



# Town of Windham

## Meeting Minutes - Final

### Planning Board

Town Offices  
8 School Road  
Windham, Maine

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Monday, August 8, 2016

7:00 PM

Council Chambers

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1 Call To Order

2 Roll Call

*The meeting was called to order by Chair, David Douglass. Other members present were: Margaret Pinchbeck, Keith Elder, Rachael Mack, and Bill Walker.*

*Planner, Amanda Lessard, and Planning Director, Ben Smith, were also present*

3 [PB 16-068](#) Approval of Minutes: July 25, 2016

**Attachments:** [Planning Board Minutes 7-25-16 - draft](#)

*Bill Walker made a motion to approve the minutes as written.*

*Seconded by Margaret Pinchbeck.*

*Vote: Four in favor. No one opposed. Keith Elder abstained.*

### **Public Hearing**

4 16-20 Odd Fellows Subdivision. Minor Subdivision final plan review. P.T.G. Properties, Inc. to request review of a two (2) lot residential subdivision. The property in question is identified on Tax Map: 48, Lot: 28-1 and located at 529 Roosevelt Trail, Zones: Medium Density Residential (RM) and Retirement Community and Care Facility Overlay (RCCF).

*Tom Farmer, landscape architect with Wright-Pierce, was present representing the applicant. He explained:*

- They had resubmitted the landscape plan to show the existing tree line and where the one new tree was proposed on Route 302.*
- One lot would be accessed from Route 302; the second lot would be accessed from Provost Drive.*

*Amanda Lessard explained the net residential density would allow a duplex on the lot.*

*Public Comment:*

*John McNeil, Naumberg Way - He said that only two Board members had been at the sitewalk. He didn't feel that the Board could make an informed decision on the project. There were some sight distance problems.*

*The road in itself was a confusing mess. When the road was built it was built for a condominium association. There were now two condominium associations and a homeowners association that had banded together; he was the president. The applicant had agreed to join but they had a tremendous problem getting the owner of the road to work with them.*

*Mr. McNeil said he was not against the project he was just concerned with the way it was going.*

*Amanda Lessard explained:*

- The existing private road was outside of the Board's jurisdiction.*
- The subdivision had a deeded access on Provost Drive.*
- Staff had no concerns with the condition of the road.*
- The purpose of the sitewalk had been to evaluate vegetation clearing, runoff and the location of the septic system for the Odd Fellows Hall.*

*There was no more public comment. The public hearing was closed.*

## **Continuing Business**

- 5      [PB 16-071](#)      16-20 Odd Fellows Subdivision. Minor Subdivision final plan review. P.T.G. Properties, Inc. to request review of a two (2) lot residential subdivision. The property in question is identified on Tax Map: 48, Lot: 28-1 and located at 529 Roosevelt Trail, Zones: Medium Density Residential (RM) and Retirement Community and Care Facility Overlay (RCCF).

**Attachments:**    [16-20 Odd Fellows Subdivision Final 08-02-16](#)

[16-20 Odd Fellows Final Submission](#)

[16-20 Odd Fellows Plan](#)

[16-20 Odd Fellows supplemental](#)

*Margaret Pinchbeck made a motion that the application for project 16-20 – Odd Fellows Subdivision was found complete in regard to the submission requirements based on the application checklist, but the Planning Board retained the right to request more information where review criteria were not fully addressed.*

*Seconded by Rachael Mack.*

*Vote: All in favor.*

*Margaret Pinchbeck made a motion that the Subdivision application for 16-20 Odd Fellows Subdivision on Tax Map: 48, Lot: 28-1 was to be approved with conditions 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.*
- This subdivision is not located over a significant sand and gravel aquifer.*
- The new residential lot will not result in undue air or water pollution.*

**B. WATER**

- A 12-inch water main runs past this subdivision along Provost Drive.
- Lot 2 is proposed to be served by public water, and would connect to the main in Provost Drive.
- A written statement from the Portland Water District indicating that there is adequate water supply and pressure for the subdivision must be submitted with the Preliminary Plan.
- The closest fire hydrant is located on Roosevelt Trail at Provost Drive. The hydrant location should be shown on the plan.

**C. SOIL EROSION**

- A surface drainage plan must be submitted as part of the Final Plan.
- In the July 18, 2016 the applicant states that "stormwater flow will be minimal and can be handled on-site if necessary".
- This development is within the NPDES MS4 area. Relative to the applicability of Chapter 144 – Post-Construction Stormwater Ordinance, the proposed development on the 2 lots will not result in an acre or more of disturbed area.
- A soil erosion and sediment control plan has been submitted as part of final plan set. It takes the form of printed best management practices plan rather than on-the-ground designation of erosion control measures.

