

Town of Windham

Planning Department
8 School Road
Windham, ME 04062

voice 207.894.5960

fax 207.892.1916

MEMO

DATE: December 23, 2019

TO: Windham Town Council
THROUGH: Barry Tibbetts, Interim Town Manager
FROM: Amanda Lessard, Planning Director *ALL*
Cc: Private Roads ad hoc Committee (PRC)
Jenn Curtis, Planner
Chris Hanson, Director of Code Enforcement
Mark Arienti, P.E., Town Engineer
RE: Planning Board Recommendation - Ordinance Amendment – Sections 300, 550 & Appendix B related to private roads

At the Planning Board's meeting on December 9, 2019, a public hearing was held on the proposed ordinance changes to the Land Use Ordinance Section Sections 300, 550 & Appendix B related to private roads.

The proposed ordinance amendments were developed by the Private Roads ad hoc Committee (PRC), who were charged by the Council with reviewing the town's regulations with regard to private roads and to make recommendations about changes to the regulations regarding the creation, extension, and improvement of private roads, and development along and accessed by private roads. The PRC's proposed ordinance amendments are intended to improve on the changes related to the construction of new Private Roads in Windham that were adopted in October 2017 that require that new or extensions of private roads both in and out of subdivisions accessed by an existing private road must upgrade the existing private road to the nearest public street, and that new roads with direct access to a Public Street must be designed to a Local Street standard and offered for public acceptance.

The attached draft ordinance language specifies that the applicant proposing an extension of an existing Private Way or Private Road or the creation of a new Private Road that is accessed by a Private Road or Private Way must improve the existing private way, beginning at the connection with the Public Street, the same length as the proposed new road. When the existing Private Way is served by 10-30 lots, the improvement will be to a new street type, Upgraded Private Road, which is similar to the current Major Private Road standard without requiring pavement. The draft also creates a one-time exemption equal to the length of the required road frontage for homestead properties, creates criteria and a procedure for the Planning Board to approve waivers from the street design standards and the location of the upgraded portion of the existing road, requires the Town Engineer to review all applications, adds requirements for recording approved

plans and road maintenance agreements at the Registry of Deeds, and eliminates the requirement that any new roads with a connection to a public street must be built to a public street standard. No changes are proposed to the rules that apply to Subdivision Review.

Details of all changes are included in this packet, including the redlined ordinance copy.

Five members of the public commented on the proposed amendment. All were in favor of eliminating the restriction of no new private roads off public streets. Three people commented that the proposed amendments don't solve the problem of private roads, but it is an improvement over the 2017 standards. Other comments were: there should be more exemptions for gifts to children because the road improvements is too costly; the proposal comes up short because it doesn't require that the development of properties with existing road frontage improve the road; paving doesn't solve anything and some roads, especially in the Farm Zone, should be gravel even with more than 30 homes; the homestead exemption doesn't seem clear that it only applies one time based on the effective date of the ordinance; change the form of the ordinance to be more clear and orderly; add a plan submission requirement to show the front property pins on the road; have a road standard that is more affordable (a sound base of good gravel and drainage is most important); require data on existing road base when requesting a waiver; reconsider why subdivisions need to do more as these requirements may just encourage avoidance of subdivision review.

During Planning Board discussion members of the Board agreed that no private roads off public streets needs to go away, front property pins should be shown on the plan, a road should require a right-of-way and not be part of a lot, an analysis of the existing road base should be submitted with a waiver request, holding off a certificate of occupancy isn't enough – a guarantee should be required and the Town should conduct the final inspection, these standards may be an unfair burden on subdivisions, and the exemption to improve the road should be reoccurring every 5 years for gifts to immediate family that are held for 5 years.

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

To recommend approval of the proposed amendment to the Land Use Ordinance Sections 300, 550 & Appendix B related to private roads with comments as discussed.

Motion: Drew Mayo

Second: Colin Swan

Vote: 4-0.

Town of Windham

Planning Department
8 School Road
Windham, ME 04062

voice 207.894.5960

fax 207.892.1916

MEMO

DATE: December 4, 2019

TO: Windham Planning Board
FROM: Amanda Lessard, Planning Director *ALL*
Cc: Jenn Curtis, Planner
Private Roads ad hoc Committee (PRC)
Chris Hanson, Director of Code Enforcement
Mark Arienti, P.E., Town Engineer

RE: Ordinance Amendment: Land Use Ordinance Sections 300, 550 & Appendix B
related to private roads
Planning Board Meeting & Public Hearing – December 9, 2019

The attached proposed ordinance amendments were developed by the Private Roads ad hoc Committee (PRC), who were charged by the Council with reviewing the town's regulations with regard to private roads and to make recommendations about changes to the regulations regarding the creation, extension, and improvement of private roads, and development along and accessed by private roads. The PRC's proposed ordinance amendments are intended to improve on the changes related to the construction of new Private Roads in Windham that were adopted in October 2017 that require that new or extensions of private roads both in and out of subdivisions accessed by an existing private road must upgrade the existing private road to the nearest public street, and that new roads with direct access to a Public Street must be designed to a Local Street standard and offered for public acceptance.

The attached draft ordinance language specifies that the applicant proposing an extension of an existing Private Way or Private Road or the creation of a new Private Road that is accessed by a Private Road or Private Way must improve the existing private way, beginning at the connection with the Public Street, the same length as the proposed new road. When the existing Private Way is served by 30 or fewer lots, the improvement will be to a new street type, Upgraded Private Road, which is similar to the current Major Private Road standard without requiring pavement. The draft also creates a one-time exemption equal to the length of the required road frontage for homestead properties, creates criteria and a procedure for the Planning Board to approve waivers from the street design standards and the location of the upgraded portion of the existing road, requires the Town Engineer to review all applications, adds requirements for recording approved plans and road maintenance agreements at the Registry of Deeds, and eliminates the requirement that any new roads with a connection to a public street must be built

to a public street standard. No changes are proposed to the rules that apply to Subdivision Review.

