

## Stephen J. Puleo

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**From:** Sam Hamilton <shamilton@eatonpeabody.com>  
**Sent:** Wednesday, October 2, 2024 1:02 PM  
**To:** Durward Parkinson; Planning Board; Stephen J. Puleo  
**Subject:** Cross Ridge Community Memo for Windham October 7 Planning Board Hearing re: # 24-13 After-the-Fact Major Subdivision  
**Attachments:** Memo to Windham PB re Cross Ridge Subdivision.docx

Durward and Members of the Windham the Planning Board,

I hope your week is going well. I am enclosing with this email a memorandum from the Cross Ridge Community group (made up of homeowners in the existing subdivision) in regards to the hearing on October 7 for the After-the-Fact Major Subdivision application filed by PTG properties. We hope that the Planning Board will be able to read our comments and will find them helpful for their deliberations Monday night.

Myself and Joe Kellner (lead member of Cross Ridge Community group) are planning to speak to the Planning Board Monday night and would request some leeway on the 3min speaking rule as Joe and I will be the only ones speaking on behalf of the entire neighborhood group (rather than having numerous members come up and speak).

Thank you so much for your time and effort on this project.

If you could please confirm receipt of this memorandum and that it will be circulated to all members of the Planning Board in advance of the hearing that would be much appreciated.

Best,

Sam

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## Memorandum

**To:** Windham Planning Board and Durward Parkinson, Esq.  
**From:** Eaton Peabody obo Cross Ridge Community  
**Date:** 10/2/2024  
**Re:** October 7, 2024, Planning Board Public Hearing re: #24-13 After-the-Fact Major Subdivision- Cross Ridge Subdivision by PTG Properties Inc.

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### Summary

Cross Ridge Community (hereinafter “CRC”) is a newly formed group of neighbors who live within the already existing subdivision and will be directly affected by this project as the deeded road maintenance agreement will have direct financial implications on all CRC members for any additional growth within the neighborhood. CRC was formed due to the applicants proposed further construction in the neighborhood, which CRC members opposed on the basis of the roads not being constructed to standards, the responsibility of the neighbors to repair the roads following his construction work, and that there is not safe passage in the neighborhood for emergency vehicles.

From the outset CRC would like to note that they are not against development and do believe that PTG properties, or anyone, should be able to further develop in the neighborhood where it is possible to do so under the current ordinance. CRC has reached out to the applicant in the hope of resolving our issues prior to the October 7<sup>th</sup> hearing but those efforts were not successful. The ordinance provides the guidelines that must be met by all applicants. CRC is concerned that the proposed development attempts to skirt the requirements in the ordinance. As explained in more detail below, should the Planning Board vote to grant the extensive waivers requested by the applicant and move to substantive review, CRC requests the Planning Board consider attaching conditions of approval to the project to ensure the safety of all within the neighborhood.

### Waiver Standards

Per section 120-908(C) of the Windham Land Use Code (“LUC”): “The Planning Board may waive the requirements of § **120-911**, Performance and design standards, unless prohibited by Maine statutes, where it finds that there are special circumstances of a particular parcel proposed to be subdivided, or that the application is simple and minor in nature. The applicant must demonstrate that the performance standards of these regulations and the criteria of the subdivision statute have been or will be met and the public health, safety and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of this chapter.”

This is what is required for each and every waiver that is requested by the applicant or any applicant for that matter. Further, in granting site waivers, the Planning Board shall utilize the following criteria: “The waiver will improve the ability of the project to take the property's predevelopment natural features into consideration. Natural features include, but are not limited to, topography, location of water bodies, location of unique or valuable natural resources, and relation to abutting properties or land uses.” The Planning Board must also find that for each waiver requested it will not result in the following:

1. Undue water or air pollution.
2. Undue light pollution or glare.
3. An inadequate water supply.
4. Unreasonable soil erosion.
5. Unreasonable traffic congestion or safety risk.
6. Decreased pedestrian safety or access.
7. Inadequate supply of parking spaces.
8. Inadequate sewage disposal capacity.
9. Inadequate solid waste disposal capacity.
10. An adverse impact on scenic or natural beauty, aesthetics, historic sites, or rare or irreplaceable natural areas.
11. Flooding or adverse drainage impacts on abutting properties.
12. An adverse impact on the Town's ability to provide the subdivision with public safety services.

CRC contends that the applicant has not shown that the health, safety and welfare of the Town are protected by agreeing to these substantial waivers. The waivers in fact have the effect of nullifying the intent and purpose of the LUC. The applicant proposes a waiver of LUC Sections 120-911M(5)(b)(7)<sup>1</sup> Street Connection Requirements and Att. Section 120-2 Attachment 2-Appendix B. Street Design and Construction. Rather than provide a narrative of how this requested waiver will improve the project or protect health and safety, the applicant simply stated there is no way they could comply with this requirement. Simply put, inability to comply with ordinance requirements means that an application cannot proceed. Further, the requested waivers violate the Planning Board’s waiver ability as they will result in unreasonable traffic congestion or safety risk [120-908(C)(2)(b)(5)]; decreased pedestrian safety or access [120-908(C)(2)(b)(6)]; and will have an adverse impact on the Town’s ability to provide the subdivision with public safety services [120-908(C)(2)(b)(12)].