**D. TRAFFIC**

- Lot 1 has frontage on Roosevelt Trail, a public street. The applicant has submitted an easement deed to provide access to Lot 2 on Provost Drive, a private road.
- The driveway serving the proposed new lot should be shown on the plan.

**E. SEWERAGE**

- The proposed lot will be served by a private septic system.
- Test pit results prepared by James Mancini, S.E., dated March 16, 2016, show that the property has adequate soils to support a private septic system.
- The test pit location is shown on the plan.

**F. SOLID WASTE**

- Private residences in this subdivision will participate in the Town trash bag program.
- The creation of a new house lot will not produce an undue burden on the Town's ability to collect and dispose of solid waste.

**G. AESTHETICS**

- There is a single family home under construction on Lot 28-1.
- There is an existing tree line along the Provost Drive property line. Street trees are required every fifty (50) feet on Lot 1 and Lot 2.
- There are no documented rare botanical features for significant wildlife habitat documented on the site.
- In a letter dated July 26, 2016 Tom Farmer, P.L.A of Wright-Pierce stated that on tree will be planted every 50' on the frontage of Lot 1 and the existing tree line on Provost Drive provides the required street trees for Lot 2.

#### *H. CONFORMITY WITH LOCAL PLANS AND ORDINANCES*

- *Comprehensive Plan:*
- *The plan does meet the goals of the 2003 Comprehensive Plan.*
  
- *Land Use Ordinances:*
- *Each of the lots exceeds the 20,000 square foot minimum lot size for a lot served by public water in the RM District. The lots also meet or exceed the minimum lot width of 100 feet.*
- *The subdivision meets the net residential density requirements. The total area of the subdivision is 86,535 square feet (1.06 acres). There are no wetland areas. The net residential density allows for 5 dwelling units (86,535 s.f./15,000 s.f. = 5.769 lots).*
  
- *Subdivision Ordinance*
- *None.*
  
- *Others:*

#### *I. FINANCIAL AND TECHNICAL CAPACITY*

- *There is no public infrastructure or improvements proposed as part of this application. Coast associated with review of this project are privately finance by the applicant.*
- *The applicant, the landscape architect and the surveyor have demonstrated technical capacity for this project.*

#### *J. RIVER, STREAM OR BROOK IMPACTS*

- *This 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 July 5, 2016, as amended July 26, 2016, 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 Land Use Ordinance.*

*Seconded by Keith Elder.*

*Vote: All in favor.*

## **Public Hearing**

6 Proposed Ordinance changes relative to Private Roads. Proposed changes would require all extensions of Private Ways and new Private Roads to go through Site Plan review and adjust the existing Private Road standards so that a Major Private Road would be required after the 5th lot, as opposed to the 10th lot under today's standards.

*Ben Smith, Director of Planning, explained the status of the ordinance work:*

- *Town Council had been dealing with private roads. They recently had a wide-ranging discussion primarily concerned with when new development on existing private roads triggered the requirement for upgrades on those private roads. The Council continued to work on that.*
- *There were two very specific items that they had directed to the Planning Board for review and recommendation:*
  - o *The first was to further develop ordinance language regarding what*

development conditions would trigger upgrades to the existing road standard. Currently, there were minor private roads and major private roads. The threshold between the two was ten lots. Fewer than ten lots would be considered a minor private road and could have a gravel surface. More than ten lots was a major private road that was required to be paved. There were some other differences in the standards but that was the most prominent one.

- o The second was to look specifically at having all private roads receive site plan approval from the Planning Board. Currently, private roads were reviewed by Code Enforcement. There were requirements for the design of those roads. Those roads would be reviewed either by the Planning Board or by the Staff Review Committee, depending on the length of the road. A road longer than 500 feet would go to the Planning Board, less than 500 feet would go to the Staff Review Committee.

- o The roads would receive third party engineering review. There would be a requirement for inspection fees to be in place and ongoing inspections during construction.

- o Ordinance language had been provided which included additions and strike-throughs related to all new private roads and extensions of existing, going to the Planning Board for site plan review, and the proposed change in the threshold between minor and major private roads.

- o Requirements for existing private roads had not yet been determined. The ordinance language did not deal with currently existing private roads. It was only for new private roads and extensions from existing private roads in existence since 2009.

- o The objective was to provide Town Council with a recommendation.

#### *Public Comment*

John McNeil, Naumberg Way – He stated that the road he lived on was supposed to be a private road. He had been told by the builder that it was a town road and so he had bought his condominium and moved in. Then he found out it was a private road. After two years of dissatisfaction and wrangling he had managed to take over the association. His first charge was to get the town to accept the road because it was built to town standards, sidewalks, streetlights, drainage, the whole nine yards. He estimated that he had spent between \$10,000 and \$15,000 dollars on a lawyer and trying to get deeds and the paperwork together to get the road into an association and then hopefully approach the town to accept it. This was complicated in that it was parallel to Varney Mill Road and had become a short cut for it. The traffic through there was horrendous.