A more detailed summary of the proposed ordinance amendments is included in the attached November 20, 2019 memo.

A public hearing is scheduled for the Planning Board meeting on December 9, 2019. After the public hearing and discussion by the Board, the Planning Board may vote on a recommendation to the Town Council similar to the following:

MOTION: To (**recommend/recommend with comments/not recommend**) approval of the proposed amendment to the Land Use Ordinance Sections 300, 550 & Appendix B related to private roads.

Town of Windham

Planning Department
8 School Road
Windham, ME 04062

voice 207.894.5960

fax 207.892.1916

MEMO

DATE: November 20, 2019

TO: Windham Planning Board
FROM: Amanda Lessard, Planning Director *AWL*
Cc: Jenn Curtis, Planner
Private Roads ad hoc Committee (PRC)
Chris Hanson, Director of Code Enforcement

RE: Ordinance Amendment: Land Use Ordinance Sections 300, 550 & Appendix B
relate to private roads
Planning Board Meeting – November 25, 2019

At their meeting on November 12, 2019, the Town Council voted to forward the enclosed proposed ordinance changes to the Board for review and recommendation. The proposed ordinance was developed by the Private Roads ad hoc Committee (PRC), who were charged by the Council with reviewing the town's regulations with regard to private roads and to make recommendations about changes to the regulations regarding the creation, extension, and improvement of private roads, and development along and accessed by private roads.

The PRC's proposed ordinance amendments are intended to improve on the changes related to the construction of new Private Roads in Windham that were adopted in October 2017 that require that new or extensions of private roads both in and out of subdivisions accessed by an existing private road must upgrade the existing private road to the nearest public street, and that new roads with direct access to a Public Street must be designed to a Local Street standard and offered for public acceptance.

The attached draft ordinance language specifies that the applicant proposing an extension of an existing Private Way or Private Road or the creation of a new Private Road that is accessed by a Private Road or Private Way must improve the existing private way, beginning at the connection with the Public Street, the same length as the proposed new road. When the existing Private Way is served by 30 or fewer lots, the improvement will be to a new street type, Upgraded Private Road, which is similar to the current Major Private Road standard without requiring pavement. The draft also creates a one-time exemption equal to the length of the required road frontage for homestead properties, creates criteria and a procedure for the Planning Board to approve waivers from the street design standards and the location of the upgraded portion of the existing road, requires the Town Engineer to review all applications, adds requirements for recording approved plans and road maintenance agreements at the Registry of Deeds, and

eliminates the requirement that any new roads with a connection to a public street must be built to a public street standard. No changes are proposed to the rules that apply to Subdivision Review.

Summary of Proposed Ordinance Amendments:

Section 300 – Definitions

- Upgraded Private Road. A new street type defined as a private way that serves 30 or fewer lots that will be upgraded in accordance with Section 550.B to the street design and construction standards in Appendix B.
- Waiver. Permits a relaxation of the requirements of Section 550 Streets.

Section 550 – Streets

- Section 550.B
 - Existing private ways must be improved for a length equal to the new or extended road.
 - The upgrade of the existing road must begin at the public street.
 - The applicable road standard to upgrade the existing road, if served by 30 or fewer lots, is a new road standard, Upgraded Private Road.
- Section 550.B.1 – Change exemption from the length of frontage every 5 years, to a one-time exemption for homestead properties.
- Section 550.B.2 - Construction of the required 30' paved apron counts as 100 feet of the required road improvement.
- Section 550.B.3 - The Planning Board may grant waivers from the street design standards and the location of the upgraded portion of the existing road.
- Section 550.C – Delete no new private roads with connections to public streets.
- Section 550.C.2 – Private Road Application Submission Requirements
 - Establish criteria and a procedure for the Planning Board to waive the requirements of the street design standards and the location of the upgraded private way.
- Section 550.C.3 – Review Authority
 - Code Enforcement reviews Private Road applications except applications requesting a waiver are reviewed by the Planning Board.
 - All plans shall be reviewed by the Town Engineer or consulting engineer.
 - The Planning Board is required to hold a site walk.
- Section 550.C.3 – Recording
 - All approved plans shall be filed with the Cumberland County Registry of Deeds.
- Section 550.C.7 – Prior to issuance of any Certificates of Occupancy the applicant shall provide evidence that a road maintenance agreement has been recorded in the Cumberland County Registry of Deeds.
- Section 550.C.8 – Clarification of stormwater management and erosion control standards.
- Section 550.C.9 – Appeals of Planning Board decisions may be taken to Superior Court.

Appendix B – Street Design and Construction Standards

- Table 3 Design and Construction Standards for Town Streets and Private Roads
 - Added standards for Upgraded Private Road to be applicable to an upgrade of a Private Way served by 30 or less lots.

- Table 4 Street Construction and Dimensions
 - Added standards for Upgraded Private Road: Similar to the Major Private Road standard without requiring pavement. A paved apron is required.

Zoning Amendment Process

The Planning Board must hold a public hearing prior to making a recommendation on this item to the Town Council. The Town Council will need to vote on the proposed changes to the Land Use Ordinance for the changes to be officially approved. A public hearing will be scheduled for the December 9, 2019 Planning Board meeting. After the public hearing and discussion by the Board, the Planning Board may vote on a recommendation to the Town Council.

