changes are proposed to extend the fourteen (14) day submission deadline for appeal or variance applications as staff review is typically limited to items found in the record.

One member of the public spoke against the proposed zoning amendment and asked the Board to consider a fourteen (14) day submission deadline.

During Planning Board discussion, it was noted that a reduction from thirty (30) days to fourteen (14) days would be a drastic change. It was also noted that for an application currently under review by the Board a fourteen (14) day submission deadline would result in an application being placed on the same agenda as a (21) day submission deadline but would allow for less staff review time.

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

To recommend to the Town Council approval of the proposed application submission deadline amendments to the Land Use and Wireless Telecommunications Facilities Siting Ordinances.

Motion: Scott McDonald
2nd: James Hanscom

Vote: 7-0

- (b) How the proposal is in conformance with the Town's most recently adopted Comprehensive Plan;
 - (c) The current zoning district(s) applicable to the property.
 - (d) The proposed conditions or restrictions regarding the use and/or development;
 - (e) Land uses on abutting property and how they relate to the proposed use.
2. Application forms, as required;
 3. A non-refundable application fee in such amount(s) as the Town Council may from time to time establish in the fee schedule, see (*Appendix A, Fee Schedule*);
 4. A consulting and review fee in such amount as the Town Council may from time to time establish in the Fee Schedule. The fee shall be placed in escrow with the Town when the application is filed with the Planning Board. The fee shall be used by the Town in accordance with Subsection 810.C;
 5. Evidence of right, title or interest in the property proposed for contract or conditional zoning;
 6. A copy of the tax map on which the property is located.
 7. A draft contract agreement, if the Town Staff, Planning Board or Council determines it to be necessary.
- D. Rezoning Procedure. This subsection governs the procedure to be followed after the Town has received a conditional or contract zone application.
1. Town Council. All required submission material shall be submitted to the Windham Town Council at least ~~thirty (30)~~twenty-one (21) days prior to the meeting at which the applicant wishes to be heard by the Council.
 - (a) The Town Council may choose to send the application to the Planning Board with, or without, suggested amendments.
 2. Planning Board. All required submission material shall be submitted to the Windham Planning Board at least ~~thirty (30)~~twenty-one (21) days prior to the date at which the petitioner/property owner wishes to be heard by the Board.
 - (a) The Planner, within fourteen days, shall determine if the application is complete. An application shall not be placed on the Planning Board's agenda until it is found to be complete.
 3. Public Hearing. The Planning Board shall hold a public hearing.
 - (a) Notice Content. The public hearing notice shall contain the following information:

514 Conditional Use

- A. The Reviewing Authority shall permit as a conditional use any matter so referred to it by other provisions of this Ordinance, provided that the standards of this Section are met.
1. Conditional use permits run with the land and thus pass from one owner of the property to the next unless the approval is limited to the petitioner by the Review Authority.
- B. Reviewing Authority
1. Board of Appeals. The Board of Appeals shall serve as the Review Authority for all conditional use applications, except where the application is reviewed by the Planning Board.
 2. Planning Board. The Planning Board shall serve as the Review Authority for all conditional use applications that are submitted in combination with the following:
 - (a) A Minor Site Plan Review application under Section 800 Site Plan Review,
 - (b) A Major Site Plan Review application under Section 800 Site Plan Review, or
 - (c) A Minor or Major Subdivision Review application under Section 900 Subdivision Review.
- C. Submission Timelines
1. Applications to the Board of Appeals shall be filed at least ~~fourteen (14)~~ twenty-one (21) days prior to the meeting at which the applicant wishes to be heard.
 2. Submissions to the Planning Board shall meet the submission deadlines for subdivision or site plan review applications, as appropriate (*See Sec. 800 and 900*).
- D. Submission Requirements. The petitioner shall submit the following information to the proper Review Authority.
1. A cover letter describing the requested conditional use and location of the property.
 2. Written statements describing how the conditional use will meet the review criteria of this Section.
 3. Diagrams and/or photographs demonstrating that the conditional use will meet the review criteria of this Section. If the information is contained in either a Site Plan or Subdivision Application, it must be referenced in Subsection 514.D.1., above.
 4. Proof of right, title or interest in the property on which the conditional use will be located.
 5. An “Ability to Serve” letter from the Portland Water District if public water or sewer is to be supplied to the conditional use.
 6. Documentation of the applicant’s technical capacity to implement the proposed use.
- E. Application Fees
1. A non-refundable application fee as established by the Town Council.
 2. A Peer review escrow deposit as established by the Town Council,
 - (a) Unexpended peer review escrow funds shall be returned to the applicant.

