

# Town of Windham

Planning Department  
8 School Road  
Windham, ME 04062

voice 207.894.5960

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## MEMO

DATE: October 20, 2014

TO: Windham Town Council  
THROUGH: Tony Plante, Town Manager  
FROM: Ben Smith, Director of Planning *BWS*  
Cc: Amanda Lessard, Planner

RE: §1200 Ordinance Amendments – Impact Fee Corrections

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The following changes to the Impact Fees section of the ordinance are proposed to correct the wording of the relevant ordinance sections so that they can be implemented the way the Council intended when the individual sections were adopted.

### **§1202 – North Windham Sidewalk Impact Fee**

This impact fee was adopted by the Town Council on May 16, 2013, to fund sidewalk projects in the Commercial 1 (C-1) zoning district, and set the fee at \$35/linear foot of sidewalk. Earlier this year, it was noted that there is an internal inconsistency within the ordinance, and a portion of the ordinance passed by the Council did not make it into the ordinance document.

#### Internal inconsistency between the “wording” and the “formula” on how the fee is calculated

§1202.D, Amount of Fee, represents the sliding scale for the fee based on the size of the new building or addition. There is a discrepancy between the written description of how the fee is calculated, and the formula in that same section. The formula contains a math error, as it does not include the “x 5” to reflect the fact that the requirement is for five (5) feet of sidewalk per 100 square feet of gross floor area.

For example, based on the wording of the ordinance, the fee would be calculated as follows for a 5,000 square foot building:

$$[5 \text{ linear feet of sidewalk}] \times [5,000 \text{ s.f./}100] \times [\$35 \text{ per linear foot of sidewalk}] = \$8,700$$

Based on the formula meant to clarify the wording of the ordinance, the fee would be calculated as follows for the same 5,000 square foot building:

$$[5,000 \text{ s.f./}100] \times [\$35 \text{ per linear foot of sidewalk}] = \$1,750$$

Maximum sidewalk fee based on property frontage is not included in the ordinance.

Note that in the staff memo dated April 10, 2013, the sliding scale recommendation included a maximum fee based on property frontage. This was to cap the maximum sidewalk impact fee based on the property's frontage, regardless of the size of the building or addition proposed. Using the example above, a 5,000 square foot building in the impact fee area with no sidewalks in front of that property would have an impact fee calculated at \$8,700. However, if the property only had 100 feet of road frontage, the fee would "cap out" at \$3,500, based on \$35 per linear foot and 100 feet of frontage. If the property had 200 feet of frontage, the fee would cap out at \$7,000.

Only the first part of the sliding scale adopted by the Town Council is included in the current ordinance language. Staff has included the draft language to add the fee cap, should the Town Council decide to include it as part of this update.

#### **§1204 – North Route 302 Road Improvements Impact Fee**

This impact fee was adopted on April 8, 2014, to fund the outstanding portion of the Town's share of intersection improvements at the Anglers Road/Whites Bridge Road and Route 302 intersection.

#### Errors in the Table 1

Staff had presented the Town Council with a proposed impact fee of \$756.31 per primary peak hour trip for new uses or for expanded or changed uses that resulted in additional traffic through that intersection. For projects that would not otherwise require traffic engineering review, Table 1 was incorporated into the ordinance as a short-cut to save applicants time and expense by providing a fee calculation based on the typical traffic generation numbers for those uses. In other words, if a project doesn't have to go to the Planning Board, applicants have the option of hiring an engineer to do a detailed, project specific breakdown of traffic numbers, or they can use Table 1.

The Council ultimately adopted a fee of \$382.65, half the proposed fee. This is reflected in section D.2.d and in Table 1, Trip Rate. However, all of the numbers in the Fee Area 1, Fee Area 2, and Fee Area 3 columns are twice as high as they should be based on the fee adopted by the Council. See the proposed ordinance changes for the correct numbers in these columns.

# Town of Windham

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## MEMO

DATE: April 10, 2013

TO: Windham Town Council  
THRU: Tony Plante, Town Manager *HEW*  
FROM: Brooks More, Director of Planning  
Cc:

RE: Additional Recommendation on Sidewalk Impact Fee

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### Overview

At the Planning Board's meeting on March 25, 2013, a public hearing was held on the proposal to create an impact fee for sidewalks in the Commercial 1 (C1) zoning district. Following the public hearing the Board discussed the appropriate impact fee amount to be charged to development activity. From this discussion, the Board made a motion to recommend adoption of the C1 Sidewalk Impact Fee with the following amendments:

- The impact fee should be equal the estimated cost of constructing sidewalks on a given property, and
- An option for property owners to build the sidewalk on their own property in lieu of paying the impact fee should be included in the ordinance language.