Town of Windham

Planning Department
8 School Road
Windham, ME 04062

voice 207.894.5960

fax 207.892.1916

MEMO

DATE: August 15, 2019

TO: Windham Town Council
THROUGH: Don Gerrish, Interim Town Manager
FROM: Amanda Lessard, Planning Director *AWL*
Cc: Private Roads ad hoc Committee (PRC)
Chris Hanson, Director of Code Enforcement

RE: Proposed Amendments to Chapter 140 Land Use Ordinance Sections 300, 550 & Appendix B

The Town Council held workshops on June 4, 2019 and July 3, 2019 to discuss the Private Roads ad hoc Committee (PRC)'s recommendations for changes to the Land Use Ordinance related to the creation, extension, and improvement of private roads, and development along and accessed by private roads.

At the July 3, 2019 meeting the Council asked for clarification on several issues. Staff consulted with town attorney Kristin Collins of Preti Flaherty and the attached draft ordinance now include the following additional changes:

- Section 550.B to clarify that roads with 10 or fewer lots should be improved to the Minor Private Road standard.
- Section 550.B.1 to clarify that the exemption from the requirement to upgrade an existing Private Road or Private Way is a one-time exemption.
- Section 550.C.2.a.2.i to clarify that the Private Road will be adequate to accommodate all anticipated traffic notwithstanding the requested waiver.

The Council also questioned if the Town could require that the existing road be in the same condition as before any construction on that road. Our attorney agreed that the Town could include an ordinance provision requiring a permit holder to ensure that the road quality isn't degraded during construction. Staff has not included that language in this draft as the Council should consider if this standard should apply to both public and private existing streets.

During public comment and Council discussion there were additional comments related to if 30 is the right number of lots to require pavement, questions about what when a driveway, right-of-way or road would require improvements, and that the cost for property owners to upgrade existing roads may not allow them to give land to their children. No changes are included in the attached draft related to these comments, but they are documented here to note that they could be further discussed by the Planning Board.

Town of Windham

Planning Department
8 School Road
Windham, ME 04062

voice 207.894.5960

fax 207.892.1916

MEMO

DATE: May 29, 2019

TO: Windham Town Council
THROUGH: Don Gerrish, Interim Town Manager
FROM: Amanda Lessard, Planning Director *AL*
Cc: Private Roads ad hoc Committee (PRC)
Chris Hanson, Director of Code Enforcement

RE: Private Roads ad hoc Committee Recommendations: Proposed Amendments to
Chapter 140 Land Use Ordinance Sections 300, 550 & Appendix B

The Private Roads ad hoc Committee (PRC) was charged with reviewing the town's regulations with regard to private roads and to make recommendations about changes to the regulations regarding the creation, extension, and improvement of private roads, and development along and accessed by private roads. The Committee convened in July 2018 and met biweekly to review the Town's Land Use Ordinance and other relevant supporting information, receive input and recommendations from local experts and stakeholders and held a public forum on February 13, 2019 to seek public input on draft recommendations.

At their meeting on March 27, 2019 the PRC voted unanimously 5-0 to recommend the attached amendments to Section 300, Section 550, and Appendix B and that the Town Council seek more public comment on the draft ordinance, especially from owners of properties served by private roads that are impacted by this ordinance.

The PRC's proposed ordinance amendments are intended to improve on the changes related to the construction of new Private Roads in Windham that were adopted in October 2017 that require that new or extensions of private roads both in and out of subdivisions accessed by an existing private road must upgrade the existing private road to the nearest public street, and that new roads with direct access to a Public Street must be designed to a Local Street standard and offered for public acceptance.

The attached draft ordinance language specifies that the applicant proposing an extension of an existing Private Way or Private Road or the creation of a new Private Road that is accessed by a Private Road or Private Way must improve the existing private road, beginning at the connection with the Public Street, the same length as the proposed new road. When the existing Private

Way is served by 30 or fewer lots, the improvement will be to a new street type, Upgraded Private Road, which is similar to the current Major Private Road standard without requiring pavement. The draft also creates a one-time exemption equal to the length of the required road frontage for homestead properties, creates criteria and a procedure for the Planning Board to approve waivers from the street design standards and the location of the upgraded portion of the existing road, requires the Town Engineer to review all applications, adds requirements for recording approved plans and road maintenance agreements at the Registry of Deeds, and eliminates the requirement that any new roads with a connection to a public street must be built to a public street standard. No changes are proposed to the rules that apply to Subdivision Review.

Summary of Proposed Ordinance Amendments:

Section 300 – Definitions

- Upgraded Private Road. A new street type defined as a private way that serves 30 or fewer lots that will be upgraded in accordance with Section 550.B to the street design and construction standards in Appendix B.
- Waiver. Permits a relaxation of the requirements of Section 550 Streets.

Section 550 – Streets

- Section 550.B
 - Existing private ways must be improved for a length equal to the new or extended road.
 - The upgrade of the existing road must begin at the public street.
 - The applicable road standard to upgrade the existing road, if served by 30 or fewer lots, is a new road standard, Upgraded Private Road.
- Section 550.B.1 – Change exemption from the length of frontage every 5 years, to a one-time exemption for homestead properties.
- Section 550.B.2 - Construction of the required 30' paved apron counts as 100 feet of the required road improvement.
- Section 550.B.3 - The Planning Board may grant waivers from the street design standards and the location of the upgraded portion of the existing road.
- Section 550.C – Delete no new private roads with connections to public streets.
- Section 550.C.2 – Private Road Application Submission Requirements
 - Establish criteria and a procedure for the Planning Board to waive the requirements of the street design standards and the location of the upgraded private way.
- Section 550.C.3 – Review Authority
 - Code Enforcement reviews Private Road applications except applications requesting a waiver are reviewed by the Planning Board.
 - All plans shall be reviewed by the Town Engineer or consulting engineer.
 - The Planning Board is required to hold a site walk.
- Section 550.C.3 – Recording
 - All approved plans shall be filed with the Cumberland County Registry of Deeds.