They needed badly to get things changed within the town. He had listened to Town Council talk about private roads and try to get organized. When the road was designed it was dedicated to two sets of condominiums. At the top of the road was another cluster of housing. He had sent letters to those people. Some of them had agreed to join the association, some thought it was a town road and would not. It had been a headache. Anything the town could do to get the private road system under some sense of order to try and help someone like himself to have direction and not just be floundering around trying to do good for a lot of people.

The other scenario was it was a site looking for an accident waiting to happen. When cars pulled up there were structures blocking site distance. He had tried to get that rectified. If you were on Route 302, making a left turn onto Provost,

*the speed of cars coming behind you was on average 50 to 55 miles per hour.*

*He couldn't believe that the road was before the Planning Board as a road for the association. After it was completed the developer could break a piece off for the people at the top of the hill and 850 feet for himself. It was a mess.*

*Anything the Board could do would be appreciated, having a person within the town to go to who could help. There were just not any laws or anything else. They couldn't get the road owner to address them or the people at the top of the hill to recognize them. Yet, there were 80 families who were willing to join the association. He had been maintaining the road for ten years but he was going to stop. The sidewalks needed repair. They shouldn't have to take care of that if they weren't going to have control of the road.*

*Ben Smith explained there was a private roads task force for existing roads that didn't meet the road standard which would allow them to get an easement for winter maintenance. That was one of the things in discussion.*

*Jim Hanscom joined the Board.*

*Lynda McDonald, Studio Drive – She said if there were at least three people on the road they could form a road commission and assess whoever they wanted so they did have a recourse.*

*She thought she had heard at a Council meeting that they had started working on this several years ago. She would like someone to address what a private road was. It was becoming just like a public road only they paid for it and you decided what it was.*

*Right now if there was a road servicing three lots it could still be a driveway. That was to be changed to two lots. That sounded minor but it wasn't if you thought about it. In their position, right now, if you had the density you could have three dwelling units on one lot. They had been saving acreage, one lot for their old age. They could have three dwelling units on it. That road would be about 1,000 feet in. She was there because when they bought it in 1975 it was not in great shape but they bought it because it was on a private road. It was a private thing. That's why they bought it. If anybody didn't like it that wouldn't be the place for them. When they sold lots they did it the same way, gravel road suitable for emergency vehicles, no association. If you didn't want to live on it you could buy someplace else. Private roads should be for those that liked private.*

*All they wanted to do was go in about 1,000 feet. They would cross a wetland too. If they took the third dwelling unit on the lot they would have to put in a driveway and impact the wetland more or they had the choice of widening the driveway they had now and making it a major road because it was over 500 feet. They would have to pave it and do the engineering and all that expense. Then you would have to go to the Planning Board. What she had seen traditionally when you went to the Planning Board and something was approved, forever after you were into it. Whenever you wanted to make a change you had to come back.*

*So it wasn't really minor. They would have to put in a superhighway if she wanted another relative near. She didn't think private roads should be the same as*

public roads and they should be in different areas. There was nothing good about it in a farm zone, through a wetland, putting in a super highway, a wide paved road. There was nothing about it in the Comp Plan, of keeping it rural. There was nothing about it for the ecology or protection of run-off. It was not reasonable and it certainly wasn't fair to people who had paid taxes on their land all these years. The things you tried to do legally and you couldn't do it.

It also seemed to her to be a way around the State law that said you could do if you had enough land and you had it long enough you could give your kids some land. It had been mentioned that there was still some time to scoot in under the wire. One of her grandkids was two years old. He would be the guy that had to put in the road. The reason the road was so long was their sons wanted it even more private then they were and they put the road in to be as far back as they could go.

It didn't make any sense at all because the other people had come in and had problems. It seemed like a ploy to get everything to have to be approved by the town. You were supposed to be able to give your kids land or sell some off to pay taxes if you had to or for any other reason. You were also supposed to, if you got older and wanted a one story house you ought to be able to do that on your own land. She didn't think any of that was fair. The other thing was what was a private road? It was supposed to be private for their business. The only time it should overlap was when they want emergency vehicles to come service it.

If somebody's got a private road and they expect the town services that everybody paid for then it was certainly reasonable for the Town Council to say keep your road up for emergency vehicles or you don't get them. That's it, end of discussion. If that happened many times she was sure the insurance companies would take it over and make it feasible for people to keep their roads up and mortgage companies and the whole works. All the town had to say was this is fair to taxpayers; we're not going to take our vehicles down over bumpy roads or wreck them. That should be the only thing, if the road was suitable for emergency vehicles. Not suitable to bring the values of her property up.