Motion: Jim Hanscom

2<sup>nd</sup>: Keith Elder

Vote: 4-3 (John Carlberg, John Eddy, Ryan McDonald opposed)

### Post Meeting Discussion

During this process, Staff has also been reviewing a development proposal for Sea Coast Fun Park. The proposal is to build an approximately 5,000 sf. addition to the clubhouse for a restaurant, and increase parking on the property. In accordance with the proposed sidewalk impact fee, the applicant would be required to pay a fee for the property's 600 feet of road frontage. Staff met with the applicant to discuss his concerns that a single project on the site would trigger the cost equivalent, or more, of installing sidewalk along the road frontage.

**Alternative Sliding Scale**

Using the fee amounts developed by Staff, consulting engineers, and the LUOC, the project would be required to pay \$28, \$50, or \$100 per linear foot of frontage. This amount is to be set by the Council as part of the adoption process. These calculations are as follows:

- 600 ft. of Road Frontage
- @ \$28/ft. = \$16,800
- @ \$50/ft. = \$30,000
- @ \$100/ft. = \$60,000

According to the applicant, he could construct a 600 ft. sidewalk on the property for approximately \$20,000. Thus, two (2) of the fees would be higher than the cost of construction by the applicant.

As you may recall, this is a discussion that the Council had when sending the ordinance to the Planning Board. Basically, that by using an average cost for the district, some properties would pay more, and some less, than the cost of construction on any one site. However, what was not discussed is that small projects could be discouraged by imposing the entire cost for a sidewalk on any project that is 500 sf. or larger. To address this issue, the following sliding scale is an option the Council should consider.

Using the attached example from Indianapolis, IN, the amount of sidewalk to be constructed would be based on the square footage of the building. In this case, the fee amount for five (5) feet of sidewalk would be required for every 100 gross square feet of building area. The following are the calculations using the \$28, \$50, and \$100 fee amounts:

Table Showing Calculation with 5 ft. of sidewalk per 100 sf. of GFA

<p>500 sf. Addition  <math>500 \text{ sf.}/100 \text{ sf.} \times 5 \text{ ft.} = 25</math>                  @ \$28 = \$700                  @ \$50 = \$1,250                  @ \$100 = \$2,500</p>	<p>10,000 sf. Addition/Building  <math>10,000/100 \times 5 = 500</math>                  @ \$28 = \$14,000                  @ \$50 = \$25,000                  @ \$100 = \$50,000</p>
<p>2,000 sf. Addition/Building  <math>2,000/100 \times 5 = 100</math>                  @ \$28 = \$2,800                  @ \$50 = \$5,000                  @ \$100 = \$10,000</p>	<p>20,000 sf. Addition/Building  <math>20,000/100 \times 5 = 100</math>                  @ \$28 = \$28,000                  @ \$50 = \$50,000                  @ \$100 = \$100,000</p>
<p>5,000 sf. Addition/Building  <math>5,000/100 \times 5 = 250</math>                  @ \$28 = \$7,000                  @ \$50 = \$12,000                  @ \$100 = \$25,000</p>	

With the sliding scale, properties would be required to pay the fee for every project until a maximum amount was reached. The maximum amount of fee to be paid would be equal to the property's road frontage multiplied by the required sidewalk impact fee. The maximum fee amount for a property with 80 ft., 150 ft., 300 ft. and 600 ft. is as follows:

<p>80 ft. of Road Frontage</p> <p>@ \$28 = \$2,240          @ \$50 = \$4,000          @ \$100 = \$8,000</p>	<p>300 ft. Road Frontage</p> <p>@ \$28 = \$8,400          @ \$50 = \$15,000          @ \$100 = \$30,000</p>
<p>150 ft. of Road Frontage</p> <p>@ \$28 = \$4,200          @ \$50 = \$7,500          @ \$100 = \$15,000</p>	<p>600 ft. Road Frontage</p> <p>@ \$28 = \$16,800          @ \$50 = \$30,000          @ \$100 = \$60,000</p>

Using the sliding scale and cumulative maximum fee limit it is possible to determine the size of building activity that will reach the maximum limit. For example, an addition or new building on a lot with 80 ft. of road frontage could construct between 1,500 sf. and 2,000 sf. of building before the maximum limit was reached. The following table shows when the limit would be reached for several frontage lengths at each fee amount level (\$28, \$50, \$100):

