

Town of Windham

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MEMO

DATE: February 8, 2018

TO: Windham Planning Board
FROM: Amanda Lessard, Planner *AL*
Cc: Ben Smith, Planning Director
Jeff Amos, P.E., Terradyn Consultants, LLC
Development Review Team

RE: 17-15 – Kettle Estates – Final Subdivision Plan
Planning Board Meeting: February 12, 2018

Overview –

The applicant is proposing a 42 unit duplex development on a 15.46 acre parcel, located off Dusty Rhoads Lane and Acorn Lane. The site is located on the northeastern half of a reclaimed gravel pit.

The project appeared as a preliminary plan at the Board meeting on October 23, 2017. At that meeting the Board held a public hearing and approved the preliminary plan. Since that meeting the plans have been revised to show the access easement to the abutting property, increased a forested buffer along the property line, reduced the number of light poles, and removed all proposed improvements to the first 300 feet of Dusty Rhoades Lane. The applicant has also received a Stormwater Permit from DEP.

The owner of the property of the first 300 feet of Dusty Rhoades Lane had commented at the public hearing that the applicant did not have rights to make improvements to the road and has since filed a complaint in Superior Court. Town Attorney Kevin Haskins has provided an opinion that the applicant has provided sufficient evidence for the Planning Board to determine that the applicant has right, title, and interest to make improvements to the existing private road. He also agreed that the application has had substantive review under 1 MRSA 302 such that the recently adopted amendments to the land use ordinance that require upgrades of existing private roads is not applicable. Therefore, to approve the final plan as presented, the Planning Board must make a finding that the existing private road is adequate in terms of traffic, capacity, pedestrian safety and actual construction to serve as an appropriate access road within the terms of Windham's Subdivision Ordinance. The applicant has also submitted documentation on the width of the existing road and comment from the Fire Chief on emergency vehicle access.

New comments from the staff memo dated October 17, 2017 appear as underlined text below.

Tax Map: 19, Lot: 8-2-1, Zone: Medium Density Residential (RM).

SUBDIVISION REVIEW

Staff Comments:

1. Waivers:
 - a) §910.C.1.c.1 (page 9-33) – High Intensity Soils Survey, Submission requirement.
Granted August 28, 2017
2. Complete Application: *Staff has found the final plan application complete*

MOTION: The final subdivision application for project 17-15 – Kettle Estates Subdivision 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.
3. Public Hearing: A public hearing was held at the Planning Board meeting on October 23, 2017.
4. Site Walk: A site walk was held Monday August 28, 2017 at 5:30pm.

Findings of Fact and conclusions for the

Windham Planning Board,

MOTION: The Final Subdivision application for 17-15 Kettle Estates on Tax Map: 19, Lot: 8-2-1 is to be (approved with conditions/denied) with the following findings of fact and conclusions.

FINDINGS OF FACT

A. POLLUTION

- No portion of this subdivision is within the mapped 100 year floodplain.
- Wetlands should be shown on the plan.
- A portion of this subdivision is located over a significant sand and gravel aquifer.
- A hydrogeologic assessment must be submitted as part of the Preliminary Plan as the subdivision is not served by public sewer and the subdivision has an average density of more than one dwelling unit per 100,000 square feet.
- A hydrogeologic assessment dated October 2, 2017, prepared by Mark Cenci Geologic, Inc. was provided in the December 19, 2016, preliminary plan submission. The assessment states that the 10 mg/L nitrate plumes will be approximately 150 feet in length and all

wastewater disposal areas will be set back at least 150 feet from the downgradient property lines, thus meeting the ordinance standards regarding groundwater quality. NO₃- 10 Mg/L plumes are shown on the Utility Plan Sheets C-3.0 and C-3.1.

B. WATER

- All dwelling units will be served by public water in a new water main located in the subdivision street.
- There is an existing fire hydrant is located at the intersection of Acorn and Forbes Lanes.
- A fire hydrant will be located near the mid-point of the new subdivision street and is shown on Preliminary Plan.
- The applicant proposes to install a new water main to serve the entire development, extended from the 8" water main in Acorn Lane. Hydrants and water main locations and details are shown as part of the Preliminary Plan on Sheets C-3.0 and C-3.1.
- In an Ability to Serve letter dated January 18, 2018 from Robert Bartels, P.E. of the Portland Water District, a main extension within Acorn Lane is permitted to serve the domestic and fire flow demands of the subdivision. A meter pit will be located within Dusty Rhoades Lane within 10-15 feet of the property line at Acorn Lane Extension.