- Section 550.C.7 – Prior to issuance of any Certificates of Occupancy the applicant shall provide evidence that a road maintenance agreement has been recorded in the Cumberland County Registry of Deeds.
- Section 550.C.8 – Clarification of stormwater management and erosion control standards.
- Section 550.C.9 – Appeals of Planning Board decisions may be taken to Superior Court.

Appendix B – Street Design and Construction Standards

- Table 3 Design and Construction Standards for Town Streets and Private Roads
 - Added standards for Upgraded Private Road to be applicable to an upgrade of a Private Way served by 30 or less lots.
- Table 4 Street Construction and Dimensions
 - Added standards for Upgraded Private Road: Similar to the Major Private Road standard without requiring pavement. A paved apron is required.

Sidewalk. A paved way for pedestrian traffic which is constructed parallel to a road. (See Sec. 900 *Subdivision Review*)

Sign. A name, identification, description, emblem, trade name, trademark, display or illustration which is affixed to, painted or represented, directly or indirectly upon a building, structure, parcel or lot and which relates to an object, product, place, activity, person, institution, organization or business.

Slaughterhouse. A structure, building, or facility used to process live animals for human consumption.

Small Engine Repair. The maintenance and repair of engines or motors used for the following types of equipment: power tools, lawn mowers, snow blowers and wood splitters. Small engine repair shall not include the maintenance or repair of engines or motors used in passenger vehicles, all terrain vehicles (ATV's), mopeds, motorcycles and snowmobiles is prohibited.

Smokehouse. A structure, building, or facility used to process or cure animal meat or products through the use of smoke.

Story. That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above.

Story, Basement. That portion of a building which is partly or completely below grade.

Story, First. The lowest story having its finished floor surface entirely above grade, except that a basement shall be considered the first story where the finished surface of the floor *above* the basement is:

- More than six (6) feet (1829 mm) above grade plane;
- More than six (6) feet (1829 mm) above the finished ground level for more than fifty (50) percent of the total building perimeter; or
- More than twelve (12) feet (3658 mm) above the finished ground level at any point.

Story, Mezzanine. An intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than one-third of the area of the room in which the level or levels are located.

Story, Second. The story directly above the first story of a structure.

Street. Public or private roads or ways such as alleys, avenues, boulevards, highways, roads, and other rights-of-way, as well as areas on subdivision plans designated as rights-of-way for vehicular access other than driveways. (See Sec. 500 *Performance Standards*)

Street Classification:

Arterial Street. A major thoroughfare which serves as a major traffic way for travel between and through the Town. For the purpose of this Ordinance, only the following roadways shall be classified as Arterial Streets: Route 302, Route 202, Route 115, Route 35, River Road, and Falmouth Road.

Commercial Street. A street that provides frontage in the C-1 and C-2 Zoning Districts, primarily in areas dominated with non-residential uses.

Controlled Access Street. A street which serves primarily as a major traffic way for travel within the Town between two arterial streets. For the purpose of this Ordinance, only the following roadway shall be classified as a Controlled Access Street: Manchester Drive. (*See Commercial I and Commercial II District Standards*) (*See “Controlled Access Street” in Sec. 500 Performance Standards*)

Curbed Lane. A street that provides frontage in the C-1 and C-2 Zoning Districts, primarily in mixed use areas or as a secondary road in a more commercial area.

Residential Street. A street that provides frontage in the C-1 and C-2 Zoning Districts, primarily in residential neighborhood settings.

Dead-End Street. A street with a single common ingress and egress.

Industrial or Commercial Street. Streets servicing industrial or commercial uses.

Local Street, Major. A street designed for public acceptance which complies in width and construction with the specifications in Section 911.M.5, Traffic Conditions and Streets, and has an estimated average daily traffic count of more than 400 vehicles per day.

Local Street, Minor. A street designed for public acceptance which complies in width and construction with the specifications in Section 911.M.5, Traffic Conditions and Streets, and has an estimated average daily traffic count of 400 or fewer vehicles per day.

Private Road, Upgraded. A Private Way that serves 30 or fewer lots that will be upgraded in accordance with Section 550.B to the street design and construction standards in Appendix B.

Private Road, Major. A street constructed on or after October 22, 2009 that complies in width and construction with the specifications for private roads in Section 911.M.5, “Traffic Conditions and Streets,” and serves more than ten (10) lots.

Private Road, Minor. A street constructed on or after October 22, 2009 that complies in width and construction with the specifications for private roads in Section 911.M.5, “Traffic Conditions and Streets,” and serves ten (10) or fewer lots.

Private Way. A street that was constructed prior to October 22, 2009, that does not meet the specifications for private roads in Section 911.M.5 "Traffic Conditions and Streets," and that has not been accepted by the Town of Windham. Private ways do not include access ways typically referred to as tote roads or woods roads.

Public Street. Any street that complies in width and construction with the standards for public streets in Section 900 Subdivision Review, or a street meeting lesser standards that the Town of Windham agrees to accept. (*See Sec. 900 Subdivision Review*)

Structure. A combination of materials that form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water. For the purpose of this chapter, antennas shall be considered "structures"; however, fences, doghouses, tree houses designed for children's use, and bus shelters shall not be considered "structures."

Subdivision. A subdivision is a division of a tract or parcel of land as defined in 30-A, M.R.S.A. § 4401, as amended from time to time; provided, however, that the Town of Windham does hereby elect to count lots of 40 or more acres as lots for purposes of subdivision review.

Subdivision, Amended. The division of an existing subdivision or any change of to an approved subdivision that requires Planning Board approval.