Ben Smith explained the private road standards were completely up to the Town of Windham to enact as appropriate. A private road was a road that had not been accepted by the Town of Windham. He didn't know that there was a definition of public vs. private street. But, that was the difference. Police and fire departments were obligated to respond. They may find themselves in a position where they couldn't get a truck down and they had to carry a board or respond on foot, but they were obligated to respond.

Ms. McDonald said if you could change everybody in town's life around, change the word private, why couldn't you change to whatever the other towns were doing? Change that ordinance instead. That was fair. The other thing was it kept saying that it referred to new roads or extensions. They knew full well the other was just around the corner. On page 5-37, 550 Streets, B.32 Reviewing Authority, it said all private roads required site plan. It didn't say just new ones, it said all. So there were some discrepancies. However they decided it, what happened to the people who were doing what they were supposed to but now they were going to be made nonconforming? The last time this thing went around everyone was told if you were already there this wouldn't affect you. Come to find out that wasn't exactly true. She knew someone that it affected them when they



went to have their property reappraised. They lost \$20,000 in value because it was nonconforming. Besides the money value she believed that a nonconforming lot had more restrictions than a regular lot as to additions or things you wanted to do to it. It for sure would though if you were on a road that you had to go to the Planning Board for. So that wasn't really accurate.

Scott McDonald, Inland Farm Road –He was a little concerned with the whole thing. It seemed like every couple of years, lately every year, this thing came back up. He didn't know why he would have to have his road paved. He didn't want it paved. He had kids that rode bicycles on it. The traffic went faster on paved roads. Now people put bumps on the paved road to slow it down. He shouldn't have to pave his road. If he gave his kids a piece of property they shouldn't have to pave it either. Right now you would have to hurry up and get your building permits before this went through. Hopefully it wouldn't be retroactive. He found it very hard to believe that it was so you could get a firetruck to his house. He could go sleep in a tent in the woods and you couldn't get a fire truck there. He didn't see how that would justify...when he put his road in he didn't have to pay the engineering. He put the money into gravel. What were his kids going to do? He may as well not give them the property because of the road going into it. Already the power had gone up considerably over the years. Now he needed to hire an engineer to tell whoever was going to do it how to do it. That was absurd. It was a private road. When was the last time the town took over a private road?

Ben Smith explained there had been a handful adopted that were built to the town standard as part of subdivision projects. Otherwise those would have remained private. Some had been private for a few years before they were adopted.

Mr. McDonald said he hadn't seen a lot of the private roads get turned over to public. He knew a lot of people wanted to and he didn't see it happening. His kids were pretty young now but what would it be by that time? It was craziness.

There was more to it than being able to get a fire truck to his house. It was a private lot. He didn't see what they were trying to accomplish. Why having two houses off a driveway instead of three? That helped the fire truck get in he guessed. He wasn't seeing any of it. He wasn't seeing how paving his road would get a fire truck in. In could get in fine now.

Basically, they were forcing everyone to go through subdivision for one lot if it was on a private road. You go before the Planning Board. They could say yes, no, yes with conditions. This was a subdivision. It should be kept for a subdivision because it was not a subdivision. It was a single lot.

When they did the thing with backlots you could get frontage off your driveway. Well, now you couldn't get frontage off your driveway. Now the whole thing was so crazy you didn't know what you were reading. Could you get frontage off your driveway or couldn't you. Why would you put in a big hammerhead and all that ridiculous stuff that was said before if you weren't going to get frontage from it?

It seemed like once again land owners rights were being tread on and he wasn't sure why but there had never been a year that went by that they gained any land rights. There had been a lot when they lost many. It was usually done kind of quietly and one at a time. They pertained to you. You couldn't do that now. You

were supposed to be able to give a piece of land to your kids. You still could but it was basically worthless once you paid all the fees. If you had \$60,000 worth of road and power to get into the lot it wasn't worth it.

You were taking away a lot of value, making things nonconforming so now you couldn't make it more nonconforming. It wasn't just no this isn't a good idea, let's try this. It was changing a lot. He knew their decision was nonbinding but he thought people had to speak up because every piece that they changed affected a lot of things.

Elaine Pollack, Gentle Breeze – She was already over \$5,000 for the engineering plan and over \$5,000 for the survey work. As if someone who was a contractor really didn't know what they were doing. They had no idea what it would cost once they got approval. Then they would have to have the person's work checked. They had no idea what it would cost. Before they even sold a lot they were at a minimum of \$10,000 and they were not through with it.