C. SOIL EROSION

- An Erosion and Sedimentation Control Plan prepared by Terradyn Consultants dated August 7, 2017 on Sheets C-2.0 and C-2.1 has been submitted as part of the preliminary plan submission. Notes and details are on Sheet C-5.0.
- In an email dated August 16, 2017, Town Engineer Jon Earle, P.E, noted that there are gaps in the installation location of silt fence that should be connected in order to ensure sediment does not migrate onto the abutting properties during construction.
- The applicant must submit a stormwater management plan that meets the water quality and quantity standards as well as the flooding standard of Section 3 DEP Chapter 500 Stormwater Management.
- A DEP Stormwater permit is required for this project. The permit must be submitted as part of the Final Plan.
- This project is in the NPDES (National Pollutant Discharge Elimination System) area as designated by the Environmental Protection Agency for the Town of Windham. As a result, there will be additional construction inspection requirements and ongoing requirements for reporting of stormwater infrastructure maintenance as there is more than one (1) acre of development. See recommended Condition of Approval #2.
- A stormwater management plan, has been submitted as part of the August 7, 2017 Preliminary Plan submission. The proposed development is estimated to generate a total of 2.88 acres of new impervious area, with a total developed area of 10.98 acres. Stormwater is proposed to be treated by two infiltration basins and roof drain filter strips.
- In an email dated August 16, 2017, Town Engineer Jon Earle, P.E, requested submission of stormwater calculations for water quantity and quality and a stormwater maintenance plan. He also noted that there do not appear to be catch basins proposed at the intersection of

Dusty Rhoades Lane and Varney Mill Road and asked if the ditch on Varney Mill Road can accommodate any additional peak runoff flows.

- The applicant submitted a revised stormwater management plan dated October 2, 2017.
- In an email dated October 13, 2017, Town Engineer Jon Earle, P.E, noted that the post development condition results in significantly reduced flows at the Varney Mill Road Ditch. He requested that roof filter strips for units 1-7 and 31-42 be shown on the plan. A roof dripline filter bed detail is shown on Sheet C-5.2. Finally, he noted that there is a minor increase in flow from the 2-yr storm (0.04 cfs pre development, 0.13 cfs post development) and a waiver request should be submitted.
- A revised stormwater management plan dated January 5, 2018 was included with the final plan submission.
- In an email dated January 26, 2018, Town Engineer Jon Earle, P.E, stated that the basic, general and flooding standards have been met for the project. He commented that for the new roadway drainage design for the extension of Dusty Rhoades Lane, Basins 5 & 6 do not capture the last 30 feet of pavements runoff.
- The Maine Department of Environmental Protection stormwater act permit L-27647-NJ-A-N was submitted on January 28, 2018. The permit should be noted on the plan.
- In response to peer review comments, the Grading Plan and Profile Sheets were revised on February 8, 2018 to move the first two catch basins to the very beginning of the proposed improvements.

D. TRAFFIC

- The site is accessed off of Forbes Lane and Acorn Lane, which are both public streets, and Dusty Rhoads Lane, a private way.
- The applicant must clarify if the subdivision street is proposed to remain a private street, where the Major Private Road standards apply, or if it is to be offered for public acceptance in which case it must meet the design and construction standards in Appendix B, Tables 3 and 4 for a Major Public Street.
- The applicant must provide a traffic study to show any potential impacts of the additional dwelling units on the local street inventory. Part of this discussion should include off-site improvements to existing street, including potential needs for additional signage or sidewalks.
- As shown on the sketch plan, one entrance to the site is proposed at the end of Acorn Lane. This single entrance does not meet the ordinance requirement. § 911 M. (7) (page 9-62) requires a minimum of two connections to an existing public street for a residential subdivision street serving 31 or more units.
- The Preliminary Plan dated August 8, 2017 shows two entrances to the site: primary access from Dusty Rhoades Lane, and a secondary access from Acorn Lane, to be limited to emergency vehicles only. Road profiles and cross sections are shown on Sheets C-4.0 and C-4.1. The application states that the existing private way, Dusty Rhoades Lane, will be paved and brought up to the Major Private Road standard. Per Section 911.M.5.a.6 (pg 9-58) access drive standards for condominium subdivisions shall meet the major private road standard (right-of-way width is not applicable). The internal access road section detail is not consistent with the Major Private Road Standard. The extension of Acorn Lane is

proposed to be a 14 foot wide paved road with a base consistent with the Minor Local Road standard.

- Ornamental pole lights are shown on the preliminary plan. Except for a light at intersections with existing public streets, Section 911.M.3.d states that additional streetlights shall be discouraged.
- In an email dated August 16, 2017, Town Engineer Jon Earle, P.E, had several comments about the proposed road plans and noted that waiver requests may be required. He also noted that the major private road standard detail was incorrect and questioned if additional information on the existing condition of Dusty Rhoades Lane would be provided.
- The proposed hammerhead turn around shown near the end of the subdivision street does not meet the subdivision ordinance requirement. § 911 M. 3. (2) (page 9-51) and shown in Appendix B of the Land Use Ordinance. The hammerhead at the intersection of Dusty Rhoades Lane and Acorn Lane also does not meet the subdivision ordinance requirement.
- The Preliminary Plan dated October 2, 2017 shows two entrances to the site: primary access from Dusty Rhoades Lane, and a secondary access from Acorn Lane. The submission has revised the extension of Acorn Lane to be consistent with the Minor Local Road standard. A hammerhead at the property line provides road frontage for the lot. The application states that the existing private way appears properly constructed and they plan to place finish gravel over the existing surface prior to paving.
- In an email dated October 13, 2017, Town Engineer Jon Earle, P.E, suggested removing or relocating the Acorn Lane hammerhead to provide additional wooded screening between the existing property and the proposed development. He noted that the typical road sections on Sheet C4.1 all meet the respective Town standards but the existing Dusty Rhoades Lane provide does not. He also requested verification that the existing material meets the Town specifications.
- There is a large undeveloped property which abuts the proposed subdivision. § 911 M. 3. (a) (page 9-51) and § 911 M. 5. (b) (5) (iii) (page 9-60) allows the Board to require the dedication of a right-of-way to provide continuation of the road where future development is possible. At the meeting on June 12, 2017 the Planning Board requested a right-of-way to the abutting property. A right-of-way is not shown on the August 7, 2017 preliminary plan. At the meeting on August 28, 2017 the Planning Board requested a right-of-way to the abutting property. A right-of-way is not shown on the October 2, 2017 revised preliminary plan. An access easement from Map 8 Lot 8-2 to Acorn Lane should be shown on the plan. Draft language should be submitted with the Final Plan submission. See recommended Condition of Approval #3. The access easement is shown on the final plan.
- On the Sketch plan, a four (4) foot wide sidewalk is proposed on one side of the subdivision road. Appendix B, Table 3 requires the sidewalk to be five (5) feet wide. The sidewalk would extend from the location of the group mailbox to the last driveway on that side of the road (units 31 and 32).
- The Preliminary Plan set dated August 7, 2017 shows a five (5) foot wide sidewalk is proposed on one side of the subdivision road. The sidewalk extends from the intersection of Acorn Lane and Dusty Rhoades Lane to the end of the road (just beyond units 31 and 32).
- A traffic impact study prepared by William J. Bray, P.E. of Traffic Solutions, was included in the August 7, 2017 preliminary plan submission. The 21 duplex units will generate 28

peak hour trips in the AM and 33 vehicle trip in the PM peak hour. The traffic study assumes that all traffic will utilize the primary point of access of Dusty Rhoades Lane.

- The traffic assessment notes that a minimum unobstructed sightline of 305 feet is required and the sight distance at the intersection of Dusty Rhoades Lane at Varney Mill Road was measured at 500 feet in both directions. The site distance should be noted on the plan.
- At the Planning Board public hearing on October 23, 2017 abutter Michael Martin who owns the property encumbered by the first 300 feet of Dusty Rhoades Lane, commented that the applicant did not have the right to pave the road and was overburdening the easement.
- The applicant provided evidence of right, title, or interest to make improvements to Dusty Rhoades Lane in letters dated October 23, 2017 from Scott Herrick of Drummond & Drummond and Carly S. Joyce, Esq of Two Lights Settlement Services.
- The Final Plan submission dated January 5, 2018 removes all proposed improvements to the first 300 feet of Dusty Rhoades Lane per abutter demand. The Board should make a determination on if the existing private road is adequate in terms of traffic, capacity, pedestrian safety and actual construction to serve as an appropriate access road. The final plan also shows a sign at the intersection of Dusty Rhoades Lane and Acorn Lane that reads, "Primary site access to be through Acorn Lane."
- In an email dated January 26, 2018 Town Engineer Jon Earle, P.E, suggested the applicant provide gravel depth and gradation information for the portion of Dusty Rhoades Lane that will not be improved and asked for verification of the 20 foot width of the existing road depicted on the plan and that the traffic study be revised if traffic will be directly to use Acorn Lane for primary access.
- In response to peer review comments the applicant submitted aerial photography overlaid with the subdivision plan to demonstrate the existing edge of gravel and revised the final plan to eliminate the sign directing traffic to use Acorn Lane.
- In an email dated January 30, 2018, Fire Chief Brent Libby, indicated that the emergency vehicles could safely use the existing road.

