

Town of Windham

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MEMORANDUM

To : Town Council
From : Anthony T. Plante, Town Manager 
Date : December 31, 2015
Re : Discussion Item for January 5, 2016 Special Meeting
CD 15-394, "Private Ways, Development, and Standards"

At next Tuesday's special meeting the Council will take up discussion item CD 15-394, "Private Ways, Development, and Standards." This is an outgrowth of the discussion involving private ways around Forest Lake and the way development has occurred; specifically, the standards to which private ways have (or have not) been built in the past, the town's current standards, and what, if any, changes to make. At the meeting staff will provide copies of Windham's current private way standards ordinance language, as well as that for Cumberland, Gorham, and others. Staff will also share maps and other information about the extent of private ways in Windham, the potential for additional development, and outline a range of potential alternatives for the Council to consider.

In an email sent to Councilor Chapman, Ken Cole, and me last October, attorney Natalie Burns had the following to say about some of the challenges associated with regulating private ways and development on them:

Windham currently has private road standards that are fine as to the actual construction requirements. However, there are several issues. First, there is a grandfathering provision for streets built prior to October 22, 2009. We will have to consider whether this provision can be revised without resulting in successful legal claims. It was written as it is to avoid any legal claims, but it may be possible to change this, especially in light of the resulting public safety issues. Second, private roads are reviewed by Code Enforcement and a consulting engineer is only required for four or more lots. You may want to revise this to require Planning Board review (as Gorham does for all private roads), at least over a certain number of lots. This removes one incentive for piecemeal divisions, especially if any increase in the number of lots on the road is required to come back before the Planning Board for approval of an amendment to the private way approval. Third, both the backlot and the driveway provisions need to be reviewed to

Town Council

Discussion Item for January 5, 2016 Special Meeting

CD 15-394, ðPrivate Ways, Development, and Standardsö

Page 2 of 2

ensure that they do not provide unintended exemptions from the road standards or worsen existing private road conditions.

The most fundamental duty of local government is to protect public health, safety, and welfare. As we have seen in Forest Lake, but again recently with the proposed subdivision at the end of Lazy Acres Lane, continued development on private ways can create real issues and lead to conditions that adversely affect public safety and the town's ability to provide public safety services.

The maps included with this memo in legislative file CD 15-394 show that private ways account for nearly half (49%) of road mileage in Windham (105 out of 213 miles), that 43% of Windham's dwelling units are located on private ways, and that there is still considerable development potential on private ways. If anything, the development potential on private ways is likely understated because lots with public road frontage would not necessarily gain their access from that public road. A nearby private way may provide easier, cheaper, or better access to all or part of that lot.

The purpose of Tuesday night's discussion is to understand the extent of the issues facing the community, consider a range of alternatives (and potential consequences) for dealing with those issues, and for the Council to determine a path forward.