She wanted to say that she agreed many of Windham's private roads were in poor condition. She recognized and respected that the Town Council and Planning Board were in a difficult place. They were long-term issues that had to be addressed. The manner of addressing them should be well thought out in respect to Windham's property owners, citizens, and taxpayers. People with land had long term plans, had paid taxes, and should be worked with in the proposed process. How was the Planning Board doing this? A hearing did not suffice. It met the legal requirement but was unfriendly toward the town's long standing citizens.

They should make the process more inclusive of Windham's property owners. One size did not fit all was an easy way out. One standard for all private roads did not respect Windham's multiple zones. She advocated they maintain the revision made in 2009. Specifically she meant ten lots or fewer should continue with a minor gravel, not paved, road standard. This should especially apply to Windham's farm zone. She was speaking for where she lived, the farm zone. Paving for ten lots or under in the farm zone was incompatible with other issues.

Property owners had a right to due process in the site review process. There was no mention of any waivers. Most property owners didn't have \$50,000 to \$100,000 for a required performance guarantee. It would create undue hardship for property owners. The bar must be obtainable. What was proposed was not. The average property owner had to be able to navigate the process without professional representation. The process had to be kept financially accessible. Having professional representation was not.

She strongly encouraged the Planning Board to maintain the standards currently in place: ten lots were a minor road, gravel, no paving, same depth; no shoulder. Paved roads become dangerous if they were not maintained. The proposed process was cumbersome and would result in a cost for staff time and taxpayer money being spent. She hoped they would consider keeping the standards in the farm zone.

They did not feel Windham was protecting the farm zone when the Planning Board agreed to suburban subdivisions with paving in them. They had been in the process of creating lots, but did not want to go through subdivision. They thought the subdivision requirements that were required were totally inappropriate.

for the zone. They had encumbered their land with protective covenants into the future to prevent paving, prevent the restriction of animals, roosters crowing, and manure spreading.

Allen Pollock, Gentle Breeze – There were a few things he wanted to say in regard to it. Defining problems was where you had to put most of the effort because what you defined as a problem would drive the solution in that direction. He questioned broadly how was the problem quantified and qualified other than opinion and anecdotal evidence? It was not really good enough if you were talking about creating an entire change in the way that development occurred within the town, the parameters for that.

He strongly suggested that the town spend the dollars and time and look at the 90 plus miles of roads in an engineering sense and say where were the deficiencies? Were they really only talking about 3% to 5% of total linear footage. If so, that was a different set of problems. To define the problem you had to do the surveys, etc. He advocated for that and thought it was a good way to start. He was not sure that the work that had gone into it so far to make recommendation for changes to ordinances for planning was based on evidence.

He pointed out that page five of the proposed changes discussed changes to major and minor and those relating to traffic volumes. Minor streets were designed as 400 or less. Major streets were designed for more than 400 on average. He thought that was an accepted standard. Why not apply that kind of considerations to private roads? How much traffic was there? He didn't think a lot of the hubbub about private roads was warranted. That was just his opinion.

The problem with asphalt was it drove urbanization. Currently, it cost between \$125 and \$150 per linear foot to put down gravel permeable road that met town standards. You would be talking about 200 linear feet, minimum on the frontage. That was a lot of money invested in having a road that allowed Code Enforcement to provide a certificate of Occupancy for the properties on either side. If you added asphalt to that you tripled the cost, close to \$400 a linear foot and you were causing other problems. A permeable road didn't have the swift run-off and drainage problems that an asphalt road did. When you had an asphalt road the water ran fast. You had to do a lot of extra work in terms of drainage and so forth to make sure that problems didn't damage the road of other people's property. So you were compounding the problems by dictating a solution.

If they said private roads had to be paved after a certain number of lots he could guarantee the Planning Board would be crushed by the developers saying they needed less frontage because they couldn't sell properties economically without an urban density. That would completely undercut the rural life style.

Another problem with the cost of the process was that granting familial lands was a tradition that undergirds the financial stability of families. If you granted a lot and then helped children build a home you had essentially kept them from debt and gotten them a firm foundation in a good stable community. The community was solidified for that kind of work. You must be very careful that ordinances did not destroy the ability of families to do that for each other intergenerationally. There were families in Windham that had been here for six to ten generations living and working the land and staying here.