The ordinance does not allow the Planning Board to grant a waiver simply because the applicant cannot comply. The applicant has not shown that the health, safety and welfare are protected and, in fact, without taking the proper steps to achieve construction standards, further construction exacerbates an existing health, safety and welfare problem. There is already

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<sup>1</sup> The most recent planning staff memo notes that there may not be a need for the LUC requirement of two street connections as it is serving less than 31 lots. This is not; however, what the LUC requires. Specifically, LUC section 120-911M(5)(b)(7) requires that “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.” These new lots will create roughly 60 total lots in the neighborhood. Therefore, there are more than 31 lots, which per the LUC, requires a minimum of 2 connections. A waiver is required if the applicant does not add a second street connection—a waiver that should not be granted.

substantial traffic congestion, especially at the neighborhood entrance, due to the design deficiencies. Adding more homes, and a potential connector into Gray<sup>2</sup>, makes this worse. Pedestrian safety is at risk due to vehicles not being able to safely pass while navigating the neighborhood. Further development does present an adverse impact on the town's ability to provide public safety services. By waiving the requirement for a second entrance, the health and safety of the Town are at risk as it is highly conceivable that the Cross Ridge Drive entrance could become inaccessible cutting off 52 (60 after this application) homes. The new roads need to have the proper stability, width, and visibility for the safety of the residents. These standards contained in the ordinance are not superfluous they are in there for a reason. All words in an ordinance must be given meaning and cannot be treated as mere "surplusage." *Zappia v. Town of Old Orchard Beach*, 2022 ME 15, ¶ 10, 271 A.3d 753. The Town has taken up a concerted effort over the last several years to get Town roads up to the requirements in the Ordinance and simply not requiring a new major subdivision to comply with these requirements flies in the face of what waivers are for in Windham.

### **Consent Agreement**

The consent agreement was "intended to, and shall only, resolve the Town's potential legal action against the Owners, and in no way shall be construed to or shall actually constitute approval of any subdivision, such legal authority being resolved only for the Town Planning Board." See Consent Agreement at Page 2. This alone should signal to the Planning Board that the Consent Agreement does not allow the Planning Board to waive subdivision requirements, nor does it require the Planning Board to approve this development. Rather, it allowed the developer to avoid the Town taking them to court for failing to follow the ordinance requirements previously.

### **Requested Conditions Should Waivers be Granted**

The Windham LUC provides the requirements that the applicant must meet. The Planning Board, not the consent agreement, is the sole source of interpreting and applying the LUC to this project. CRC simply requests that the Planning Board require the applicant to meet all the standards and requirements of the ordinance and requests that the Planning Board not issue the waivers. Should the Planning Board grant the waivers, CRC requests that the Planning Board consider attaching the following conditions of approval<sup>3</sup> to the project to ensure the safety of those living in the neighborhood. The Planning Board should require PTG Properties, along with

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<sup>2</sup> Of note, CRC is concerned with the Gray Access Easement that is included as part of this plan. Part of this plan includes the ability to access a large parcel across the gray line. Once the town line is crossed, Windham has no control. If the applicant were to develop that area, that would be even more traffic over improper roads and an even more substantial life safety risk.

<sup>3</sup> Per state statute 30-A M.R.S. §4403(5) "The municipal reviewing authority shall, within 30 days of a public hearing or, if no hearing is held, within 60 days of determining it has received a complete application or within any other time limit that is otherwise mutually agreed to, issue an order: . . . Granting approval upon any terms and conditions that it considers advisable to: (1) Satisfy the criteria listed in section 4404; (2) Satisfy any other regulations adopted by the reviewing authority; and (3) Protect and preserve the public's health, safety and general welfare." Emphasis added. The conditions CRC proposes are critical to protecting and preserving the public's health, safety, and general welfare should the Planning Board decide to grant the waivers requested.

all associates, in addition to the terms already agreed to with the Town of Windham via Consent Agreement, to comply with the following conditions:

1. Applicant agrees to widen the Cross Ridge Drive entrance such that access for life safety is not inhibited, while accounting for school bus drop off, snow storage, and the new cistern. The construction of the entrance shall be up to modern standards to mitigate against drainage issues that may arise. Paint lines to delineate proper travel on this area of the road.
2. Applicant agrees to widen the 90-degree corner on Lockland Drive such that fire apparatus can safely pass each other. Correct current issues with puddling / draining that currently exist in the area. The idea of stop signs was discussed, but we do not feel this intersection would benefit from stop signs.
3. Applicant will cause for the creation of an MOU or other binding instrument with the town or a third party that outlines the refilling of the cisterns if they are used, delineates how they will be monitored and maintained, how they will be topped off, and that PTG properties, or its successor in interest, is responsible for a period of no less than 10 years.
4. Applicant will document the current state of all roads between the entrance to Cross Ridge Drive and the subject properties and agree to bring these roads back up to the current state following all construction activities should any damage occur.
5. Applicant agrees that, once construction is completed, cracks will be filled along all roadways leading to the subject properties.
6. Applicant agrees that there will be no more than one single family dwelling in Gray accessible from the Cross Ridge Neighborhood.
7. Applicant agrees that no further development activities beyond the ones currently before the planning board will occur within the Cross Ridge Neighborhood following completion of this project.
8. Applicant agrees that, if in the future the town may accept the roads, that the roads will be conveyed to the town at no cost for this purpose.
9. Applicant agrees to release all properties from the deeded road maintenance agreement upon formation of the Road Association.

Thank you for your time and efforts in reviewing these comments and the project. We will be at the October 7th meeting to speak and answer any questions you may have.

Very truly yours,

*/s/ Sam Hamilton*

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