Substantial Improvement. Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or structural part of the building commences, whether or not that alteration effects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or for any alteration of a structure listed on the National Register of Historic Places or a State or Local Inventory of Historical Places.

Theater. A building, or part of a building, used to show motion pictures or for drama, dance, musical, or other live performances.

Truck Terminal. An area and building where trucks load and unload cargo and freight and where the cargo and freight may be broken down or aggregated into smaller or larger loads for transfer to other vehicles or modes of transportation.

Unfinished Area. The vertical interior of the exterior walls which, may include, rough wiring and rough plumbing, but no insulation, ceiling, inside partitions or heat.

Use. The purpose or activity for which land or structures are designed, arranged, or intended or for which land or structures are occupied or maintained.

Use, Accessory. A use customarily incidental and subordinate to the principal building or use and located on the same lot with such principal building or use. For the purposes of this ordinance, the following structures, either attached or detached to the primary use, shall be considered accessory uses: porches, garages, pools, and decks.

Use, Principal. The primary or predominant use of any lot or parcel.

Variance. Permission to depart from the literal requirements of the Land Use Ordinance. (*See Sec. 1100 Board of Appeals*)

Waiver. A relaxation of the terms of either Section 550 Streets, Section 800 Site Plan Review, or Section 900 Subdivision Review. (*See Sec. 800 Site Plan Review; See Sec. 900 Subdivision Review*)

Warehousing Private. A building used primarily for the storage of goods and materials by the owner of the goods or operated for a specific commercial establishment or group of establishments in a particular industrial field.

Warehousing, Public. A building or lot used primarily for the storage of goods and materials and available to the general public for a fee. This use definition includes self-storage facilities, as defined.

Water Body. (1) Any natural or artificial collection of water, whether permanent or temporary; (2) any body of water that meets the definition of “Water Body” in the Windham Shoreland Zoning Chapter. This definition does not include swimming pools (*See Chapter 199 Windham Shoreland Zoning*)

Wetland. (1) An area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support – an that under normal circumstances does support – a prevalence of vegetation adapted for life in saturated soil conditions; (2) An area that meets the definition of a “Freshwater Wetland” in the Windham Shoreland Zoning Chapter. (*See Chapter 199 Windham Shoreland Zoning*)

Wildlife Habitat, Significant Wildlife Habitat. Areas identified by a government agency such as the Maine Department of Inland Fisheries and Wildlife as having significant value as habitat for animals or any areas identified in the Town’s Comprehensive Plan.

Wireless Telecommunications Tower and Facility. (1) A parcel of land containing a tower, sending and receiving antennas attached to the tower, and a prefabricated or modular structure or cabinets containing electronic equipment; (2) a Federal Communications Commission (FCC)-licensed facility, designed and used for the purpose of transmitting, receiving, and relaying voice and data signals from various wireless communication devices and equipment. For purposes of this Ordinance, amateur radio transmission facilities and facilities used exclusively for receive-only antennas are not classified as wireless telecommunications towers and facilities.

550 Streets

A. **Public Streets.** All Public Streets, as defined in Section 300 - and Private Roads submitted as part of a subdivision application - constructed on or after October 22, 2009 shall meet the street design standards in Section 900 Subdivision Review.

1. Waivers of the street design standards may only be granted by the Planning Board as part of a site plan or subdivision application.

B. **New or extensions of Private Roads created off existing Private Roads or Private Ways.** No new Private Roads or extensions of existing Private Roads or Private Ways will be permitted unless ~~all portions of the Private Roads or Private Ways equal in length to the new Private Road or extended Private Road or Private Way that connects the new or extended Private Road with the nearest public street are beginning at the public street is~~ upgraded to the applicable Private Road standards. ~~The applicable standard to upgrade the existing Private Road or Private Way shall be the Minor Private Road Standard if 10 or fewer lots are served by the existing Private Road or Private Way, the Upgraded Private Road standard if 10 to 30 lots are served by the existing Private Road or Private Way, or the Major Private Road standard if more than 30 lots are served by the existing Private Road or Private Way.~~

1. ~~New Private Roads or An extensions of an existing Private Roads or Private Ways will be exempt from this requirement if the cumulative length of the new Road or Road extension(s) is no greater than the equal to the length of the required Frontage in the applicable Zoning District will be exempt from this requirement one-time within a five year period. when the extension is located on property with a single-family home that has been an applicant's principal residence for a period of at least 5 years immediately preceding the private road application.~~ Note that the new Road or Road extension will still need to meet the requirements of Section 550.DC. below.
2. ~~When the upgraded portion of the Private Way includes the thirty (30) foot paved apron required in Appendix B, the paved apron shall count as 100 feet of the road length required to be upgraded.~~
3. ~~Waivers of the street design standards and the location of the upgraded portion of the Private Road or Private Way may be granted by the Planning Board as part of a private road construction application in accordance with Section 550.C.2.a below.~~

C. ~~New Streets with direct connections to Public Streets. No new Private Roads will be permitted to directly access a Public Street. New Streets with direct access to a Public Street must be built to the applicable Local Street standard and offered to the Town for acceptance as a Public Street.~~

DC. Private Roads Not Part of a Subdivision Application.

1. Applicability. These standards apply to Private Roads used to obtain the required Frontage in the applicable zoning district. (See “Developable Land” in Sec. 500 Performance Standards)
2. Submission Requirements. An application form and accurately scaled plan shall be prepared by a Maine Licensed Professional ~~Engineer authorized by the State of Maine to design streets or roads.~~ At a minimum, the plan shall include the location and width of the right-of-way, a plan view and profile view of the roadway, the location and size of culverts and proposed drainage features ~~of the new private road and the portion of the existing Private Road or Private Way that is proposed to be upgraded to the applicable Private Road standard.~~

(a) ~~Waiver of Street Design Standards. The Planning Board may waive the requirements of the Appendix B street design standards and the location the upgraded portion of the Private Road or Private Way required in Section 550.B if it finds that extraordinary and unnecessary hardships, not self-imposed, may result from strict compliance with the street design standards. In all cases, waivers shall not be deemed a right of the applicant, but rather shall be granted at the discretion of the Planning Board.~~

(1) ~~Procedure. The applicant shall submit a list of the requested waiver(s) in writing. For each waiver requested, the applicant shall submit answers to each of the criteria in Subsection 2 below.~~

(i) ~~The Planning Board may request additional information to make a determination on a waiver request.~~

(2) ~~Criteria. In granting a waiver, the Planning Board shall use the following criteria:~~

(i) ~~The applicant shall provide a certification from a Maine Licensed Professional Engineer certifying that the waiver will be adequate to accommodate all anticipated traffic notwithstanding the requested waiver.~~

(ii) ~~The waiver does not result in:~~

1. ~~Undue water or air pollution,~~

2. ~~Unreasonable soil erosion,~~

3. ~~Unreasonable traffic congestion or safety risk,~~

4. ~~Decreased pedestrian safety or access,~~

5. ~~An adverse impact on scenic or natural beauty, aesthetics, historic sites, or rare or irreplaceable natural areas,~~

6. ~~Flooding or adverse drainage impacts on abutting properties.~~

(3) ~~Recording of Waivers of Private Road Construction Standards. When the Board grants a waiver to any of the standards required by these regulations, the Private Road Plan shall indicate the waivers granted. Waivers shall be~~

listed in a separate location from either the plan's general notes or any conditions of approval.

3. Review Authority. All Private Roads application forms and plans shall be submitted to and approved by, the Director of Code Enforcement. Private Road applications requesting a waiver from the road standards shall be reviewed and approved by the Planning Board. For All Private Roads that provide frontage to four (4) or more lots, the plans must shall be reviewed by the Town Engineer or consulting engineer.
4. Site Walk. The Director of Code Enforcement may require a site walk with the applicant, or his or her authorized representative. The Planning Board shall visit the site if the applicant is requesting a waiver from the street design standards. The site walk shall be scheduled by the Planner prior to the first regular meeting at which the application is reviewed by the Planning Board.
5. Recording. Upon approval, a mylar copy of the private road plan shall be filed with the Town and the Cumberland County Registry of Deeds.
6. Construction Observation. The Code Enforcement Officer or Planning Board may require that observations by the Town Engineer or consulting engineer be conducted during construction. The property owner or developer shall be responsible for the costs of all observations.
7. Final Approval. Prior to the issuance of any Certificates of Occupancy for the lots with Frontage on said Private Road, the applicant shall provide the following:
 - (a) Private Roads with three (3) or fewer lots. A statement from the a Maine Licensed Professional Engineer that prepared the plans, that the road was constructed in general conformance with the approved plans. The Director of Code Enforcement may observe the road to confirm that the road was constructed in general conformance with the approved plans.
 - (b) Private Roads with four (4) or more lots. A statement from a Licensed Maine Professional Civil Engineer that the road was constructed in general conformance with the approved plans. If the Town's consulting engineer reviewed the design and observed the construction, the Town's consulting engineer may provide the required statement.
 - (b) Evidence that a road maintenance agreement has been recorded in the Cumberland County Registry of Deeds.
8. Standards
 - (a) Design Standards. Private roads shall be designed to conform to the appropriate standards presented in Subsection 911.M.5.(b)(8) Street Construction Practices; and the standards for "Major, or Minor, or Upgraded Private Roads" in Table 3, Table

4, and the applicable cross sections in Appendix B Street Design and Construction Standards.

(b) Street Lights. Street lights may be required at intersections with existing public streets. The use of additional street lights shall be discouraged to avoid excessive light pollution.

(c) Stormwater Management & Erosion & Sediment Control. The plan shall provide adequate provisions for drainage flooding impacts to abutters, and erosion and sediment control. Drainage. The private road shall have adequate provisions for drainage and stormwater runoff.

(d) Paved Apron. In addition to the standards in Section 518 Curb Cuts and Driveway Openings, a paved apron shall be constructed when a gravel private road connects to a paved public street or paved private road in accordance with the standards in Table 3 and Table 4 (*See Appendix EB, Street Standards*).

(e) Gravel Surface Limit. Notwithstanding other provisions of the Land Use Ordinance to the contrary, no gravel surfaced private road shall provide access to or serve in any way to provide compliance with the requirements of the Ordinance for more than the greater of ten (10) lots or ten (10) dwelling units; provided; however, nothing in this paragraph shall serve to limit the use of such private road for occasional use by and for agricultural purposes. Private Roads providing access to eleven (11) or more lots shall meet the standards for a “Major Private Road” contained in Table 3 and Table 4 of Appendix B Street Standards. When determining the number of dwelling units, the Code Officer shall not include permitted Accessory Apartments.

(f) Dead End Streets. The following standards shall apply to dead end private roads. (*See Sec. 300 for definition of “Dead End Street”*)

(1) Maximum Length. Dead end private roads shall meet the following standards:

(i) Private Roads Served by Public Water. There is no maximum length limit for private roads served by the Portland Water District that have fire hydrants and hammerhead turnarounds installed every 1,000 linear feet. However, the street connectivity standards of Subsection (g) below shall apply.

(ii) Private Roads Not Served by Public Water. Dead end Private Roads not supplied with fire hydrants served by the Portland Water District shall have a maximum length of 1,000 linear feet unless all dwellings beyond 1,000 linear feet from the closest public street or private way, as defined, have a National Fire Protection Association (NFPA) 13D monitored sprinkler system installed and approved by the Windham Fire Chief and hammerhead

turnarounds installed every 1,000 linear feet. The street connectivity standards of Subsection (g) below, shall apply.

1. Existing Rights-of-Way. The maximum length of 1,000 linear feet shall commence at the terminus of any dead end rights-of-way existing on, or before, October 22, 2009.
2. Any existing right-of-way which does not contain an improved private way existing on, or before, October 22, 2009 shall construct any future improvements in accordance with the standards for private roads contained in this Section 548 to the greatest extent practical.

(2) Hammerhead Requirement: At a minimum, a hammerhead turnaround is required at the terminus of all dead end private roads.

(i) All hammerhead turn around shall meet the following standards:

- a) The right-of-way or easement area of the turnaround side branch shall be at least 50 feet by 50 feet.
- b) The gravel or paved surface shall extend at least 50 feet from the centerline of the adjacent roadway.
- c) The width of the gravel or paved surface shall be equal to the street width.
- d) The hammerhead shall have a minimum 25 foot turning radius.
- e) Larger dimensions may be required by the Director of Code Enforcement or Planning Board to accommodate larger design vehicles anticipated to use the turnaround.

(g) Connection Requirements. The following standards determine the number of connections a Private Road must have with an existing Local Street. The cumulative number of lots or dwelling units created through the addition of lots or dwelling units to an existing subdivision shall be included in the minimum number of required street connections. Permitted Accessory Apartments shall not be included When when determining the number of dwelling units, the Code Officer shall not include permitted Accessory Apartments.

| Number of Lots or Dwelling Units | Minimum Connections |
|----------------------------------|---------------------|
| Lots: 30 or less | 1 |
| Lots: 31 or more | 2 |
| Units: 30 or less | 1 |
| Units: 31 or more | 2 |

(1) Street Connection Separation Requirements. Private Roads with two (2) or more connections to an existing public street shall be separated according to the standards in Table 2 of Section 900 Subdivision Review.

(h) Maintenance Agreement. The applicant shall provide evidence that the new or extended private road shall be maintained either by the applicant or by the lot owners or a homeowners-a road association. Proof may consist of a declaration of

covenants that will be recorded and become part of each deed and specify how the costs of maintenance will be apportioned among the lot owners, or appropriate road homeowners-association documents. In the event that a road homeowners association is formed, each lot deed shall refer to the association and shall require the lot owner to be a member of the association. No private road will be maintained by the Town until the Town has accepted the road or a public easement has been granted and accepted by the Town. No private road shall be offered to the Town for acceptance until it meets the design requirements for a public street contained in this Ordinance.

9. Appeals. An appeal of any order, relief or denial made by the Planning Board may be taken by any aggrieved party to the Superior Court within thirty (30) days pursuant to Maine Rules of Civil Procedure 80-B.

DE. Sidewalks

1. Where required by this Ordinance, or by the Planning Board as a condition of subdivision or site plan approval, sidewalks shall be constructed in accordance with the standards in Tables 3 and 4 or Appendix B of this Ordinance.
2. Accessibility. Sidewalk construction shall meet all applicable American with Disabilities Act (ADA) Standards.

E. The quality of an existing road shall not be degraded during construction of any new public street or private road.

Section 500 Amendments

| | |
|-----------------------------|---|
| Order 10-075; Date 04-27-10 | Changes to Central Sewer System; Child Care Facility; Net Residential Density; and Dead End Streets |
| Order 10-164; Date 09-14-10 | Changes to Outdoor Sales |
| Order 10-230; Date 12-14-10 | Addition of Restaurants in C1 zone |
| Order 11-206; Date 12-13-11 | Addition of siting and regulation for Medical Marijuana Dispensaries |
| Order 12-014; Date 03-14-12 | Changes to Backlot standards |
| Order 12-099; Date 08-14-12 | Addition of Domesticated Chickens |
| Order 12-148; Date 10-23-12 | Addition of Retirement Community and Care Facility Overlay District |
| Order 12-149; Date 10-23-12 | Addition of Accessory Apartments |
| Order 13-001; Date 01-22-13 | Change to waiver of Curb Cuts |
| Order 13-002; Date 01-22-13 | Change to list of Controlled Access Streets. |
| Order 13-072; Date 05-14-13 | Addition of Sidewalk Impact Fee |
| Order 14-164; Date 07-08-14 | Changes to Automobile Repair Services, Addition of Automobile Storage Lot |
| Order 14-223; Date 07-08-14 | Change of Conditional Use Submission deadlines |
| Order 14-387; Date 10-14-14 | Addition of Automobile Auction Facility |
| Order 17-052; Date 03-28-17 | Change to Accessory Apartment |
| Order 17-161; Date 10-10-17 | Change to Developable Land; Streets; Deletion of Driveway; Lot, Backlot |
| Order 18-049; Date 04-20-18 | Change to Streets, New or Extensions of Private Roads. |

Table 3 Design and Construction Standards for Town Streets and Private Streets Roads

| Item | Major Local Street | Minor Local Street | Ind./Comm. Street | Major Private Street <u>Road</u> | Minor Private Streets <u>Road</u> | Upgraded Private <u>Road</u> |
|--|--------------------|--------------------|-------------------|--|--------------------------------------|---------------------------------|
| Average Daily Traffic (ADT)/Lots Served ⁽¹⁾ | > 400 AADT | ≤ 400 AADT | n/a | ≥ 11 lots | ≤ 10 lots | <u>See Note 7</u> |
| Surface Type | Paved | Paved | Paved | Paved | Gravel | <u>Gravel</u> |
| Min. Right-of-Way Width | 60' | 50' | 50' | 50' | 50' | <u>50'</u> |
| Min. Traveled Way Width ⁽²⁾ | 22' | 20' | 24' | 20' | 18' | <u>20'</u> |
| Primary Shoulder Type ⁽³⁾ | Paved | Paved | Paved | Paved | Gravel | <u>Gravel</u> |
| Min. Primary Shoulder Type without Curb | 4' | 2' | 4' | 2' | 2' | <u>2'</u> |
| Min. Primary Shoulder Type with Curb | 5' | 2' | 4' | 2' | n/a | <u>n/a</u> |
| Min. Primary Shoulder Type with Sidewalk | 5' | 2' | 4' | 2' | n/a | <u>n/a</u> |
| Secondary Shoulder Type | Gravel | Gravel | Gravel | Gravel | n/a | <u>Gravel</u> |
| Min. Secondary Shoulder Width without Curb | 2' | 2' | 2' | 2' | n/a | <u>n/a</u> |
| Min. Clear Zone Width (each side) | 8' | 7' | 7' | 2' | 2' | <u>2'</u> |
| Min. Esplanade Width | n/a | 5' | n/a | n/a | n/a | <u>n/a</u> |
| Minimum Vertical Clearance | 14' | 14' | 14' | 14' | 14' | <u>14'</u> |
| Min. Grade | 0.50% | 0.50% | 0.50% | 0.50% | 0.50% | <u>0.50%</u> |
| Min. Grade with Curb | 1% | 1% | 1% | 1% | 1% | <u>1%</u> |
| Max. Grade | 7% | 8% | 6% | 11% | 11% | <u>11%</u> |
| Min. Centerline Raduis | 350' | 180' | 200' | 100' | 60' | <u>80'</u> |
| Min. Tangent between curves of reverse alignment | 200' | 100' | 200' | 100' | 100' | <u>100'</u> |
| Min. Angle of Street Intersection ⁽⁴⁾ | 90 | 60 | 90 | 60 | 60 | <u>60</u> |
| Max. Grade at Intersections ⁽⁵⁾ | 2% | 2% | 2% | 2% | 2% | <u>2%</u> |
| Min. Curb Radii | 30' | 25' | 30' | 25' | 15' | <u>25'</u> |
| Max. Dead End Street Length | | | | See Section 543 Streets and Section 911.M.5(b)(5) Dead End Streets | | |
| Min. Sidewalk Width | 5' | 5' | 5' | n/a | n/a | <u>n/a</u> |
| Min. Paved Apron ⁽⁶⁾ | | | | 30' | 30' | <u>30'</u> |

Additional Standards

(1) See Section 911(M) for street connection Requirements

(2) Add 8' of width for each lane of on-street parking

(3) See Section 911(M)(5)(b)(6) for shoulder and sidewalk requirements

(4) Angle must be maintained for at least 60' from intersection.

(5) Maximum grade must be maintained for at least 60' from the intersection

(6) A negative 2.0% grade from the existing edge of pavement must be provided to an appropriate drainage way what is no less than 5 feet from the travel surface or private way it intersects.

(7) This standard shall apply to an upgrade of a Private Way served by 30 or less lots

Table 4 Street Construction and Dimensions

| Material | Major Local Street | Minor Local Street | Ind./Comm. Street | Major Private Street <u>Road</u> | Minor Private Streets <u>Road</u> | <u>Upgraded Private Road</u> |
|-------------------------------------|--------------------|--------------------|-------------------|----------------------------------|-----------------------------------|------------------------------|
| Surface Type | Paved | Paved | Paved | Paved | Gravel | <u>Gravel</u> |
| Aggregate Sub-Base Courses | | | | | | |
| Type D* | 21" | 21" | 27" | 21" | 18" | <u>21"</u> |
| Crushed Aggregate Base Course** | 3" | 3" | 3" | 3" | 3" | <u>3"</u> |
| Hot Bituminous Pavement | | | | | | |
| Total Thickness Compacted | 5" | 4" | 5" | 4" | n/a | <u>n/a</u> |
| Base Course, HMA 19.0 mm | 3.5" | 2.5" | 3.5" | 2.5" | n/a | <u>n/a</u> |
| Surface Course, HMA 9.5 mm | n/a | 1.5" | n/a | 1.5" | n/a | <u>n/a</u> |
| Surface Course, HMA 12.5 mm | 1.5" | n/a | 1.5" | n/a | n/a | <u>n/a</u> |
| Paved Apron | | | | | | |
| Aggregate Sub-Base Courses | | | | | | |
| Type D | | | | | 18" | <u>18"</u> |
| Type B | | | | | n/a | <u>n/a</u> |
| Crushed Aggregate Base Course** | | | | | 3" | <u>3"</u> |
| Hot Bituminous Pavement | | | | | 3" | <u>3"</u> |
| Bituminous Concrete Sidewalk | | | | | | |
| Crushed Aggregate Base Course | 10" | 10" | 10" | n/a | n/a | <u>n/a</u> |
| Pavement Surface Course*** | (2)-1.25" | (2)-1.25" | (2)-1.25" | n/a | n/a | <u>n/a</u> |

Notes:

(#= Required number of courses

* The Planning Board or Director of Public Works, as appropriate, may reduce the required depth of ASCG Type D from 27" to 21" if the applicant provides a geotechnical evaluation performed by a professional engineer. The evaluation must include gradations, California Bearing Ratios, and a design (based on AASHTO design methods) which indicates that 21" of ASCG Type D will be adequate to handle the estimated vehicular weight loads.

** Material shall be Crushed Aggregate Base Course, Type A, or Reclaimed asphalt approved by the Public Works Department.

*** Material shall be HMA 9.5 mm.