Max Limit(s)	Fee Amount at 5ft. Sidewalk / 100sf. of GFA
<p>80 ft. of Road Frontage</p> <p>@ \$28 = \$2,240          @ \$50 = \$4,000          @ \$100 = \$8,000          Limit Reached btw 1,500sf. and 2,000sf.</p>	<p>500 sf. Addition  <math>500 \text{ sf.} / 100 \text{ sf.} \times 5 \text{ ft.} = 25</math>          @ \$28 = \$700          @ \$50 = \$1,250          @ \$100 = \$2,500</p>
<p>150 ft. of Road Frontage</p> <p>@ \$28 = \$4,200          @ \$50 = \$7,500          @ \$100 = \$15,000          Limit reached btw 2,000sf. and 5,000sf.</p>	<p>1,500 sf. Addition/Building  <math>1,500 \text{ sf.} / 100 \text{ sf.} \times 5 \text{ ft.} = 75</math>          @ \$28 = \$2,100          @ \$50 = \$3,750          @ \$100 = \$7,500</p>
<p>300 ft. Road Frontage</p> <p>@ \$28 = \$8,400          @ \$50 = \$15,000          @ \$100 = \$30,000          Limit reached btw 5,000sf. and 10,000sf.</p>	<p>2,000 sf. Addition/Building  <math>2,000 / 100 \times 5 = 100</math>          @ \$28 = \$2,800          @ \$50 = \$5,000          @ \$100 = \$10,000</p>
<p>600 ft. Road Frontage</p> <p>@ \$28 = \$16,800          @ \$50 = \$30,000          @ \$100 = \$60,000          Limit reached btw 10,000sf. and 20,000sf.</p>	<p>5,000 sf. Addition/Building  <math>5,000 / 100 \times 5 = 250</math>          @ \$28 = \$7,000          @ \$50 = \$12,000          @ \$100 = \$25,000</p>

	10,000 sf. Addition/Building $10,000/100 \times 5 = 500$ @ \$28 = \$14,000 @ \$50 = \$25,000 @ \$100 = \$50,000
	20,000 sf. Addition/Building $20,000/100 \times 5 = 100$ @ \$28 = \$28,000 @ \$50 = \$50,000 @ \$100 = \$100,000

**Summary**

Staff recommends that the Town Council amend the proposed North Windham Sidewalk Impact Fee to incorporate a sliding scale based on project building size. The example above recognizes that a small addition should not trigger construction of the entire cost of building a sidewalk on a property with a lengthy road frontage.

If acceptable, the Town Council will still need to set the fee amount in a way that balances the additional need for pedestrian safety caused by new development, and the amount of fees that new development can support. As you may recall, the LUOC recommended a fee amount of \$50 per linear foot, while the Town Council had consensus on a \$100 per linear foot.

As the Council may recall, the LUOC created ordinance language that would allow an applicant to build a sidewalk on their property if it connected to the existing network. If the Council would like to re-review that text, it can be provided at an upcoming meeting.

We look forward to discussing this issue at your earliest possible convenience. Please feel free to contact the Town Manager or me if you have any questions.

Excerpt From  
WINDHAM TOWN COUNCIL  
MINUTES

Windham Town Hall  
Council Chambers  
May 14, 2013 – 7:00 p.m.

[Order 13-072: To adopt amendments to the Town's Land Use Ordinance, Chapter 140 with regard to the establishment of an impact fee for sidewalks in the Commercial 1 \(C-1\) district.](#)  
[13-072 Order Detail](#)  
[13-072 Sidewalk Impact Fee Planning Board Recommendation](#)  
[13-072 Sidewalk Impact Fee in C-1 Zone Draft Language](#)

**Councilor Gleason:**

Moved the Order, seconded by Councilor Welch.

**Brooks More:**

He said this does not deal with a new building but rather if a new use goes into an existing building or a new building is built or a building changes from one use classification to another one, the property owner is required to put a sidewalk along their public right-of-way frontage. Recent examples are Goodwill, a commercial building across from Enterprise Drive and at the Industrial Park the corner of Enterprise Drive and 302 who had an approval for an expansion of the facility, and had they moved forward on that, their approval would require sidewalks be installed along 302.

At the same time, they had a new business come to staff, and they were changing the use of the property from a printing business to a counter top business. They asked if it was possible to develop an impact fee system rather than requiring them to install a sidewalk along their frontage because there is no sidewalk to connect to at this time. At the same time they were developing the North Windham Downtown Plan and the North Windham 302 Corridor Plan so the Downtown Plan covers from Whites Bridge down to River Road/Page Road and the 302 Corridor Plan covers from Whites Bridge Road up to about Mineral Spring or Assembly of God Church. Both plans call for expanding the sidewalk network.

The fee recommended from the LUOC was \$50/linear foot, and that was based on the analysis of the existing sidewalk network and cost estimates from our consulting engineers. (See attachments)

Brooks said following the Planning Board's public hearing and vote, staff had a meeting with the owner of Seacoast Fun Park who is coming before the Planning Board for an expansion of their club house. His recommendation was the town use a sliding scale so that a small project is not discouraged because under the 500 ft enlargement, in the current proposal, even a small project would require to build the sidewalk for a entire property. Staff went back and drafted the

alternative you have in the memo of April 10th. (See attached)

**Councilor Anania:**

Asked where did the money go; did it go into a separate account? Brooks said it would go into a separate account, but it could only be used for this purpose, and be used up to 15 years from the date the impact fee is collected.

