

Town of Windham

Planning Department
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MEMO

DATE: August 13, 2014

TO: Windham Town Council

THROUGH: Tony Plante, Town Manager

FROM: Amanda Lessard, Planner *AL*

Cc: Ben Smith, Director of Planning

RE: Planning Board Recommendation - Ordinance Amendment – Removal of Section 915 – Building Permit Limits in Subdivisions

At the Planning Board's meeting on July 14, 2014, a public hearing was held on the proposed amendments to the Land Use Ordinance Sections 915 and 1001 related to building permit limits in subdivisions.

No members of the public spoke for or against the proposed amendment.

During Planning Board discussion, it was noted that the Council should direct the Land Use Ordinance Committee to draft a Rate of Growth Ordinance that is consistent with state law to replace Section 915.

Following discussion of the proposed changes, the Board made the following motion:

To recommend to the Town Council approval of the removal of Section 915 Building Permit Limits.

Motion: James Hanscom
2nd: David Douglass, AIA

Vote: 5-0

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MEMO

DATE: July 3, 2014

TO: Windham Town Council

THROUGH: Tony Plante, Town Manager

FROM: Ben Smith, Planning Director *BWS*

Cc: Amanda Lessard, Planner

Land Use Ordinance Committee (LUOC)

RE: LUOC recommended ordinance changes to Section 900 –
Removal of Section 915 – Building Permit Limits in Subdivisions

At the Town Council meeting on April 8, 2014, the Town Council confirmed the list of priority ordinance revisions for the LUOC to work on. Among the other ordinance priorities that staff would be reviewing was the removal of Section 915 from the Subdivision Ordinance, which limits the number of building permits that can be issued each year for subdivisions with 21 or more lots.

This section was reviewed by the Town Council in 2010, but a separate Rate of Growth Ordinance was not drafted to replace Section 915 of the Subdivision Ordinance. Please see the attached information regarding the Council vote in 2010.

This item will have a public hearing at the Planning Board meeting on July 14, and will then be forwarded to the Council for review and action. I anticipate a discussion at that time on whether or not the Town should proceed with the work to draft and adopt a Rate of Growth Ordinance that meets the State requirements.

Please feel free to contact Planning staff with any questions on the attached.

Town of Windham
Council Agenda Article Cover Sheet

I. Council Action Requested.

To direct the Land Use Ordinance Committee to develop proposed ordinance amendments to replace the provisions of the Land Use Ordinance, Windham Code Chapter 140, Section 915, "Building Permit Limits for Subdivisions," consistent with items 2 through 5 listed on a memorandum from Brooks More, Planning Director, dated March 3, 2010.

II. Basis for Council Action.

Council approval of this item is required because;

- a.) Article II, Section 3(D) authorizes the Town Council to "create by ordinance, change and abolish offices, departments and agencies"
- b.) This article contemplates assigning duties to a Council-appointed committee.

III. Issue Summary.

Please refer to the attached memorandum from Brook More, planning director, dated March 3, 2010.

**BWS note 7/3/2014 -
This item was voted on by the Windham Town Council on May 11, 2010
Vote - 7-0 in favor**

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MEMO

DATE: March 3, 2010

TO: Windham Planning Board
FROM: Brooks More, Dir. of Planning on behalf of the Land Use Ordinance Committee
Cc: Windham Town Council
Tony Plante, Town Manager
Land Use Ordinance Committee
RE: Section 915 Building Permit Limits for Subdivisions

HBM

At its meeting on March 3rd, 2010, the Land Use Ordinance Committee (LUOC) made the following recommendation to the Windham Planning Board:

“Recommend removal of Land Use Ordinance Section 915 Building Permit Limits for Subdivisions.”

Motion: P. Busque
2nd: P. Gilman
Vote: 5-0 in favor

Background: The LUOC recognized that the current building permit limits on subdivisions does not meet State of Maine law for Rate of Growth Ordinances. Chapter 30-A Sec. 4360 stipulates that rate of growth ordinances must:

1. be consistent with a comprehensive plan approved by the State of Maine,
2. be applicable to all new residential building permits,
3. set a building permit limit at 105% of more of the mean number of permits issued for new residential dwellings within the municipality during the 10 years immediately prior to the year in which the number is calculated, not included permits for affordable housing.
4. add additional building permits for affordable housing.
5. recalculate the number of allowable building permits every 3 years.

