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**PLANNING BOARD MEMO • MAJOR SUBDIVISION • PRELIMINARY PLAN**

DATE: April 16, 2024

TO: Windham Planning Board  
FROM: Steve Puleo, Planning Director  
Cc: Amanda Lessard, Planning Director  
Steve Roberge P.E., SJR Engineering; Agent  
Laurie Bachelder, RCI, LLC; Applicant

RE: #24-12 – Major Subdivision – Betty Lane Subdivision – Preliminary Plan Review – 4 Betty Lane – RCI, LLC

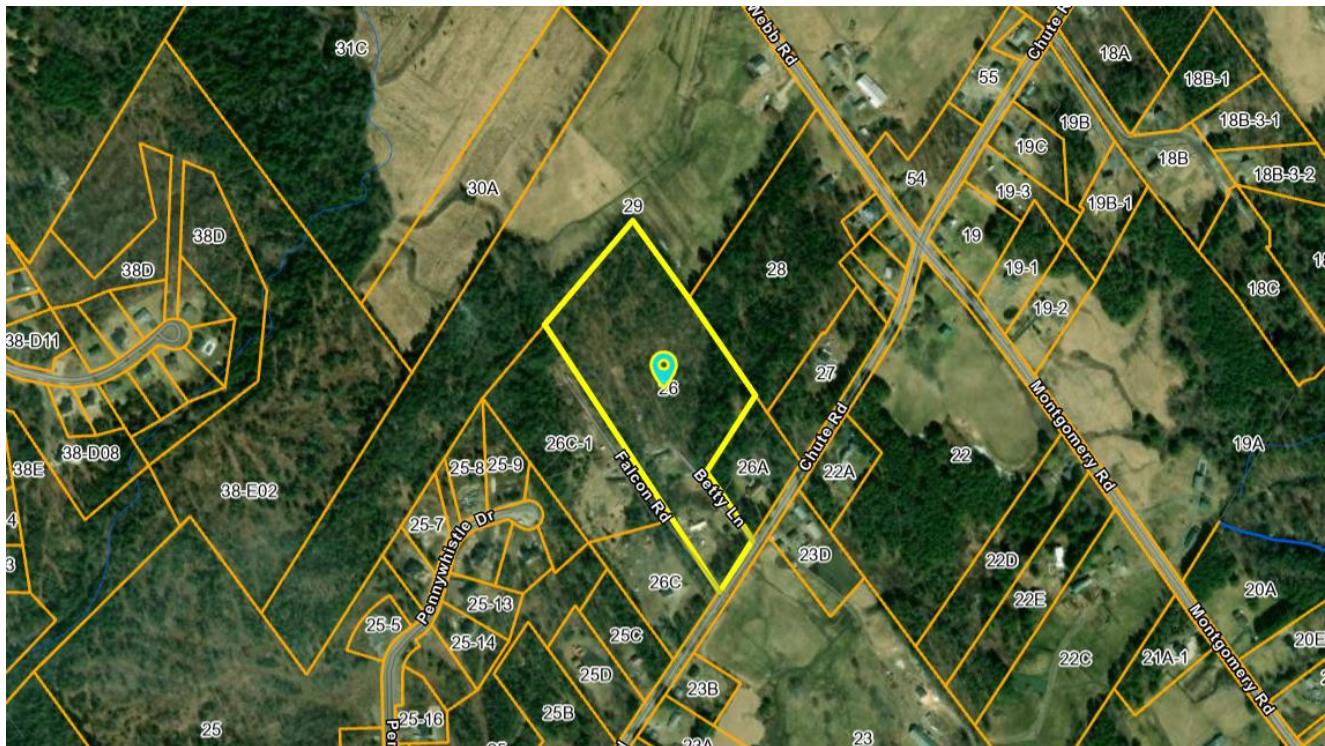
## Planning Board Meeting: April 22, 2024

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## Overview –

The application is to develop a new conservation subdivision with a minor private road of 850' in length. The applicant will construct the road in the general location of the named private driveway, Betty Lane. The proposal is to provide six (6) building lots of about 30,00 SF in size, with the remaining 327,750 SF area as open space. Each parcel will have a private septic disposal field and well. The proposed utilities are to be installed underground. The proposed service waiver request includes a reduction in the open space area due to the configuration of the parcel.