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)~~twenty-one (21) days prior to the meeting at which the applicant wishes to be heard by the Staff Review Committee.
 2. Within thirty (30) working days of receipt of an application for a Minor Site Plan, the Planner shall review the material to determine whether or not the submission is complete.
 - (a) If submission requirement waivers are requested, the Planner shall review the requests and make a recommendation to the Staff Review Committee.
 - (b) The Planner shall notify the applicant and the Chair of the Planning Board in writing of the finding of completeness. If the Planner determines that the application is incomplete, the notice shall specify the additional material required to

1. The sketch plan shall be completed prior to the preparation and submission of a Final Site Plan application and supporting documentation.
2. The Planning Board shall review the Sketch Plan with the applicant and shall authorize the submission of the Final Plan application when the Sketch Plan review is complete.

D. Sketch Plan Review Procedures

1. All Sketch Plan submission requirements shall be submitted to the Planning Department at least ~~thirty (30)~~twenty-one (21) days prior to the meeting at which the application wishes to be heard by the Board.
2. Site Walk. The Planning Board may visit the site to observe existing conditions, generally confirm the information submitted and assess the development proposal. (*See "Rules of the Windham Planning Board"*)
 - (a) The Board may schedule the site walk either before or after the first meeting at which the application is considered.
 - (b) The applicant shall prepare the property for the site walk by staking the centerline of any proposed street or access points and the corners of all proposed buildings. The applicant shall also provide each Board member with a copy of the plan on an 11"x17" sheet at the site walk.
 - (c) The Board may decide not to hold, or postpone, a site walk when the site is snow covered.
 - (1) Notice of the site walk shall be published in a newspaper of general circulation, mailed to the applicant and property owners within five hundred (500) feet of the property under review. Notices shall be published and/or sent at least seven (7) days prior to the site walk.

E. Review of the Sketch Plan. The review of the Sketch Plan shall be informational and shall not result in any formal approval or disapproval of the project by the Planning Board.

1. The applicant and property abutters shall be notified of the time, date, and place of the Board meeting at which the sketch plan will be reviewed.
 - (a) The notice shall be published in a newspaper of general circulation, mailed to the applicant and property owners within five hundred (500) feet of the property under review. Notices shall be published and/or sent at least seven (7) days prior to the meeting.
2. The Board shall review the submission to determine if the information provides a clear understanding of the site and identifies opportunities and constraints that help determine how it should be used and developed.

- results of water quality tests as performed for, or by, the State of Maine Department of Health and Welfare.
- (h) Maine Department of Health and Human Services if an engineered sewage collection and treatment system is to be utilized.
 - (i) The Plumbing Inspector if individual septic tanks are to be installed by the builder.
 - (j) U.S. Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required.
 - (k) Written approval of any proposed street names from the Town of Windham E911 Addressing Officer.
2. If the plan identifies any areas listed on or eligible to be listed on the National Register of Historic Places, the applicant shall submit a copy of the plan and a copy of any proposed mitigation measures to the Maine Historic Preservation commission prior to submitting the final plan application.
 3. All Final Plan submission requirements shall be submitted to the Planning Department at least ~~thirty (30)~~ twenty-one (21) days prior to the meeting at which the application wishes to be heard by the Board.
 - (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.