**Councilor Hayman:**

Explained that under the proposed ordinance the change of use is not applicable anymore; it is only if they are doing construction and enlarge the building or build a new building that they would have to put in a sidewalk; they are not part of this if a sidewalk is already existing.

After much more debate about the fee Councilor Hayman made the following amendment.

**Councilor Hayman:**

Makes a motion to amend Order 13-072 to set the lineal foot cost on the sliding scale from Brooks More's memo, page 3 at \$35.00 per lineal foot, seconded by Councilor Anania.

**Dan Hancock - Windham Economic Development Corp.:**

He said he thinks sidewalks would be a nice addition to the downtown area and a lot of businesses feel that way, but you also have to think about priorities and if you set an impact fee that discourages development or building additions you are taking a step backwards. He feels \$35.00 is a reasonable fee.

**Tom Bartell:**

He asked if a developer came in and wanted to redevelop properties along an area that does not have sidewalks now and as part of their vision they wanted sidewalks, wouldn't we want them to put sidewalks in even if there was nothing on either side? He is concerned about not allowing sidewalks to be put in at the same time as the development occurs. He asked if he could get a summary regarding uses, not uses, building size, sliding scale, etc.

**Brooks More:**

Brooks said the target area is the C-1 district starting at Mineral Spring Road, goes down to Page Road, out along Sandbar Road to the east and to the west it goes out to 115 until just before Basin Road, that is the boundary.

The sliding scale is based on being responsible for the cost equivalent or the impact fee amount of 5 linear feet of sidewalk for every 100 square feet of building area, so if you are doing a 500 square foot addition you would be responsible for the equivalent of 25 feet of sidewalk. He had not calculated for a \$25.00 fee but at \$28.00 linear foot the fee would be \$700.00 for that 500 square foot addition. (See chart for further examples)

**Vote 6-1 (MN) on amendment**

**7-0 as amended Passed**



- H. Review and Revision. The Town Council shall periodically review each impact fee established under this chapter at least once every five years. If the Council finds that the anticipated cost of the improvement has changed or that the identification of developments subject to the fee is no longer appropriate, the Council may propose changes in the impact fee. Any changes adopted as a result of such review shall apply to all future development but shall not be applied retroactively to projects that have already paid an impact fee.

## 1202 North Windham Sidewalk Impact Fee

- A. Description of the improvements. The North Windham Sidewalk Impact Fee will be used to partially fund the construction of public sidewalks to accommodate pedestrian movement in the Commercial 1 zoning district as set forth in the Town's 21<sup>st</sup> Century Downtown Plan (see North Windham Sidewalk Impact Fee Methodology dated June 14, 2013 in Appendix E). This includes improvements in the following areas: Roosevelt Trail (Route 302), Tandberg Trail (Route 35 and 115), River Road, and Manchester Drive.
- B. Need for the improvements. The road network in the North Windham commercial district serves a large volume of vehicular traffic. The roads serve to provide mobility throughout the region, and local access to commercial establishments. In addition, the public road network provides pedestrian movement between local commercial businesses. Many sections of the public road system in North Windham either lack sidewalks entirely, or provide them only on one side of the road. Commercial growth creates more pedestrian movements that increase conflicts between bicyclists and motor vehicles on the primary road network. This results in increased safety concerns. To address this concern, the Town's 21<sup>st</sup> Century Downtown Plan recommends that the Town expand the network of sidewalks along major roads.
- C. Applicability. In accordance with Section 406(E)(6)(j), the following commercial development activities commenced on or after June 14, 2013 on properties that do not have an existing sidewalk along all or a portion of their property's frontage shall be subject to the impact fee:
- The construction or placement of new buildings with a cumulative area that is greater than, or equal to, five hundred (500) s.f.
  - The enlargement of existing buildings by five hundred (500) s.f. or more
  - As required by the Planning Board as part of a Site Plan approved in accordance with Section 800 of this Ordinance.
- D. Amount of the Fee. The base impact fee for the sidewalk improvements shall be five (5) linear feet of sidewalk per 100 square feet or fraction thereof of the gross floor area to be constructed, erected, enlarged, extended, or relocated on the site multiplied by the per linear foot of sidewalk fee as set by the Town Council in the fee schedule (*see*

*Appendix A Fee Schedule*). The formula described above shall be calculated as follows:

$$\text{Base Impact Fee} = \text{[5 linear feet]} \times \left\{ \frac{\text{[Total gross square footage of building]}}{\text{[100 square feet]}} \right\} \times \text{[linear foot sidewalk fee \$]}$$

The amount of the base fee is based upon the North Windham Sidewalk Impact Fee Methodology dated May 14, 2014 (*See Appendix E*). The fee is based on the average estimated construction costs of sidewalks in North Windham based on the following conditions:

- Installation of granite curbing if no curbing exists
- Installation of closed drainage infrastructure if no curbing exists as determined by the Director of Public Works
- Replacement of existing bituminous curbing with granite curbing
- Resetting of existing granite curbing as determined by the Director of Public Works due to the condition of existing granite curbing.