A Development Review Team was held on February 27, 2024 and site walk was conducted on April 22, 2024. The memo reflects comments provided at the meeting from staff to the applicant.



Aerial View of the subject parcel relative to surrounding properties and street network.

## MAJOR CONSERVATION SUBDIVISION REVIEW

The Board will review the submission to see if it provides a clear understanding of the site and identifies opportunities and constraints that will influence how it is used and developed. The ordinance procedure requires the applicant to use the design process outlined in §120-911K(3)(a):

- Sketch and preliminary plans should include delineations for open space areas. It should include all primary conservation areas as well as some secondary conservation areas with the most significant resource value. The applicant has yet to define secondary conservation areas.
- Open space design should consider setbacks, high-value natural resources, neighboring properties, connectivity, size, and boundary markings.
- Building sites should be tentatively located within prescribed setbacks, including 100 feet from primary and secondary conservation areas, 100 feet from existing streets, and 50 feet from the external property perimeter.
- To improve connectivity between open space areas and building sites, streets should be aligned, and a trail system created.
- The lot lines will then be drawn based on the proposed building sites.

PLEASE NOTE: The staff memo is a reference guidance document, and suggested topics for board discussion are listed; ~~the strikethrough text is items for the final review;~~ **bold and italic text represent unaddressed existing and/or new staff comments;** or plain underlined text are items that have been addressed by the applicant; and *italic text is for information or previously reviewed and/or approved items.*

Staff Comments:

1. Complete Application:

**MOTION:** The application for project #24-12 Betty Lane subdivision is found complete in regard to the submission requirements based on the application checklist, but the Planning Board retains the right to request more information where review criteria are not fully addressed.

2. Waivers:

*Limitation of Waivers. The granting of a submission requirement waiver or site waiver may not conflict with, nor negate, any State Statutory requirements for the subdivision of land. Per §120-908B. The Director of Planning or designee may waive the submission requirements identified in §120-910 (Submission requirements) as being eligible for a waiver if it is determined that the information is not required to determine compliance with the standards and criteria of this chapter or that the information relates to a standard that is not applicable to the application.*

The applicant requested four (4) submission requirement waivers to the Planning Director.

a) §120-910C(3)(a): High Intensity Soils Mapping. *Approved.*

At the Development Review Team (DRT), the Planning Director waived the requirement to submit a high-intensity soil survey by a certified soil scientist, per §120-910C(3)(a), for a medium-intensity soil survey. The applicant will be performing soil test pits to determine potential locations for private wells and septic systems.

b) §120-910C(3)(b): Landscaping Plan. *Denied.*

At the Development Review Team (DRT), the Planning Director, requested that the applicant provide a plan for planting in the required buffer from the existing public street and external perimeter of the property line of the subdivision where there was no existing natural vegetation to providing screening of the buildings required by §120-911K(3)(c). Following the DRT meeting, the applicant responded with a draft landscaping plan that included plantings to fill gaps in the subdivision boundary line's 50-foot buffer on lot 1. The applicant proposes to keep the existing trees along the street ROW while planting new street trees on lots 1, 2, 5, and 6.

c) §120-910C(3)(c): Hydrogeologic Assessment. (N/A)

The Planning Director did not support waiving the submission of a hydrogeologic assessment at this time due to the lack of information regarding abutting properties' private well locations and the proposed location of septic systems on the subdivision lots. The applicant will provide locations of wells on properties abutting the proposed subdivision and test pit analyses for proposed septic systems on each lot.

d) §120-910C(3)(e): Traffic Impact Analysis. No Waiver Required.