*He didn't think stakeholders had been consulted. 80% to 90% of Windham's land was rural. How many of those owners had been involved in saying what would work for them? He agreed it was going to take time to fix. But you needed to know what you were going to have to fix and how you were going to do it progressively instead of in a big bang fashion that essentially put everyone out*

*Bill McDonald, Studio Drive – He said he hadn't gotten much notice. If his son hadn't attended the last meeting he wouldn't have known. He didn't see anything published in the paper. When you considered the impact that private roads had and all the people involved there would be a lot of impact. At some point they would realize it.*

*He had a lot of land. Part of it was he would give it to his kids and grandkids. He could sell a lot off every once in a while to pay the taxes and he needed to do that. He'd had some health issues and his money went to other things. So if it wasn't for being able to sell a lot once in a while. The State let you sell a lot every five years and you could sell it and get some money. In five or six years that was what his taxes amounted to so if he didn't sell a lot he had to come up with a lot of money. That's the only way he could keep the land.*

*If it changed in this case and even his grandkids... They were at the end of the road and if they triggered the next one that came in they would have to do paving all the way to the beginning of the road. No one was going to do that. All he could do at that point was sell his land to a developer. They could probably do it but he couldn't at that scale. So he was out of the picture. It was forcing land owners to do something different than what they wanted to do. There went the rights they thought they had and paid taxes for 40 years. It just wasn't fair. He didn't think it was a legal thinking. He didn't see how you could do that.*

*Part of the reason he had been told it was happening was because there was some issues where another town wouldn't go over the roads because they were so bad. Well, why didn't they fix the problem, the road that was bad and not punish everybody because of that? There were some other roads that had been problems for years and they weren't wide enough and there were all kinds of hassles. Now there were some State provisions, a road commissioner deal where it had to be shared and if they didn't pay for it they could go to court or put a lien on the property.*

*So in their case they had Inland Farm Road. They had the Fire Chief down and he suggested they construct a hammerhead. They didn't have to but they did. They had built the rest of the roads with the idea of wanting to be safety conscious and making sure they would be happy there. Everyone wanted grave roads. That was why they wanted to be there. If you wanted a country atmosphere that was where you would go. So they did all those things and someone who didn't changed everything so they would be penalized for that as well. Didn't seem fair.*

*Corey McDonald – He agreed with everything the first speaker had said and he always did. His understanding was the whole problem started with camp roads that the town did winter maintenance on. Roads that were meant for summer passage anyway. People bought lots and built year round residences on them without improving the road or little bits here and there. They didn't have wide enough right-of-ways in place or the right-of-ways were sketchy. They were as travelled; there were no widths given. Some of them were only 14 or 15 feet*

*which wasn't really wide enough for a right-of-way. That was how it all started.*

*The town had been maintaining the roads in the winter. They felt they couldn't get out of it because they had been doing it for so long. Yet there were stumps in the edge of the roadway that the wings were hitting, damaging town vehicles. They couldn't be plowed wide enough in the winter so a lot of the time fire apparatus couldn't get in. It was a big problem. It was a safety problem and they knew there had been a problem with Cumberland on another road. They couldn't get in because of a fuel truck was blocking the way. The standards for new driveways or any new roads they had to meet were fine. They knew where those roads were, where the problem was. They needed to address those.*

*Pavement didn't do anything. He didn't care if there were 75 houses in there. If it was safe enough for one to get in it was safe enough for 75. If it met the standard for a fire truck to be able to pass if the road was half blocked, there was enough room for a fire truck to get by or an ambulance or whatever. Pavement didn't do any of that. Paying thousands of dollars for an engineer to tell you that the road was whatever width that it was supposed to be. They didn't need that. It was either wide enough or it wasn't. It either met the spec or it didn't.*

*The town somehow thought they couldn't do anything about the roads that were problem. They needed to stop the winter maintenance. Give the roads a year and if they didn't comply they wouldn't get plowed. They'd have to hire a subcontractor to do it. Chances were it would cost them more money because the road was so bad. To go through and take everybody else's rights that were doing it right and already had to meet certain specs that would create a safe passage. The town was putting its efforts into the wrong direction. They really needed to address the camp roads that had been turned into year round roads. He understood some of them. The problems weren't in the right-of-way. Some neighbors wouldn't let you widen the road. He didn't know what you would do about that. What you didn't do was attack everybody else with these unfair hoops to jump through. That was the problem. It was not the new roads.*

*Ryan McDonald, Studio Drive – He thought there was a mistake. It wasn't about private roads. It seemed to be about a much bigger issue and that was controlling development in the town and slowing it down or directing it the way you wanted. There was this big, grand vision of how they wanted it to be in the future. The problem was you couldn't control that if people could break lots off piece by piece outside of subdivision review or Planning Board review. You could still make the division, but if you wanted a building permit to actually have a residence there you need to meet these requirements and go before the Planning Board to get a road in there.*