The base impact fee shall be adjusted to account for changes in the cost of construction. The impact fee shall be adjusted based upon the change in the ENR Construction Cost Index between June 2013 and the month in which the impact fee is paid. The amount of the fee shall be calculated as follows:

$$\text{Impact fee to be paid} = \text{Base impact fee} \times \left( \frac{\text{ENRCCI for the month in which fee is paid}}{\text{ENRCCI for June 2013}} \right) \text{ where ENRCCI is the national construction cost index published by ENR (Engineering News Record).}$$

Impact Fee Maximum. The maximum sidewalk fee required for any property will be equal to the property's road frontage times the base impact fee at the time of application. If the calculated fee is less than the maximum, future development that meets the criteria of Section 1202.E. will be required to pay the impact fee up to the maximum amount for the property.

- E. Expenditure of Funds. Impact fees shall be collected and expended in two (2) subareas within the Commercial 1 zoning district. Fees shall be expended on sidewalk construction within the subarea from which they are collected. The subareas are as follows:
- Roadways within the C1 District that are south of White's Bridge Road
  - Roadways within the C1 District that are north of White's Bridge Road.
- F. Impact Fee
1. The North Windham Sidewalk Impact Fee shall be paid for any project that meets the applicability standards in Section C, above.

2. A property shall be required to pay the fee in the event of future development on said property until the amount of fees paid is equal to the length of property frontage multiplied by the fee per linear foot of sidewalk in Section 4, above, is reached.. Properties with an existing sidewalk on a portion of their frontage shall pay a maximum fee equal to the length of lot frontage on which sidewalk does not exist at the time of development.
- G. Sunset Provision. The fee shall remain in effect until the Town has collected \$2.1 million in fees in subarea 1 and \$900,000 in subarea 2 (as adjusted for construction cost inflation) or until July 1, 2026 whichever comes first unless such time is extended by vote of the Town Council.

### 1203 Recreation Impact Fee

- A. Description of Improvements. The Recreation Impact Fee will be used to partially fund the acquisition and development of land for recreation fields and facilities throughout the Town as set forth in the Town's Parks and Recreation Facilities Capital Investment Plan, adopted by the Town Council on October 8, 2013, and attached in Appendix F.
- B. Need for Improvements. Existing municipal and school district recreational facilities, including rectangular playing fields, diamond-shaped fields, and hard-court facilities are in high demand, and conflicts regarding scheduling and access to facilities among user groups occur throughout the sports seasons. New residential growth creates additional demand for recreation facilities, which can result in a loss of access to recreational activities and facilities. The Parks and Recreation Facilities Capital Investment Plan outlines the how the Town maintain the existing levels of service for recreational facilities faced with demand driven by a growing population.
- C. Applicability. All new residential development activities commenced on or after April 10, 2014, shall be subject to the Recreational Impact Fee. This includes:
  1. Dwelling, Single Family Detached
  2. Dwelling, Two-Family
  3. Dwelling, Multifamily
  4. Accessory Apartment
  5. Manufactured Housing
- D. Amount of the Fee. The amount of the impact fee will be based on the cost land acquisition and development costs, calculated on a per capita basis, multiplied by the average household sized for the type of dwelling unit being constructed. The formula for this shall be calculated as follows:  
Recreation Impact Fee = {[ (Land Acquisition Costs)+(Facility Development Costs)]/[ (2030 Projected Population)-(2010 Baseline Population)]} x (Average Household Size for Dwelling Unit category)

The amount of the fee is based on "Recreation Impact Fee: Basis of Assessment, Windham, Maine," dated September 27, 2013.

- E. Expenditure of Funds. Fees will be collected on a Town-wide basis for the acquisition and development of recreation facilities anywhere in Town.
- F. Sunset Provision. The fee shall remain in effect until July 1, 2030, unless such time is extended by vote of the Town Council.

#### **1204 North Route 302 Road Improvements Impact Fee**

- A. Purpose. Roosevelt Trail/Route 302 is part of the National Highway System. It is the most significant highway corridor in the Town of Windham and is critical to the current and future mobility of local and regional motorists. This corridor provides important connections to Route 202 and State Routes 115, 35, and 4, as well as River Road, a major State Collector Highway. In addition, Route 302 is vital to the accommodation of future growth and development on land served by this corridor.

In order for Route 302 to continue to adequately serve local and regional transportation needs, while also providing additional capacity to support future development and accompanying traffic generation and demands, roadway infrastructure improvements are warranted. These improvements are highlighted in the Town of Windham “North Route 302 Corridor Plan, Windham, Maine” adopted by the Town Council in March 2011.

The Town has identified in the Corridor Plan roadway infrastructure improvements that will accommodate traffic growth projected for the next 10 years, and will establish the additional vehicular capacity and adequate levels of service necessary to serve, accommodate, and benefit new development. The purpose of the North Route 302 Capital Improvement District is to reimburse the portion of the Town’s cost of constructing these roadway infrastructure improvements that benefit new development by providing additional vehicular capacity.

- B. Applicability

- 1. This impact fee shall commence upon the earliest of either January 1<sup>st</sup>, 2015, or upon the Town of Windham’s commitment of funds to complete the infrastructure projects stated in Section H, below. The impact fee shall apply to any of the activities listed in this section that are located within the fee collection areas identified in Section J. North Route 302 Road Improvements Impact Fee Collection Areas Map that generate additional traffic within the North Route 302 Capital Improvement District (*Note: For existing uses, the impact fee shall only apply to activities or uses that generate new trips above their existing levels*):
  - (a) New development,
  - (b) Change in or expansion of an existing development,
  - (c) All new development seeking subdivision or site plan approval,
  - (d) The expansion of previously approved subdivisions or site plans,
  - (e) New development enabled by land divisions exempted from subdivision review as per Title 30-A M.R.S.A. §4401 (4),

- (f) All new extractive industry operations,
  - (g) Any change in use, when such change results in a re-classification from one land use to another in accordance with the uses listed in Section 300 Definitions and/or Section 400 Zoning Districts, and
  - (h) The location, or relocation, of any land use that requires a certificate of occupancy from the Code Enforcement department.
2. The following development and construction shall be exempt from this ordinance:
- (a) Alterations or expansions of an existing building which do not result in the generation of additional vehicle trips
  - (b) Construction of accessory buildings or structures which do not generate additional vehicle trips.
  - (c) The replacement of a building or structure destroyed or damaged by fire, flood or natural disaster with a new building or structure of the same size or use which does not generate additional vehicle trips.
  - (d) The location, or relocation, of a land use which does not generate additional vehicle trips.

C. Impact Fee Procedures

- 1. Any person who seeks a permit or approval for any development, activity or use described in Section B(1), above, is hereby required to pay a road impact fee in the manner and amount set forth in this ordinance.
- 2. Preliminary determinations regarding whether a proposed development will generate traffic within the North Route 302 Capital Improvement District shall be made by the Town Planner and the Town's consulting traffic engineer. Actual traffic generation, impacts, and the corresponding fee, shall be determined in accordance with the procedures in Section D, below.

D. Impact Fee Calculations. An impact fee shall be applied to development projects in the Town of Windham that generate additional traffic within the North Route 302 Capital Improvement District. This impact fee is structured to be in proportion to the development project's share of infrastructure costs necessitated by the development and as enabled by Title 30-A M.R.S.A. §4354. The process for this impact calculation is as follows:

- 1. For projects that do not require subdivision approval, site plan approval, or as determined by the Town Planner as not requiring a traffic analysis:
  - (a) The Town Planner shall determine the fee in accordance with the amounts stated in Section L, Table 1. North Route 302 Road Improvement Impact Fee, Windham, Maine and Section M. Map 1. North Route 302 Road Improvement Impact Fee Collection Areas.
  - (b) The applicant may request that the fee be calculated by either the Town's consulting engineer, or by hiring a Registered Professional Engineer with significant experience in traffic engineering. The analysis shall be conducted in accordance with Section 1203(D)(2), below. All costs incurred as a result of said analysis shall be the responsibility of the applicant. A building permit or certificate of occupancy,

- whichever applies, shall not be issued by the Code Enforcement Officer prior to the payment of any costs incurred by the Town's consulting engineer.
2. For projects that require subdivision approval, site plan approval, or as determined by the Town Planner as being required to conduct a traffic analysis:
    - (a) A traffic analysis shall be conducted by a Registered Professional Engineer with significant experience in traffic engineering in order to determine the traffic impact, and requisite impact fee total, as measured by additional vehicle trips to be generated by a development project that pass through the North Route 302 Capital Improvement District in the peak commuter hour (whether A.M. or P.M., whichever is greater).
    - (b) The impact fee calculation for individual development projects shall use generally accepted standards, such as the Maine Department of Transportation's currently adopted edition of the Institute of Transportation Engineers "Trip Generation" Handbook or traffic generation data or estimates from field measurements or data collected at similar development types, and shall be based on the peak commuter hour of traffic in the A.M. or P.M., whichever is greater.
    - (c) The costs assigned to trips shall be based upon a fee per new trip (primary trip) to be generated by a development project that passes through the North Route 302 Capital Improvement District within the peak commuter hour. All new trips that pass through the District shall be counted as new trips. Other types of traffic associated with a development project, such as the capture of trips passing a site (pass-by trips) or trips in the area that are rerouted (diverted trips) shall not be utilized in the assessment.
    - (d) The fee determination shall be based on the following formula with the fee amounts stated in the Fee schedule, as set by the Town Council (*see Appendix A Fee Schedule*):
      - 1) The Town's cost of realigning Anglers Road with Whites Bridge Road as stated in the "North 302 Corridor Plan" for roadway infrastructure improvements in the North Route 302 Capital Improvement District amounts to \$300,000, less any state and federal funding contributions. The Town cost is to be funded in whole or in part from this impact fee ordinance.
      - 2) The total additional (bi-directional) vehicular capacity to be fostered by the roadway infrastructure improvements will equal approximately 392 trip ends in the peak commuter hour of traffic.
      - 3) Each additional trip generated by the new development will benefit from the 392 trip ends of capacity and will utilize one trip end of that additional capacity.
      - 4) The Town will finance one half of the cost of the improvements through the North Route 302 Road Improvements Impact Fee and the fee per trip, therefore, shall be \$382.65. This fee per trip equals \$150,000 / 392 trip ends.
    - (e) The Planning Board or Town Planner shall establish a payment schedule which apportions the impact fee to component parts of the development based on the estimated trip generation for each component part. Depending on the nature of the development, a component part may be a lot, building, dwelling unit (as defined in the Windham Zoning Ordinance), unit of occupancy (as defined in the Windham Zoning Ordinance) or some combination thereof. The payment schedule shall specify the portion of the impact fee attributable to each component part and the