~~A traffic impact analysis is not required unless the proposed subdivision has ten (10) or more single family lots. The Betty Lane Subdivision proposes six (6) single family lots.~~

*Per §120-908C. The Planning Board may waive the requirements of §120-911 Performance and Design Standards when the applicant demonstrates that the performance standards of these regulations and the criteria of the subdivision statute have been or will be met, and the public health, safety, and welfare are protected and provided the waivers do not have the effect of nullifying the intent and purpose of the land use ordinance. In granting site waivers, the Planning Board shall utilize the criteria in §120-908C(2).*

a) §120-911E(1)(b): Street tree per lot. No Waiver Required.

~~The request is to waive the requirement to plant two (2) street trees per lot. The lot is mostly wooded, and the applicant will keep as many trees as possible on each parcel. Trees will be planted in lots 1, 2, 5, and 6, where there are gaps for trees.~~

At the DRT meeting, the Planning Director felt it was not necessary to request this performance standard waiver since the applicant will preserve as many of the existing trees as possible and minimize land disturbance. Retention of existing trees to comply with this standard shall be noted on the plan.

b) §120-911H(1): Groundwater quality. No Waiver Required

~~The requested waiver of the groundwater quality study is unnecessary because each lot will have its private well and septic disposal areas, which will be installed under the state's drinking water standards. The septic disposal system will be designed and installed by the State of Maine pumping standards. Furthermore, a well exclusion zone will be determined based on the location of the disposal areas.~~

During the DRT meeting, the Planning Director expressed that it may be unnecessary to request a waiver for the performance standard pending a determination of the waiver required for the hydrogeologic assessment. The application will provide soil test pit analysis during the preliminary

plan review. The Planning Director also noted that the code file included a 2020 letter from DEP informing the Town of a remediated petroleum discharge on the property. The applicant indicated that they would provide additional testing of the existing on site well (see in Legistar file).

**c) §120-911K(6)(b)[1]&[2]: Minimum open space required**

This is a request to waive the Land Use Ordinance (LUO)'s required open space calculation. According to LUO, open space should equal the net residential area plus 50% of any remaining land that has not been deducted from the net residential area. However, the open space would impede the development of the number of lots determined by net residential density. The design avoids all of the wetlands on site.

Open space calculations indicate that the applicant must reserve 343,248 square feet of open space. According to the sketch plan design, the applicant provides 327,750 square feet of open space, which is 15,500 square feet less than the requirement. During the DRT meeting, staff indicated that the Town Council may waive the amount of open space provided if it is an insignificant reduction. A loss of one lot would make the project economically infeasible.

The design shows that the open space provided represents 59% of the entire parcel, compared to the required open space of 61%, a difference of 2%.

*At the DRT meeting, the staff supported this minor reduction of the open space due to the use of a cul-de-sac dead-end road and the maintenance of a 100-foot building setback from the primary conservation resource. The applicant is proposing to maintain 59% of the parcel in open space that includes all of the identified primary conservation areas.*

**MOTION:** [I move] to approve the waiver requests of §120-911K(6)(b)[1]&[2] Minimum open space required, to waive open space area requirement of 61% to 59% of the entire property.

**d) §120-911M(3)(d): Streetlights No Waiver Required.**

~~This waiver request seeks to eliminate the installation of a streetlight at the intersection of Betty Lane and Chute Road. Although the subdivision is in a rural area, there is adequate lighting along Chute Road, where Betty Lane is a well-established street.~~

At the DRT meeting, the Planning Director felt it was not necessary to request this performance standard waiver since it was not an ordinance requirement, but a standard the Planning Board may require. Furthermore, the Town's Streetlight Policy does not support streetlight installations at intersections with private roads that serve 10 or few homes. The Police Chief also did not see an additional streetlight was necessary, therefore the waiver is not required.

3. Public Hearing: The Board has scheduled a public hearing for this request on April 22, 2024.
4. Site Walk: The Board conducted a site walk on April 22, 2024.