906 Review Procedures for Minor Subdivisions

- A. Preapplication Conference. Applicants for a Minor Subdivision are encouraged to schedule a preapplication conference with the Town development review staff. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, and approval criteria, and to familiarize Town staff 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. Information Required. 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. The applicant should be prepared to discuss the following:
 - (a) The proposed site, including its location, size, and general characteristics,
 - (b) The layout of the proposed subdivision and potential constraints,
 - (c) Any issues or questions about existing municipal regulations and their applicability to the project, and
 - (d) Any requests for waivers from the submission requirements in Section 910. (*See Sec. 908 Waivers*)
- B. Sketch Plan
1. The sketch plan must be completed prior to the preparation and submission of a Final Minor Subdivision Plan application and supporting documentation.
 2. The Board shall review the Sketch Plan with the applicant and shall authorize the submission of the Final Plan application when the Sketch Plan review is complete.
- C. Sketch Plan Review Procedures
1. All Sketch Plan submission requirements shall be submitted to the Planning Department at least ~~thirty (30)~~ twenty-one (21) days prior to the meeting at which the application wishes to be heard by the Planning Board.
 2. Within thirty (30) days of the receipt of a Sketch Plan submission for a minor subdivision, the Planner shall review the material to determine whether or not the submission is complete.

1. All Final Minor Subdivision Plan submission requirements shall be submitted to the Planning Department at least ~~thirty (30)~~ twenty-one (21) days prior to the meeting at which the application wishes to be heard by the Board.
 - (a) Upon receipt of a formal subdivision review application, the Planner shall give a dated receipt to the applicant and shall notify by first-class mail all property owners within five hundred (500) feet of the parcel on which the proposed development is located. The notice shall specify the location of the proposed development and provide a general description of the project.
2. Within thirty (30) days of the receipt of a formal subdivision 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. These steps, except the notification requirements, shall be repeated until the application is found to be complete.
3. When the Planner determines that the application is complete, the Planner shall:
 - (a) Notify the Planning Board that the application is complete,
 - (b) Notify the applicant in writing of this recommendation,
 - (c) Provide members of the Town's development review staff with the final plan application material.
 - (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.
4. Prior to consideration of the application by the Planning Board, the Town's development review staff may review the application and make recommendations to the Board.
5. 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 and all property owners within five hundred (500) feet of the property under review.
 - (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.

- (b) Review Procedures
- (1) Submission Deadline. All Sketch Plan submission requirements shall be submitted to the Planning Department at least ~~thirty (30)~~ **twenty-one (21)** days prior to the meeting at which the application wishes to be heard by the Board.
 - (2) Site Walk. The Planning Board shall visit the site to observe existing conditions, generally confirm the information submitted and assess the development proposal. The site walk shall be scheduled by the Planner prior to the first regular meeting at which the application is reviewed by the Board.
 - (i) Procedures for the on-site inspection shall follow the requirements of the Town of Windham Planning Board Rules, as amended.
 - (ii) The Board may decide not to hold, or postpone, an on-site inspection when the site is snow covered.
 - (iii) Notice of the on-site inspection shall be published in a newspaper of general circulation, mailed to the applicant and property owners within five hundred (500) feet of the property under review. Notices must be published and/or sent at least seven (7) days prior to the on-site inspection.
 - (3) The applicant shall stake the centerline of any proposed streets, the front corners of any proposed lots, and provide a sketch plan (on an 11"x17" sheet) of the project for each member of the Planning Board and Staff present at the site visit.
3. Review of the Sketch Plan. The review of the Sketch Plan shall be informational and shall not result in any formal approval or disapproval of the project by the Planning Board.
- (a) The applicant and property owners within within five hundred (500) feet of the property under review shall be notified of the time, date, and place of the Board meeting at which the Sketch Plan will be reviewed.
 - (1) The meeting agenda may serve as notification.
 - (2) The notification shall inform the applicant and public that the Planning Board may accept public comment during the Sketch Plan review.
 - (b) The Board shall review the submission to determine if the information provides a clear understanding of the site and identifies opportunities and constraints that help determine how it should be used and developed.
 - (c) The Board may consider any input received from members of the Staff Review Committee.

- (d) The Board may choose to accept public comment on the application.
- (e) The outcome of the review process shall be the identification by the Board of the issues and constraints that must be addressed in the Preliminary Subdivision Plan application.
- (f) The Board shall act on any requests for waivers from the Preliminary Subdivision Plan submission requirements.