*It all started a long time ago, getting rid of backlots. You couldn't do that, people would get upset, so they redefined what backlot meant. It had to have frontage. You could make your own frontage on it. But we'll just refine it and live with that for a while. And then we'll come and do this change later making it so damn expensive that you're never going to be able to do it anyway. You could build your frontage but now you have to build a road. It was just crazy. So this wasn't about solving a problem with private roads. It was about controlling development and it was a back way around to do that. That was really what it was. He hoped people were smart enough to see it.*

*There was no more public comment. The public hearing was closed.*

## Continuing Business

- 7      [PB 16-072](#)      Amendment to Town of Windham Land Use Ordinance, Chapter 140. Proposed amendments to Sections 300, 500 and 800 relative to Private Roads. Proposed changes would require all extensions of Private Ways and new Private Roads to go through Site Plan review and adjust the existing Private Road standards so that a Major Private Road would be required after the 5th lot, as opposed to the 10th lot under today's standards.

**Attachments:**    [PB memo private road packet 07-11-16](#)

*Ben Smith explained:*

- *Until 2009 there were no road standards in town.*
- *Within the next year or so there was an amendment that defined a minor private road as a road that served fewer than ten houses. There was a committee that looked at different community ordinances and did a lot of benchmarking. The Town's engineer weighed in and there were a number of different meetings. There were several drafts and recommendations to the Town Council. That was the last really big change and was really the establishment of ordinance standards for private roads.*
- *Most of the situations had to do with roads that were built before the standards were in place. Six or seven private roads had been approved by the Code Enforcement Office since the ordinance.*
- *The town had been having discussions regarding this for the last number of decades. It had been a long process.*
- *Currently, the issues had to do with development around Forest Lake. People had mentioned issues related to emergency response in that area based on road conditions at a certain time of year.*
- *Another part of it had to do with an application that the Planning Board saw recently where a new subdivision was proposed at the end of an existing road and it was difficult to impossible to require upgrades. The road would need to be driven over daily by people living in that subdivision and it did not meet a standard.*
- *A moratorium had been in place on development around Forest Lake that had expired. The Council had four meetings since the beginning of the year about how to address issues related to public safety on private roads that had not been designed to a standard. Some of them were fine, some were not but they were not designed to a standard. The town didn't know what those roads were.*
- *Council was still grappling with some of those issues and would have more conversation at the next meeting. Council thought it had enough agreement to send to the Planning Board for recommendations regarding specific things having to do with post 2009 roads: making adjustments to the existing road standards and having any new roads, or new extensions of roads go to the Planning Board for site plan review.*

*The Board commented:*

- *They were about to shift a burden onto people who hadn't done anything for the sake of development.*
- *They were limiting options for those who had owned land for generations.*
- *It was a huge benefit to be as diverse as Windham was. How could that be maintained and still afford people the flexibility to do what they wanted with their land while controlling development for safety of access?*
- *Was public input similar this time to when the previous standards were developed?*
- *Was there any engineering review or studies done to determine how the changes th*

were developed would cause the desired results?

- Was consideration given to different zoning areas?
- Some people were dissatisfied with the condition of their private road but they didn't want to form a road association.
- When the backlot standards were changed any existing road, as of October 2013, was not to be affected. What was happening was a new rule was being made for a problem that didn't work. The problem wasn't new construction, it was old roads. The Town Council needed to pay attention to old roads, either give them up, fix them, or force people to fix them.
- What was happening was future owners would get caught on this thing while existing owners who did choose to buy on substandard roads were still complaining but nothing was getting fixed for them.
- A lot of places would be made nonconforming. How did that help anyone when they once had a conforming lot with value and now a new set of regulations made them lose value and the ability to make income off their property?
- Back lots were no longer allowed. A driveway easement couldn't be provided. This would limit long thin lots to one dwelling unit.
- Section 800 required site plan review for more than 25,000 square feet. Why not change it to comply with the MDEP limit of 43,000 square feet?
- Paving would be a huge cost to the property owner.
- What was the point of ignoring the real problem and covering it up with something else?
- More public process was needed. Public forums should be held because a lot of people had no idea what was coming.
- There should be some payment required by a developer to fix bad roads for subdivisions off of private roads.
- Everything should not have to be paved.
- Some mechanism was needed to make improvements.
- People's rights had to be preserved.
- This should not be approved as is. There should be some committee so the issues could be understood and not negate the 2009 work.
- This was not ready. More public input was needed.
- No one comes to forums. Everyone complains about change but nobody gets involved.
- This should be sent to Town Council without an endorsement.
- Having private roads go to the Planning Board was a good idea.
- If the road was over 500 feet and went to the Planning Board there could be a waiver request.