**Windham Planning Board decision.**

**MOTION:** I move the major subdivision preliminary application for #24-12 Betty Lane subdivision on Tax Map 6; Lot 26 in the Farm (F) zoning district and located in the Presumpscot River is **(approved)** with the following facts, conclusions, and conditions of approval) or **(denied)**:

**FINDINGS OF FACT**

**Jurisdiction:** The Betty Lane subdivision development is classified as major subdivision and site plan application, which the Planning Board is authorized to review and act on by and [§120-905A\(2\)](#) of the Town of Windham Land Use Ordinance.

**Title, Right, or Interest:** The applicant has submitted a copy of a purchase and sale agreement between RCI, LLC (Buyer) and Pinehurst Development, LLC (Seller), dated January 26, 2024, and to close on May 28, 2024. A copy of the Warranty Deed from Vivamax, LLC to Pinehurst Development, LLC dated October 6, 2023 and recorded on October 8, 2023 at the Cumberland County Registry of Deeds on in Book 40405 and Page 109.

**ARTICLE 3 DEFINITIONS**

Conservation Subdivision: “A form of development that permits a reduction in lot area and bulk requirements, and the remaining land area is devoted to open space, active recreation, preservation of environmentally sensitive areas, or agriculture.”

**ARTICLE 4 ZONING DISTRICTS**

- As shown on the Town of Windham Land Use Map approved by the Town Council, date August 15, 2023, Tax Map 6, Lot 26 is located in the Farm (F) District.
- The detached single-family residences are permitted use in the (F) District [§120-406B](#).
- Per [§120-406E](#) Dimensional standards, the applicant is showing potential developed area for the construction of single-family houses and attached garages.
- The applicant is proposing the subdivision to be designed as a conservation subdivision with a 100-foot building setback for Chute Road, per [§120-406F\(2\)](#).

**ARTICLE 5 PERFORMANCE STANDARDS****§120-541 – Net residential area of acreage**

B. The net residential area or acreage of a lot proposed for subdivision, as defined, shall be calculated by subtracting the eight (8) items listed in the subsection from the gross acreage of a lot and dividing the resulting net residential area of the parcel by the net residential density standard of the appropriate zoning district (see [Article 4](#), Zoning Districts). The eight (8) deductions shall be subtracted from the gross acreage of the lot.

**§120-911 - SUBDIVISION PERFORMANCE STANDARDS****§120-911A – Basic Subdivision layout**

- (1) The property has 12.84 acres or 559,241 SF exceeding the minimum lot size in the Farm (F) zoning district, per [§120-406E\(1\)](#).
  - (a) The applicant provided a net residential density calculation by deducting 48,173 SF of road R/W and 79,000 SF of areas within resource protection zones for the net area of 431,988 SF. The net residential density is 60,000 SF, equaling 7.2 dwelling units.
  - (b) The parcel side lot lines are perpendicular to Chute Road including the six (6) proposed single-family lots.
- (2) **The applicant has shown where the proposed utilities will be located, and all the connection will be installed underground.**

(3) The applicant shown the locations of the subdivision monuments on the preliminary plan review sheet 3.

**§120-911B – Sufficient water; water supply.**

(3) The applicant shall show private drinking well locations.

- Per §120-911B(3)(a)(3), “[W]ells shall not be constructed within 100 feet of the traveled way of any street if located downhill from the street, or within 50 feet of the traveled way of any street if located uphill of the street. This restriction shall be included as a deed restriction to the affected lots.” For the final review the applicant’s Soils Scientist will provide abutting property well and septic locations in order to evaluate conditions for a hydrogeological/groundwater study for a consideration of a waiver of §120-910C(3)(c) (see above waiver section).
- For the final review, the Town Engineer will make a recommendation on whether a waiver is necessary.

(b) For the residential subdivision, the applicant has provided adequate water storage facilities by proposing a residential sprinkler system for each home.