- point during the construction of the development at which the impact fee for each component part must be paid. The payment schedule shall be incorporated into the Planning Board's written approval document and endorsed on any final plan for the development
3. If, after a development has been approved, changes are proposed which would change the trip generation for the development or a component part of the development then, on the initiative of the Town or the developer, the impact fee and payment schedule may be recalculated, and such recalculated impact fee and payment schedule shall apply to all subsequent permits issued within the development.
  4. The Town Planner or Planning Board, as appropriate, may reduce the amount of the impact fee for projects that are required as part of their approval to construct all or a portion of the infrastructure improvements stated in Section 1203(H)(1), below. The amount of the fee reduction shall be the difference between the cost of the impact fee and the applicant's cost to construct the improvements.
- E. Impact Fee Payment. See Section 1201.C. for general payment information. The impact fee amount, as determined in accordance with this Ordinance, shall be paid to the Town according to the payment schedule established under Section D., except as follows:
1. For an extractive industry project, the impact fee amount shall be paid prior to the release of the attested final plan to the developer for recording at the Cumberland County Registry of Deeds.
  2. For a new residential dwelling(s) proposed on a lot(s) created by a land division(s) exempted from subdivision review as per Title 30-A M.R.S.A. §4401(4), the impact fee amount shall be paid prior to the issuance of a building permit for construction.
- F. North Route 302 Capital Improvement District. The North Route 302 Capital Improvement District is depicted on the map attached to this Ordinance as Appendix A and generally conforms with the "North 302 Corridor Plan" study area.
- G. Impact Fee -Trust Fund
1. There is hereby established a North Route 302 Capital Improvement District Fund to segregate the impact fee revenues generated by this Ordinance from the Town's general revenues.
  2. Funds withdrawn from this trust fund account shall be used in accordance with Section H. of this ordinance.
- H. Use of Impact Fee Funds
1. Funds generated by this Ordinance shall be used for the purpose of financing the capital improvements to realign Anglers Road with Whites Bridge Road as stated in the "North 302 Corridor Plan" for roadway infrastructure improvements within the North Route 302 Capital Improvement District. See Section 1201.E. for a list of items which may be included in the capital costs of the project.
  2. No funds shall be used for periodic or routine maintenance.
  3. Given that bonds or loans may be issued to finance the implementation of the capital improvements identified in the plan for roadway infrastructure improvements within

- the North Route 302 Capital Improvement District, impact fee funds may be used to pay debt service on such bonds or loans to the extent that the improvements provided are a component of the plan for roadway infrastructure improvements, as per Section H. 1. of this ordinance.
4. Funds may be used to provide refunds in accordance with Section I.
  5. Funds shall not be used to pay for any site specific road improvements, such as right-turn entry lanes, site driveway islands, etc., that are required of a development project that is proposed and constructed on any lot abutting a roadway section within the North Route 302 Capital Improvement District. Such project and site specific improvements shall be the responsibility of the developer. Nothing in this section shall limit the Town from providing economic development incentives for site specific improvements at the Town's sole discretion.
- I. Refund of Impact Fees
1. If a development permit expires such that there is no activity that will generate additional traffic covered by this ordinance, the developer may apply for a refund. The refund request must be consistent with Section 1201.F.1.
  2. Any funds not expended or obligated by contract by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid shall be returned consistent with Section 1201.F.2.
- J. Roadway Infrastructure Improvements
1. As per Section H. 1. of this section, the funds generated by this impact fee will be used to accomplish improvements to realign Anglers Road with Whites Bridge Road as stated in the "North 302 Corridor Plan Windham, Maine" prepared by Gorrill-Palmer Consulting Engineers, Inc. and adopted by the Windham Town Council in March 2011.
  2. The above cited plan may be amended by the Town Council, in accordance with the Windham Town Charter, if the amendments to the plan are consistent with and further the purpose of this ordinance.
- K. Sunset Provision. The fee shall remain in effect until the Town has collected \$150,000 in fees (as adjusted for construction cost inflation) or until July 1, 2026 whichever comes first unless such dollar amount is increased or time limit is extended by vote of the Town Council.

### Section 1200 Amendments

Order 13-071; Date 05-14-2013 – add Section 1202, North Windham Sidewalk Impact Fee  
Order 14-033; Date 03-11-2014 – add Section 1203, Recreation Impact Fee  
Order 14-093; Date 04-08-2014 – add Section 1204, North Route 302 Road Improvements Impact Fee



L. Table 1. North Route 302 Road Improvement Impact Fee, Windham, Maine

Use	Trip Rate*	% primary	Cost Per Primary Trip	Fee Area 1**	Fee Area 2**	Fee Area 3**
Quality Restaurant	7.49	40	\$382.65	<del>\$2,292.87</del> <u>\$1,146.42</u>	<del>\$573.22</del> <u>\$286.61</u>	<del>\$229.29</del> <u>\$116.64</u>
High Turnover Restaurant	11.15	37	\$382.65	<del>\$3,157.29</del> <u>\$1,578.62</u>	<del>\$789.32</del> <u>\$394.66</u>	<del>\$315.73</del> <u>\$157.86</u>
Fast Food Restaurant	33.84	30	\$382.65	<del>\$7,769.43</del> <u>\$3,884.66</u>	<del>\$1,942.36</del> <u>\$971.17</u>	<del>\$776.94</del> <u>\$388.47</u>
24 Hour Conv Market***	52.41	25	\$382.65	<del>\$10,027.47</del> <u>\$5,013.67</u>	<del>\$2,506.87</del> <u>\$1,253.42</u>	<del>\$1,002.75</del> <u>\$501.37</u>
Quick Lube****	5.19	50	\$382.65	<del>\$1,985.98</del> <u>\$992.98</u>	<del>\$496.49</del> <u>\$248.25</u>	<del>\$198.60</del> <u>\$99.30</u>
Auto Care	3.38	50	\$382.65	<del>\$1,293.37</del> <u>\$646.68</u>	<del>\$323.34</del> <u>\$161.67</u>	<del>\$129.34</del> <u>\$64.67</u>
Self Serve Car Wash*****	5.54	50	\$382.65	<del>\$2,119.91</del> <u>\$1,059.94</u>	<del>\$529.98</del> <u>\$264.99</u>	<del>\$211.99</del> <u>\$105.99</u>
General office	1.73	100	\$382.65	<del>\$1,323.99</del> <u>\$661.98</u>	<del>\$331.00</del> <u>\$165.50</u>	<del>\$132.40</del> <u>\$66.20</u>
Medical office	3.46	100	\$382.65	<del>\$2,647.97</del> <u>\$1,323.97</u>	<del>\$661.99</del> <u>\$330.99</u>	<del>\$264.80</del> <u>\$132.40</u>
Veterinary Clinic	4.72	100	\$382.65	<del>\$3,612.26</del> <u>\$1,806.11</u>	<del>\$903.07</del> <u>\$451.53</u>	<del>\$361.23</del> <u>\$180.61</u>
Retail	2.71	35	\$382.65	<del>\$725.90</del> <u>\$362.94</u>	<del>\$181.47</del> <u>\$90.74</u>	<del>\$72.59</del> <u>\$36.29</u>
Bank	25.82	27	\$382.65	<del>\$5,335.28</del> <u>\$2,667.60</u>	<del>\$1,333.82</del> <u>\$666.90</u>	<del>\$533.53</del> <u>\$266.76</u>
Light industry	0.97	100	\$382.65	<del>\$742.35</del> <u>\$371.17</u>	<del>\$185.59</del> <u>\$92.79</u>	<del>\$74.24</del> <u>\$37.12</u>
Dwelling Unit*****	1.01	100	\$382.65	<del>\$772.96</del> <u>\$386.48</u>	<del>\$193.24</del> <u>\$96.62</u>	<del>\$77.30</del> <u>\$38.65</u>

\* PM peak hour Trips Per 1,000 sf for uses not exceeding 2,000 sf unless otherwise noted under use

\*\* Fee cost per 1,000sf.

\*\*\*Convenience Market without gas pumps

\*\*\*\* Trip Rate per service positions

\*\*\*\*\* Trip Rate per wash stall

\*\*\*\*\* Trip Rate per dwelling unit

M. Map 1. North Route 302 Road Improvement Impact Fee Collection Areas