Keith Elder made a motion to recommend to Town Council not approving as written and to pay particular attention to problems the town had prior to 2009, rather than rules continuing after 2009. Also, in regard to section 800 conforming to the Maine DEP standard of one acre of disturbance before a permit for site plan review was required.

Bill Walker amended the motion to include holding a public forum and perhaps a workshop for a town-wide discussion.

The amendment was acceptable to Keith Elder.

Seconded by Jim Hanscom.

Ben Smith stated that the threshold for site plan review was an existing standard and not related to private roads. Any development of land over 25,000 square feet, less than one acre was subject to site plan review from the Staff Review Committee; over one acre

would go to the Planning Board.

Vote: All in favor.

## **New Business**

- 8      [PB 16-073](#)      16-26 Anglers Road Development. Minor Subdivision sketch plan review Windham Economic Development Corporation to request review of a four (4) lot commercial subdivision. The properties in question are identified on Tax Map: 80, Lots: 66, 66-1 and located at 905 Roosevelt Trail and Anglers Road, Zone: Commercial 1 (C-1) and Aquifer Protection Overlay District Zone B (APB).

**Attachments:**    [16-26 Anglers Rd Comm Subdivision Sketch 08-02-16](#)  
[16-26 Peer Review Anglers Road Commercial Subdivision 08-01-2016](#)  
[16-26 Anglers Road Subdivision Sketch Application](#)  
[16-26 PLAN S2.1 MINOR SUBDIVISION SKETCH PLAN](#)

Bob Lightbody, a project engineer with Main-Land Development Consultants was present representing the applicant. He explained:

- They proposed a four lot commercial subdivision off of Anglers Road in the Route 302 commercial district with an aquifer overlay zone.
- The development would be served by public water, private septic, and electric along Anglers Road.
- They would submit a waiver request for driveway locations. There were not yet defined buyers. Site plan review would be required as the lots sold. They would like to do the driveways then.

Margaret Pinchbeck made a motion to schedule a sitewalk.

Seconded by Rachael Mack.

Vote: Five in favor. Jim Hanscom opposed.

Margaret Pinchbeck made a motion for a public hearing.

Seconded by Jim Hanscom.

Vote: Three in favor. Jim Hanscom opposed. Keith Elder and Bill Walker abstained.

- 9      [PB 16-074](#)      16-27 Auto Shine Car Wash. Major Site Plan and Conditional Use sketch plan review. Chase Custom Homes & Finance, Inc. to request review of approximately 8,888 square foot car wash facility. The property in question is identified on Tax Map: 53, Lot: 12 and located at 660 Roosevelt Trail, Zone: Commercial 1 (C-1).

**Attachments:**    [16-27 Auto Shine Car Wash Sketch 8-3-16](#)  
[16-27 Auto Shine Car Wash - Sketch Plan Application](#)

Jeff Amos, an engineer from Terradyne Consultants was present representing the applicant. They proposed:

- An entrance 600 to 700 feet south of the intersection from River Road and Route



302.

- The site was approximately 7/10 of an acre.
- The lot had a 30 foot wide access easement across an abutting property. The drive would be 24 feet wide. They would request a waiver of the five foot setback for the area of the drive as it crossed the access easement.
- The proposed building was just below 9,000 square feet. It would have five service bays and an office. There would also be vacuum stations on site.
- One-way traffic circulation through the back of the building to provide adequate queuing length.
- Public water was available.
- A subsurface wastewater system would be on-site.
- Underground utilities.
- Underground stormwater infiltration.
- Wash water would go to 6,000 gallon tanks for treatment and recycling.
- They would provide daily and hourly trip counts with traffic analysis. It did not appear they would exceed 50 trips per peak hour.

Amanda Lessard explained:

- There was no staff concern regarding the waiver request.
- Staff had recommended diverting traffic to the lower volume road.

For the next meeting the Board requested more information regarding:

- How would stormwater be dealt with?
- Traffic and egress from the site.
- Impervious surfaces.
- How would the wastewater be handled? How would salt be removed from the water
- Snow removal.

Jim Hanscom made a motion for a sitewalk.

Seconded by Margaret Pinchbeck.

Vote: Five in favor. No one opposed. David Douglass abstained.

Jim Hanscom made a motion for a public hearing.

Seconded by Keith Elder.

Five in favor. No one opposed. Bill Walker abstained.

## **Other Business**

10 Comprehensive Plan Update. Planning staff to present on the 1st Draft of the Comprehensive Plan update. Discussion to follow.

*Jim Hanscom made a motion to table the presentation until the next meeting.*

*Seconded by Rachael Mack.*

*Five in favor. No one opposed. Bill Walker abstained.*

11 Adjournment

*Bill Walker made a motion to adjourn.*

*Seconded by Jim Hanscom.*

*Vote: All in favor.*