**§120-911C - Erosion Control and sedimentation control**

(1) The applicant has provided a soil erosion and sediment control plan showing the use of erosion and sediment control best management practices (BMPs) at the construction site consistent with the minimum standards outlined in the Maine DEP Stormwater Rule Chapter 500 Appendix A – Erosion and Sediment Control, Appendix B – Inspections and Maintenance, Appendix C – Housekeeping. Erosion and Sedimentation Control. BMPs shall be designed, installed, and maintained in accordance with the standards contained in the latest revisions of the following Maine DEP documents.

(2) The applicant’s engineer has provided a statement for the Maine licensed professional civil engineer preventing soil erosion and sedimentation from entering water bodies, wetlands, and adjacent properties.

(3) The applicant has considered the topsoil as part of the subdivision is not to be removed from the site.

(4) Except for normal thinning and landscaping, existing vegetation shall be left intact to prevent soil erosion. The Board may require a developer to take measures to correct and prevent soil erosion in the proposed subdivision.

**§120-911D – Sewage disposal**

(2) The applicant is proposing a private sewage system for each individual dwelling units. The applicant submitted evidence of site suitability for subsurface sewage disposal prepared State of Maine Subsurface Waste Disposal Rules. For the final plan review, the applicant will provide evidence that the septic disposal field will meet the State’s drinking water standards.

**§120-911E – Impact Natural Beauty, Aesthetics, Historic Sites, Wildlife Habit, Rare Natural Areas, or Public Access to the Shoreline**

(1) The applicant is developing access from Chute Road in the general location of the existing Betty Lane. By creating the road R/W in the general location of Betty Lane, the majority of the open space will remain intact, preserving the natural beauty and aesthetics.

- (a) The applicant has provided a note not allowing the clearing of trees where tree cover is depicted on the plan for at least five years. Mandatory buffer for stormwater or other reasons shown on the plan shall not be cleared of vegetation unless the Planning Board grants an amendment to the subdivision or maintenance that does not alter the purpose for which the buffer was required.
- (b) The applicant has shown a landscape plan including the street tree plantings on the front yard of lot 1, 2, 5, and 6. The landscape tree plantings to close the gaps in the 50-foot buffer setback.

(2) **For final plan review**, the applicant shall provide reservation or dedication and maintenance of open space, common land, facilities such as the stormwater management system, among others, and service in the form of homeowner's association (HOA) documentation.

#### **§120-911F – Conformance with Land Use Ordinances**

Comprehensive Plan:

- The plan does meet the goals of the 2017 Comprehensive Plan.

Land Use Ordinance:

- There is a net residential density in the Farm zoning district of 60,000 SF.

Subdivision Ordinance

- The applicant has provided a landscaping plan.
- Standard notes, the standard conditions of approval, and approved waivers are shown on the plans.
- For the final plan review, a digital transfer of the subdivision plan data must be submitted for inclusion with the Town's GIS, **although the applicant has provided the drawings file with the preliminary plan application.**

#### **§120-911G – Financial and Technical Capacity**

(1) **For preliminary plan review, the applicant has estimated the cost of development at \$313,926.00 and has provided a letter dated March 25, 2024, from Camden National Bank Vice President and Commercial Banking Officer, Christopher Abbott, stating that RCI Development Group and Bank have “a deposit relationship.”**

(2) The applicant has provided technical capacity with development experience and has completed a fourteen (14) lot subdivision and a twelve (12) unit affordable housing development in other communities in southern Maine. The applicant has contracted Steve Roberge from SJP Engineering to manage the permitting and design, Mark Censi for septic and groundwater assessment, Wayne Wood and Company for surveying needs, Kristen Collins of Preti/Flaherty for legal document drafting, and Eric Lema of Basswood Environmental to perform wetland and soil test pits to determine soil types on the parcel.