E. SEWERAGE

- The development will be served by seven (7) shared subsurface wastewater disposal systems.
- A preliminary wastewater disposal investigation dated August 5, 2017, prepared by Mark Cenci Geologic, Inc was provided in the August 7, 2016, preliminary plan submission and indicates that suitable soils and site conditions were found for the proposed disposal of wastewater. Soil test pit logs were included with the October 2, 2017 submission.
- Proposed septic system and test pit locations are shown on Sheets C-3.0 and C-3.1 of the preliminary plan set.

F. SOLID WASTE

- Residents of the single family dwellings will participate in the Town's pay-per-bag garbage program.

- Development of these lots should not produce an undue burden on the Town's ability to collect and dispose of solid waste.

G. AESTHETICS

- The site is located on one half of a reclaimed gravel pit, which appears to be growing up with brush and scrub. The old pit is completely surrounded by residential neighborhoods.
- Street trees are required and must conform with § 911 E. 1. (b) (page 9-41). Street trees are shown on the preliminary plan.
- Note 9 on the preliminary plan revised October 2, 2017 restricts clearing for five years after planning board approval beyond the tree line shown on the plan.
- Sample duplex building elevations were included in the August 7, 2017 preliminary plan submission.

H. CONFORMITY WITH LOCAL PLANS AND ORDINANCES

- Comprehensive Plan:
 - The plan does meet the goals of the 2017 Comprehensive Plan.
- Land Use Ordinance:
 - The proposal meets the net residential density requirements and the setback requirements of the RM district.
- Subdivision Ordinance
 - A landscaping (street trees and limits of clearing) is shown on the Preliminary Plan.
 - Standard notes and the standard condition of approval must be shown on the plans.
 - Digital transfer of the subdivision plan data was submitted with the Final Plan submission for inclusion with the Town's GIS.
 - Condominium Association Documents was provided with the Final Plan submission and must specifies the rights and responsibilities of each lot owner with respect to the maintenance, repair, and plowing of the subdivision streets, open space and stormwater infrastructure.
- Others:
 - Chapter 144 Post-Construction Stormwater Ordinance: The site is in the NPDES MS4 area as well as the Pleasant River watershed (the Town's high priority watershed).

I. FINANCIAL AND TECHNICAL CAPACITY

- A letter dated October 20, 2017 from Kimberly A. Donnelly, Senior Vice President at Gorham Savings Bank was submitted as evidence of financial capacity.
- The applicant has provided information on the licensed professionals working on this project as evidence of technical capacity.

J. RIVER, STREAM OR BROOK IMPACTS

- The project will not adversely impact any river, stream, or brook.

CONCLUSIONS

1. The proposed subdivision **will not** result in undue water or air pollution.
2. The proposed subdivision **has** sufficient water available for the reasonably foreseeable needs of the site plan.
3. The proposed subdivision **will not** cause an unreasonable burden on an existing water supply.
4. 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.
5. The proposed subdivision **will not** cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.
6. The proposed subdivision **will** provide for adequate sewage waste disposal.
7. The proposed subdivision **will not** cause an unreasonable burden on the municipality's ability to dispose of solid waste.
8. The proposed subdivision **will not** have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
9. The proposed subdivision **conforms** with a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.
10. The developer **has** adequate financial and technical capacity to meet the standards of this section.
11. The proposed subdivision **is not** situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, Chapter 3, subchapter I, article 2-B M.R.S.A.
12. The proposed subdivision **will not** alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
13. The proposed subdivision **is not** situated entirely or partially within a floodplain.
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. The proposed subdivision **will** provide for adequate storm water management.
17. ~~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 have/do not have a lot depth to shore frontage ratio greater than 5 to 1. (N/A)~~
18. 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.
19. ~~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. (N/A)~~
20. 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

1. Approval is dependent upon, and limited to, the proposals and plans contained in the application dated May 2017, as amended February 8, 2018, and supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board, and any variation from such plans, proposals and supporting documents and representations are subject to review and approval by the Planning Board or the Town Planner in accordance with Section 913 of the Subdivision Ordinance.
2. Approval is subject to the requirements of the Post-Construction Stormwater Ordinance, Chapter 144. Any person owning, operating, leasing or having control over stormwater management facilities required by the post-construction stormwater management plan must annually engage the services of a qualified third-party inspector who must certify compliance with the post-construction stormwater management plan on or by May 1st of each year.
3. An access easement for the benefit of Map 19 Lot 8-2 to travel over Dusty Rhoades Lane to the public street, Acorn Lane, must be recorded in the Cumberland County Registry of Deeds prior to the issuance of building permits.