B. Preliminary Plan

1. Plan Consistency. The Preliminary Plan shall approximate the layout shown on the Sketch Plan, plus any recommendations made by the Board.
2. Submission Deadline. The applicant shall submit a Preliminary Plan within six (6) months after the Board has authorized submission of said plan.
 - (a) The Board may, upon failure to meet the six month deadline, require the application to return to the Sketch Plan review phase.
 - (1) Each time that an application is returned to the Sketch Plan review phase, the applicant shall pay the required application fees.
3. Submission of Revisions. Once a formal preliminary subdivision submission is made to the Board, the applicant shall have six (6) months to return to the Board with a revised Preliminary Plan. This six-month period shall recommence at each substantive review of the Preliminary Plan by the Planning Board.
 - (a) If a revised preliminary plan is not submitted to the Planning Board within six (6) months of the last preliminary submission, the Board may require the application to return to the Sketch Plan review phase. Previously paid subdivision fees will not be refunded should a Preliminary Plan application fail to meet the above specified deadline
 - (b) Where the Planning Board finds that extraordinary circumstances make it impossible for the applicant to comply with this section, it may grant an extension 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 ~~thirty (30)~~twenty-one (21) days prior to the meeting at which the application wishes to be heard by the Board.

3. Submission of Revisions. Once a formal Final Plan submission is made to the Board the applicant shall have six (6) months to return to the Board with a revised plan. This six-month period shall recommence at each substantive review of the final plan by the Planning Board.
 - (a) If a revised Final Plan is not submitted to the Planning Board within six (6) months of the last final submission the Board may require the application to return to the Preliminary Plan review phase. Previously paid subdivision fees will not be refunded should a Final Plan application fail to meet the above specified deadline.
 - (b) If an applicant cannot comply with this section, the Planning Board may grant an extension in accordance with Subsection 907.C.2.(a)(2), above. Such extension must be filed with the Planning Board before the six-month period has expired.
4. Review Procedures
 - (a) All required Final Plans submission requirements shall be submitted to the Planner at least ~~thirty (30)~~twenty-one (21) days prior to the Board meeting at which the subdivider wishes to be heard.
 - (1) Within three days of the receipt of the Final Plan application, the Planner shall issue a dated receipt to the applicant.
 - (b) Within thirty (30) days of the receipt of a Final 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) Provided members of the Town's development review staff with the Final Plan application material.
 - (4) A determination of completeness under this subsection does not preclude the Planning Board from requiring the submission of additional material that it finds are necessary for review of the project.

TOWN OF WINDHAM

WIRELESS TELECOMMUNICATIONS FACILITIES SITING ORDINANCE

All applicants seeking approval from the Planning Board for the construction of a wireless telecommunications facility under this ordinance are encouraged to meet with the Town Planner prior to the submittal of a formal application for the development of the facility. The purpose of this meeting is to provide an opportunity for the applicant, the applicant's representative and the Town Planner to: meet and discuss the proposal in detail; review and discuss any of the provisions in the ordinance that specifically apply to the proposal, as well as, any proposed modification or waiver requests that may be requested; review and discuss the application forms; and identify what type of site plans and related information must be submitted for the Planning Board's review.

Section 6.2 Application Requirements

A. Application for Planning Board Approval.

All applicants seeking approval of a wireless telecommunications facility under this ordinance shall submit twelve (12) copies of an application, including site plans and related information, to the Community Development Office at least ~~fourteen~~ (14)twenty-one (21) -days prior to the Planning Board meeting at which the applicant wishes the proposal to be heard. The application shall include the following information:

1. A site plan prepared and certified by a professional engineer registered in the State of Maine indicating the following information:
 - a. the location, type, and height of the proposed facility, including the proposed location of the tower structure, accessory buildings and/or structures, and parking stalls for maintenance vehicles;
 - b. the antenna capacity of the proposed facility;
 - c. the type of existing land uses on-site, if any;
 - d. the name of all abutting property owners and the type of existing land use on each abutting property, including all existing buildings or structures on site;
 - e. the location of the proposed or existing town road, private road, right-of-way, or access drive providing access to the property under consideration;
 - f. the proposed location of utilities to service the site, such as telephone and electrical services, which shall be placed underground;
 - g. all building setbacks from the property lines for the zoning district in which the property under consideration is located;