#### **§120-911H – Impact on Ground Water Quality or Quantity**

(1) **The applicant has provided evidence from the certify soil scientist** that the subdivision development will not increase any contaminant concentration in the groundwater and shall meet the State's drinking water standards. A hydrogeological evaluation shall be required to demonstrate nitrates as nitrogen meet the maximum contaminant level.

(2) **The applicant has provided** evidence the proposed subdivision shall not result in lower the water table. The applicant anticipated approximately 1.0 acre of impervious conditions within the 12.84-acre site.

### **§120-911I – Floodplain Management**

- The subject property is not within a mapped FEMA Floodplain boundary.

### **§120-911J – Stormwater**

- The applicant proposes to manage stormwater runoff from the road via swales within the road R/W to two soil filters in the open space area adjacent to Chute Road, in a cleared area left after the removal of one of the mobile homes. The soil filter basins will return stormwater runoff to pre-development levels while also treating water quality. The development will require a Permit-by-Rule (PBR) issued under Chapter 500 of the Stormwater Management Law.
  - **The Engineer concurs with the Applicant's Engineer statement the development will require a Permit-by-Rule (PBR) from DEP.**
  - **The Town Engineer has requested detail and sizing for the roof drip edge filter of the final plan review.**
- The responsibility of maintaining the stormwater management system will be assigned to the future Homeowner's Association (HOA), as per **§120-911N. For the final plan review the applicant shall provide the maintenance schedule as part of the HOA documentation.**

### **§120-911K – Conservation Subdivision**

(1) The applicant is proposing to develop the conservation subdivision to set aside a significant portion of the site as open space by grouping the dwelling units closer with access to a minor private road with 50-foot rights-of-way (ROW). The applicant is proposing to reduce the lot size to approximately +30,000 SF with 100-feet of street frontage.

- Per **§120-911K(3)(a)[2]**, the applicant has provided the sketch plan as a base for an existing resource inventory of the primary conservation resource element on the site. The primary conservation resource is a 1.9-acre wetland located in the northeast portion of the site. The applicant has preserved the highest-value natural resource.
- The plan shows a 100-foot building setback from the upland edge wetlands, ensuring the home on lot 6, which protects the wetland complex, per **§120-911K(6)**.
- The applicant is providing 7.5 acres, or 327,750 SF, of total open space on the 12.84-acre site. The applicant is requesting a waiver (see waiver section above) of the insignificant reduction of open space from the required 7.9 acres, or 343,248 SF.
- The use of the open space shall not be for commercial or private clubs, but to be used by the homeowner's association.
- The applicant has not shown any secondary conservation resource on site, per **§120-911K(6)(c)[2][d]**.
- The applicant proposes to provide more than 75% of the reserved open space behind lots 4, 5, and 6, which will be accessed via a 20-foot-wide trail between lots 4 and 5, per **§120-911K(3)(d)**.
- The applicant is also providing a smaller, 30,030 SF open space area at the corner of Betty Lane and Chute Road. This area will include a stormwater filter basin and, for the preliminary plan review, a potential location for the fire cistern within the 100-foot front-year building setback. If a cistern is proposed, it must be buffered with landscaping.

### **§120-911L – Compliance with Timber Harvesting Rules**

- The applicant stated the subdivision will not involve timber harvesting activity.

### **§120-911M – Traffic Conditions and Street**

- The applicant is expecting low traffic demand for the six (6) lot subdivision development.
- The applicant is proposing to meet the Town's "Minor Private Road" standards found in Appendix B.
  - The proposed plan is to build an 850-foot private road with a 50-foot-wide R/W and a cul-de-sac at the end.
  - The town's road standards call for a 9-foot-wide road with 2-foot graveled shoulders on each side of it.
  - The cul-de-sac is designed with an offset circular travel path, and the applicant intends to pave the 22-foot-wide road from the Chute Road curb cut. The applicant will be required to obtain a street opening permit for the Department of Public Works.
  - The homeowner's association will maintain Betty Lane and the R/W road once the subdivision is completed.
  - **The intersection of Betty Lane and Chute Road will have a minimum sight distance of 305' for a 35 MPH speed limit on Chute Road.**

### **§120-911N – Maintenance of common elements.**

- **The applicant has provided HOA documentation with the preliminary plan review. The Town Attorney is reviewing the documentation will comment for the final plan review.**

### **CONCLUSIONS (N/A)**

1. The development plan ~~reflects/does not reflect~~ the natural capacities of the site to support development.
2. Buildings, lots, and support facilities ~~will/will not~~ be clustered in those portions of the site that have the most suitable conditions for development.
3. Environmentally sensitive areas, including but not limited to wetlands; steep slopes; flood plains; significant wildlife habitats, fisheries, and scenic areas; habitat for rare and endangered plants and animals; unique natural communities and natural areas; and sand and gravel aquifers ~~will/will not~~ be maintained and protected to the maximum extent.
4. The proposed site plan ~~has/does not have~~ sufficient water available for the reasonably foreseeable needs of the site plan.
5. The proposed site plan ~~will/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.
6. The proposed use and layout ~~will/will not~~ be of such a nature that it will make vehicular or pedestrian traffic no more hazardous than is normal for the area involved.
7. The proposed site plan ~~will/will not~~ provide adequate sewage waste disposal.
8. The proposed site plan ~~conforms/does not conform~~ to a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.
9. The developer ~~has/does not have~~ the adequate financial capacity to meet the standards of this section.
10. The proposed site plan ~~will/will not~~ alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.
11. The proposed site plan ~~will/will not~~ provide for adequate stormwater management.
12. The proposed location and height of buildings or structure walls and fences, parking, loading, and landscaping shall be such that it ~~will/will not~~ interfere or discourage the appropriate development in the use of land adjacent to the proposed site or unreasonable affect its value.
13. On site landscaping ~~does/does not~~ provide adequate protection to neighboring properties from detrimental features of the development that could be avoided by adequate landscaping.

14. All freshwater wetlands within the proposed subdivision ~~have/have not~~ been identified on the plan.
15. Any river, stream, or brook within or abutting the subdivision ~~has/has not~~ been identified on any maps submitted as part of the application.
16. The proposed subdivision ~~will/will not~~ provide for adequate stormwater 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, §480 B, none of the lots created within the subdivision ~~has/do not have~~ a lot depth to shore frontage ratio greater than 5 to 1.
18. The long term cumulative effects of the proposed subdivision ~~will/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.
20. The timber on the parcel being subdivided ~~has/has not~~ been harvested in violation of rules adopted pursuant to Title 12, §8869, sub§14.

#### CONDITIONS OF APPROVAL

1. Approval is dependent upon and limited to the proposals and plans contained in the application dated January 22, 2024, and as amended April 1, 2024, April 16, 2024, and [*the date of the final plan approval*] and supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board. Any variation from such plans, proposals, supporting documents, and representations is subject to review and approval by the Planning Board or the Town Planner in accordance with [§120-913](#) of the Land Use Ordinance.
2. the Cumberland County Registry of Deeds (CCRD) and the street on which the lot fronts are complete in accordance with these regulations up to and including the entire frontage, per [§120-915B\(1\)](#) and [\(2\)](#).
3. Prior to the pre-construction meeting, a Homeowner's Association Bylaws, Convents, and Documentation for the care and maintenance of the (private road) and/or open space areas shall be recorded in Cumberland County Registry of Deed (CCRD) and a copy of the recorded documentation shall be submitted to the Planning Department for verification.
4. [Recreation Impact Fee](#), [Open Space Impact Fee](#), [Public Safety Impact Fee](#); and [Municipal Office Impact Fee](#). All fees will be determined and collected for any building, or any other permits necessary for the development, [§120-1201C](#).
5. Before issuing building permits for Lots 1, 2, 3, and 4, the applicant or builder must have the town engineer verify the 50-foot conservation subdivision boundary buffer line pinned, staked or fenced in the field.