915—Building Permit Limits for Subdivisions

- A.—~~This section is intended to provide an orderly and predictable control of construction of residential living units in the Town of Windham. This goal shall be achieved by limiting the number of building permits that may be issued for a subdivision in accordance with the standards of this section.~~
- 1.—~~The number of building permits which may be issued for a residential subdivision in the Town of Windham during any building year shall be determined by the following:~~
- (a)—~~The owner(s) of an approved residential subdivision in the Town of Windham may obtain building permits for not more than fifty percent (50%) of the residential living units in the first building year after final approval, not to exceed a total of forty (40) permits; then, building permits for not more than twenty five percent (25%) of the approved residential living units in each succeeding building year, not to exceed forty (40) permits in any building year; provided however, that building permits not used in any building year shall not lapse but may be accumulated and used in full in succeeding building years.~~
- (b)—~~Notwithstanding Subsection 915.A.1.(a), above, residential subdivisions of twenty (20) residential living units or less shall be exempt from the above restriction on the number of building permits which may be issued per building year; provided, however, that the intent of this subsection to exempt twenty (20) residential living units or less may not be defeated by phasing, splitting ownership interest in a single project or otherwise attempting to circumvent this limited exemption.~~
- (c)—~~This chapter shall apply to all applications for building permits submitted after the date of passage of this amendment for all residential living units in residential subdivisions. However, these provisions shall not apply to Housing for Older Persons as defined in Section 300 of the Land Use Ordinance.~~
- (d)—~~For purposes of this chapter, each separate residential living unit shall require a separate growth permit and shall be defined as a living space designed and used for occupancy by one (1) family, e.g., a single family unit requires one (1) growth permit and a five-family unit requires five (5) growth permits.~~
- (e)—~~The building year for a residential subdivision shall begin on the date the first building permit is issued for that residential subdivision.~~
- (f)—~~When the calculation results in a fraction, the number of growth permits to be issued shall be rounded up. [EXAMPLE: 55 units X 50% = 27.5 units. Twenty-eight (28) growth permits may be issued.]~~
- 2.—~~If the owner of a lot in an approved residential subdivision in the Town of Windham sells or otherwise conveys an interest in a lot or portion of a lot, the new owner shall have no right to a building permit. However, the previous owner may transfer all or~~

- ~~some of his rights to building permits to the new owner by notifying in writing the Code Enforcement Officer of the number of permits transferred to the new owner. In making such a transfer, the previous owner shall relinquish his right to apply for the permits transferred to the new owner.~~
- ~~3.—Procedure. The applicant shall file a construction schedule with the Code Enforcement Officer that complies with the standards of this Section 915. This schedule shall be binding and filed in the Town's project file for the Subdivision.~~
- ~~4.—Construction Schedule: The construction schedule shall include the following information:~~
- ~~(a) The name of the subdivision;~~
 - ~~(b) The date of the Planning Board's final approval;~~
 - ~~(c) The maximum number of growth permits allowed for each building year.~~

SECTION 1000 - ADMINISTRATION

Sections

1001	Duty of the Code Enforcement Officer	10-1
1002	Building Permit	10-1
1003	Certificate of Occupancy	10-2
1004	Violations and Penalties	10-3

1001 Duty of the Code Enforcement Officer

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance.
 - 1. The Code Enforcement Officer, with the advice and consent of the Town Manager, is authorized to institute or cause to be instituted by the Town Council, in the name of the Town of Windham, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of this Ordinance; provided, however, that this section shall not prevent any person entitled to equitable relief from enjoining any act contrary to the provisions of this chapter.
- B. The Code Enforcement Officer shall be authorized to grant the following:
 - 1. Building permits,
 - 2. Certificate of Occupancy, (*See Current Building Code*)
 - ~~3. Growth Cap Permit, (*See Sec. 915 Subdivision Review*)~~

1002 Building Permit

- A. Building Permit: The Code Enforcement Officer shall not issue a building permit for the construction, alteration, enlargement, or moving of any building, structure or part thereof, unless the plans and intended use indicate that the building, structure, or premises are to conform in all respects with the provisions of this Ordinance.
 - 1. Applications for building permits required by the Building Code shall also serve as applications for permits required by this Ordinance.
- B. Submission Requirements
 - 1. A plan of the lot containing the following information shall be submitted to the Department of Code Enforcement to obtain a building permit: