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## Article 9 Subdivision Review

### § 120-901 Purpose.

The purpose of these standards shall be to assure the comfort, convenience, safety, health and welfare of the people; to protect the environment and to promote the development of an economically sound and stable community. To this end, in approving subdivisions within the Town of Windham, Maine, the Planning Board shall evaluate the proposed subdivision, using the following criteria. The subdivision provisions set forth in these regulations are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that ~~residential and nonresidential~~ ~~and multifamily~~ construction is designed and developed in a manner that assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of stormwater, erosion, and sedimentation; protection of groundwater; protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

### § 120-902 Statutory review criteria.

**[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

When reviewing any application for a subdivision, as defined by Article 3, the review authority shall find that the criteria as found in 30-A M.R.S.A. § 4404 have been met, as well as all applicable provisions of this chapter and other sections of this Article 9, before granting approval (see § 120-911, Performance and design standards).

### § 120-903 Authority and administration.

- A. Authority; title. These standards have been prepared in accordance with the provisions of 30-A M.R.S.A. § 4401 et seq., and all amendments thereto.
- B. Subdivisions recorded prior to enactment. The provisions of these standards, not specifically required by 30-A M.R.S.A. § 4401 et seq., shall not apply to any subdivision which has been approved by the Board and recorded in the Registry of Deeds of Cumberland County prior to the Town's enactment of subdivision regulations that became effective on February 7, 1972.
- C. Administration. The Planning Board of the Town of Windham, hereinafter called the "Board," shall administer these standards. The Board shall contain seven members. In addition, said Board shall have one alternate member, who shall have all the rights of a full member except said alternate may vote only in the absence of a full member. A quorum of four members shall be necessary to conduct a meeting. A majority vote of the quorum is required for the passage or denial of any motion before the Board.
  - (1) The term of members shall be three years.
  - (2) A municipal officer or their spouse shall not be a member of the Board.
  - (3) When there is a vacancy, the municipal officers shall appoint a person to serve the remainder of the unexpired term.
  - (4) The Board shall elect a Chair and Vice Chair from its own membership.
  - (5) Any questions of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members except the member who has declared the conflict or who is challenged.

- (6) A member of the Board may be dismissed for cause by the municipal officers before the expiration of their term.
- (7) A Secretary to the Board shall be appointed by the appropriate Town officials.
- (8) The Board shall not review any subdivision application unless the applicant, or the applicant's duly authorized representative, attends the meetings for which the application has been placed on the agenda. Should the applicant or applicant's representative fail to attend, the Board shall reschedule the review of the application to its next available meeting.

(For additional information, see "Rules of the Planning Board" on file in Town Hall.)

**§ 120-904 Joint application and hearing.**

If an application requires any combination of site plan review, subdivision review, or conditional use approval, the procedures for all applicable application reviews must be met in order to initiate the fair hearing process. The procedures for the applicable reviews may occur simultaneously.

**§ 120-905 Classification of subdivision.**

A. Classification. The Planner shall classify each project as a major or minor subdivision.

- (1) Minor subdivisions shall involve projects with four or fewer lots.
- (2) Major subdivisions shall involve projects with five or more lots.
- (3) An applicant may request that the Planner classify an application prior to its submission. In this case, the applicant must make a written request for a classification. This request must include the following information:
  - (a) The names and addresses of the record owner and the applicant and the applicant's legal interest in the property.
  - (b) The location of the project, including the Tax Map and lot number.
  - (c) A brief description of the proposed activities in such detail as to allow a classification to be made.
- B. Notification. Within 10 working days of the receipt of a subdivision application, the Planner shall notify the applicant of the classification of the project, in writing. When the Planner has classified a project based upon a request for classification rather than an application, the subsequent application must be consistent with the activities described in the request for classification. The Planner shall review such application to determine if the classification is still correct and may reclassify the application if the scope of activities has been changed.

**§ 120-906 Review procedures for minor subdivisions.**

**[Amended 2-14-2012 by Order 12-016; 7-8-2014 by Order 14-223]**

- A. Preapplication conference. Applicants for a minor subdivision are encouraged to schedule a preapplication conference with the Town development review staff. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, and approval criteria, and to familiarize Town staff with the nature of the project.
- (1) Such review shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. § 302. No decisions relative to the plan may be made at this meeting.
- (2) Information required. To request a preapplication conference, the applicant shall submit, at a minimum,

a brief narrative describing the project, the location of the project on a US Geologic Survey (USGS) topographic map, and a copy of the Tax Map showing the development parcel. The applicant should be prepared to discuss the following:

- (a) The proposed site, including its location, size, and general characteristics;
  - (b) The layout of the proposed subdivision and potential constraints;
  - (c) Any issues or questions about existing municipal regulations and their applicability to the project; and
  - (d) Any requests for waivers from the submission requirements in § 120-910. (See § 120-908, Waivers.)
- B. Sketch plan.
- (1) The sketch plan must be completed prior to the preparation and submission of a final minor subdivision plan application and supporting documentation.
  - (2) The Board shall review the sketch plan with the applicant and shall authorize the submission of the final plan application when the sketch plan review is complete.
- C. Sketch plan review procedures.
- (1) All sketch plan submission requirements shall be submitted to the Planning Department at least 21 days prior to the meeting at which the applicant wishes to be heard by the Planning Board.
  - (2) Within 30 days of the receipt of a sketch plan submission for a minor subdivision, the Planner shall review the material to determine whether or not the submission is complete.
  - (3) Site walk. The Planning Board shall visit the site to observe existing conditions, generally confirm the information submitted and assess the development proposal. The site walk shall be scheduled by the Planner prior to the first regular meeting at which the application is reviewed by the Board.
- (a) Procedures for the on-site inspection shall follow the requirements of the Town of Windham Planning Board Rules, as amended.
  - (b) The Board may decide not to hold, or postpone, a site walk when the site is snow-covered.
  - (c) Notice of the site walk shall be published in a newspaper of general circulation, mailed to the applicant and property owners within 500 feet of the property under review. Notices must be published and/or sent at least seven days prior to the on-site inspection.
  - (d) The applicant shall stake the center line of any proposed streets and the front corners of any proposed lots and provide a sketch plan (on a sheet 11 inches by 17 inches) of the project for each member of the Planning Board and staff.
- D. Review of the sketch plan. The review of the sketch plan shall be informational and shall not result in any formal approval or disapproval of the project by the Planning Board.
- (1) The applicant and property owners within 500 feet of the property under review shall be notified of the time, date, and place of the Board meeting at which the sketch plan will be reviewed.
- (a) The meeting agenda may serve as notification.
  - (b) The notification shall inform the applicant and public that the Planning Board may accept public comment during the sketch plan review.

- (2) The Board may choose to accept public comment on the application.
  - (3) The outcome of the review process shall be the identification by the Board of the issues and constraints that must be addressed in the final minor subdivision plan review application.
  - (4) The Board shall act on any requests for waivers from the final minor subdivision plan submission requirements.
- E. Final minor subdivision plan review procedures.
- (1) All final minor subdivision plan submission requirements shall be submitted to the Planning Department at least 21 days prior to the meeting at which the applicant wishes to be heard by the Board. Upon receipt of a formal subdivision review application, the Planner shall give a dated receipt to the applicant and shall notify by first-class mail all property owners within 500 feet of the parcel on which the proposed development is located. The notice shall specify the location of the proposed development and provide a general description of the project.
  - (2) Within 30 days of the receipt of a formal subdivision review application, the Planner shall review the material and determine whether or not the submission is complete. The Planner shall notify the applicant, in writing, of this finding. If the Planner determines that the application is incomplete, the notice shall specify the additional materials required to make the application complete and shall advise the applicant that the application will not be considered by the Board until the additional information is submitted to the Board. These steps, except the notification requirements, shall be repeated until the application is found to be complete.
  - (3) When the Planner determines that the application is complete, the Planner shall:
    - (a) Notify the Planning Board that the application is complete.
    - (b) Notify the applicant, in writing, of this recommendation.
    - (c) Provide members of the Town's development review staff with the final plan application material.
  - (4) A determination of completeness under this subsection does not preclude the Planning Board from requiring the submission of additional materials that it finds are necessary for review of the project.
  - (5) Prior to consideration of the application by the Planning Board, the Town's development review staff may review the application and make recommendations to the Board.
  - (6) The Planner shall give written notice of the date, time, and place of the meeting at which the application will be considered, to the applicant and all property owners within 500 feet of the property under review. The notice shall be mailed to the applicant and property owners within 500 feet of the property under review. Notices must be sent at least seven days prior to the meeting.
  - (7) At the first meeting at which the final plan application is considered, the Planning Board shall determine whether to hold a public hearing on the application.
  - (8) The Planner shall require qualified independent geotechnical, hydrogeologic, site evaluation, engineering, and similar professional consulting services to determine adherence to best practices in planning and engineering when any portion of the development is within the direct watershed of a lake most at risk from new development as designated in Chapter 502, Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams, of the Maine Department of Environmental Protection. The project shall be reviewed in compliance with the stormwater standards included in the Maine Department of Environmental Protection Chapter 500, including basic, general, phosphorus, flooding, and other standards. The review shall also ensure compliance with performance standards

contained in § **120-911C, D(2), H(1), and J** of this chapter. The review shall include attendance at any scheduled Planning Board site walk. **[Amended 3-26-2019 by Order 19-020]**

**F. Public hearing on minor subdivision applications.**

- (1) If the Planning Board decides to hold a public hearing on an application for subdivision approval, it shall hold the hearing within 30 days after determining it has received a complete application, or within any other time limit that is mutually agreed upon by the Board and applicant.
- (2) The purpose of the public hearing is to allow the applicant and affected property owners to provide information as part of the record that the Board will use in considering its action on the application. Testimony presented at the hearing should be related to factual information about the application and related submissions and the project's compliance with the review standards and other regulations and requirements of these regulations or other municipal ordinances.
- (3) The public hearing shall follow the procedures established in the Town of Windham's Planning Board Rules, as amended.

**G. Final action on the application.**

- (1) Within 30 days of the public hearing or within 60 days of determining a complete application has been received, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact on the application and approve, approve with conditions, or deny the final plan application. The Board shall specify, in writing, its findings of fact and reasons for any conditions or denial.
- (2) The Board shall notify the applicant and abutters who requested to be notified of the action of the Board, including the findings of fact and any conditions of approval. This requirement can be met through the distribution of minutes of the meeting, or an approval letter, containing the findings of fact and decision of the Board.
- (3) All time limits provided for in this section may be extended by mutual agreement of the applicant and Board.

**§ 120-907 Review procedures for major subdivisions.  
[Amended 2-14-2012 by Order 12-016; 7-8-2014 by Order 14-223]**

**A. Sketch plan.**

- (1) Preapplication conference.
  - (a) Applicants for a major subdivision are required to schedule a preapplication conference with the Town development review staff. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, and approval criteria, and to familiarize Town staff with the nature of the project. Such review shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. § 302. No decisions relative to the plan may be made at this meeting.
  - (b) Information required. To request a preapplication conference, the applicant shall submit, at a minimum, a brief narrative describing the project, the location of the project on a US Geologic Survey (USGS) topographic map, and a copy of the Tax Map showing the development parcel. The applicant should be prepared to discuss the following:
    - [1] The proposed site, including its location, size, and general characteristics;
    - [2] The layout of the proposed subdivision and potential constraints;

- [3] Any issues or questions about existing municipal regulations and their applicability to the project; and
- [4] Any requests for waivers from the submission requirements in § **120-910**. (See § **120-908**, Waivers.)
- (2) Plan submission.
  - (a) General requirements.
    - [1] The sketch plan must be completed prior to the preparation and submission of a preliminary subdivision application and supporting documentation.
    - [2] The Board shall review the sketch plan with the applicant and shall authorize the submission of the preliminary plan application when the sketch plan review is complete.
  - (b) Review procedures.
    - [1] Submission deadline. All sketch plan submission requirements shall be submitted to the Planning Department at 21 days prior to the meeting at which the applicant wishes to be heard by the Board.
    - [2] Site walk. The Planning Board shall visit the site to observe existing conditions, generally confirm the information submitted and assess the development proposal. The site walk shall be scheduled by the Planner prior to the first regular meeting at which the application is reviewed by the Board.
    - [a] Procedures for the on-site inspection shall follow the requirements of the Town of Windham Planning Board Rules, as amended.
    - [b] The Board may decide not to hold, or postpone, an on-site inspection when the site is snow-covered.
    - [c] Notice of the on-site inspection shall be published in a newspaper of general circulation, mailed to the applicant and property owners within 500 feet of the property under review. Notices must be published and/or sent at least seven days prior to the on-site inspection.
    - [d] The applicant shall stake the center line of any proposed streets and the front corners of any proposed lots and provide a sketch plan (on a sheet 11 inches by 17 inches) of the project for each member of the Planning Board and staff present at the site visit.
  - (3) Review of the sketch plan. The review of the sketch plan shall be informational and shall not result in any formal approval or disapproval of the project by the Planning Board.
    - (a) The applicant and property owners within 500 feet of the property under review shall be notified of the time, date, and place of the Board meeting at which the sketch plan will be reviewed.
- [1] The meeting agenda may serve as notification.
- [2] The notification shall inform the applicant and public that the Planning Board may accept public comment during the sketch plan review.
- (b) The Board shall review the submission to determine if the information provides a clear understanding of the site and identifies opportunities and constraints that help determine how it should be used and developed.
- (c) The Board may consider any input received from members of the Staff Review Committee.
- (d) The Board may choose to accept public comment on the application.

- (e) The outcome of the review process shall be the identification by the Board of the issues and constraints that must be addressed in the preliminary subdivision plan application.
  - (f) The Board shall act on any requests for waivers from the preliminary subdivision plan submission requirements.
- B. Preliminary plan.
- (1) Plan consistency. The preliminary plan shall approximate the layout shown on the sketch plan, plus any recommendations made by the Board.
  - (2) Submission deadline. The applicant shall submit a preliminary plan within six months after the Board has authorized submission of said plan. The Board may, upon failure to meet the six-month deadline, require the application to return to the sketch plan review phase. Each time that an application is returned to the sketch plan review phase, the applicant shall pay the required application fees.
  - (3) Submission of revisions. Once a formal preliminary subdivision submission is made to the Board, the applicant shall have six months to return to the Board with a revised preliminary plan. This six-month period shall recommence at each substantive review of the preliminary plan by the Planning Board.
  - (a) If a revised preliminary plan is not submitted to the Planning Board within six months of the last preliminary submission, the Board may require the application to return to the sketch plan review phase. Previously paid subdivision fees will not be refunded should a preliminary plan application fail to meet the above-specified deadline.
  - (b) Where the Planning Board finds that extraordinary circumstances make it impossible for the applicant to comply with this section, it may grant an extension, which shall not exceed an additional three months. Such extension must be requested by the applicant before the initial six-month period has expired.
  - (4) Review procedures.
    - (a) All preliminary plan submission requirements shall be submitted to the Planning Department at least 21 days prior to the meeting at which the applicant wishes to be heard by the Board. Upon receipt of a preliminary plan, the Planner shall give a dated receipt to the applicant.
    - (b) Within 30 days of the receipt of a preliminary plan submission for a major subdivision, the Planner shall review the material to determine whether or not the submission is complete. The Planner shall notify the applicant, in writing, of this finding. If the Planner determines that the application is incomplete, the notice shall specify the additional material required to make the submission complete and shall advise the applicant that the application will not be considered by the Board until the additional information is submitted.
    - (c) When the submission is determined to be complete, the Planner shall:
      - [1] Notify the Planning Board that the application is complete;
      - [2] Place the item on the agenda for review by the Board;
      - [3] Provide members of the Town's development review staff with the preliminary plan application material; and
      - [4] Require qualified independent geotechnical, hydrogeologic, site evaluation, engineering, and similar professional consulting services to determine adherence to best practices in planning and engineering when any portion of the development is within the direct watershed of a lake most at risk from new development as designated in Chapter 502, Direct Watersheds of Lakes Most at Risk from New

Development, and Urban Impaired Streams, of the Maine Department of Environmental Protection. The project shall be reviewed in compliance with the stormwater standards included in the Maine Department of Environmental Protection Chapter 500, including basic, general, phosphorus, flooding, and other standards. The review shall also ensure compliance with performance standards contained in § 120-911C, D(2), H(1), and J of this chapter. The review shall include attendance at any scheduled Planning Board site walk. **[Amended 3-26-2019 by Order 19-020]**

- (d) At the first meeting at which the application is considered, the Planning Board shall determine whether to hold a public hearing on the preliminary plan application.
  - (e) If the Board decides to hold a public hearing, it shall hold the hearing within 30 days of determining that it has received a complete application.
    - [1] Notice of the time, place and date of such hearing shall be sent not less than seven days before the hearing to the applicant and to owners of all properties within 500 feet of the properties involved. Owners of abutting properties shall be those listed in the most recent tax records of the Town of Windham. Failure to receive notice shall not invalidate the public hearing held.
    - [2] Notice shall also be published in a newspaper of general circulation in the Town of Windham at least two times, and the first date of publication shall be at least seven days prior to the public hearing.
  - (f) Within 30 days of the public hearing or within 60 days of determining a complete application has been received, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact on the application and approve, approve with conditions, or deny the preliminary plan application. The Board shall specify, in writing, its findings of fact and reasons for any conditions or denial.
  - (g) When granting preliminary approval to a preliminary plan, the Board shall state the conditions of such approval, if any, with respect to:
    - [1] The specific changes which it will require in the final plan;
    - [2] The character and extent of the required improvements for which waivers may have been requested and which the Board finds may be waived without jeopardy to the public health, safety and general welfare; and
    - [3] The construction items for which cost estimates and performance guarantees will be required as prerequisite to the approval of the final plan.
  - (h) Approval of a preliminary plan shall not constitute approval of the final plan or intent to approve the final plan, but rather it shall be deemed an expression of approval of the design submitted on the preliminary plan as a guide to the preparation of the final plan. The final plan shall be submitted for approval of the Board upon fulfillment of the requirements of these regulations and the conditions of the preliminary approval, if any. Prior to approval of the final plan, the Board may require additional information be submitted and changes in the plan be made as a result of further study of the proposed subdivision or as a result of new information received.
- C. Final plan.
- (1) Plan consistency. The final plan shall approximate the layout shown on the preliminary plan, plus any recommendations made by the Board.
  - (2) Submission deadline. The applicant shall, within six months after approval of the preliminary plan, submit a final plan application with the Board. If the final plan is not submitted to the Board within six

months after the approval of the preliminary plan, the Board may require that the plan return to the preliminary plan review phase.

- (a) Each time that an application is returned to a preliminary plan review phase, the applicant shall pay the required application fees.
- (b) If an applicant cannot submit the final plan within six months, due to delays caused by other regulatory bodies, or other reasons, the applicant may request an extension. Such a request for an extension to the filing deadline shall be filed, in writing, with the Board prior to the expiration of the filing period. In considering the request for an extension, the Board shall make findings that the applicant has made due progress in preparation of the final plan and in pursuing approval of the plans before other agencies, and that municipal ordinances or regulations which may impact the proposed development have not been amended.
- (3) Submission of revisions. Once a formal final plan submission is made to the Board, the applicant shall have six months to return to the Board with a revised plan. This six-month period shall recommence at each substantive review of the final plan by the Planning Board.
- (a) If a revised final plan is not submitted to the Planning Board within six months of the last final submission, the Board may require the application to return to the preliminary plan review phase. Previously paid subdivision fees will not be refunded should a final plan application fail to meet the above-specified deadline.
- (b) If an applicant cannot comply with this section, the Planning Board may grant an extension in accordance with § **120-907C(2)(b)**, above. Such extension must be filed with the Planning Board before the six-month period has expired.
- (4) Review procedures.
- (a) All required final plan submission requirements shall be submitted to the Planner at least 21 days prior to the Board meeting at which the subdivider wishes to be heard. Within three days of the receipt of the final plan application, the Planner shall issue a dated receipt to the applicant.
- (b) Within 30 days of the receipt of a final plan submission for a major subdivision, the Planner shall review the material to determine whether or not the submission is complete. The Planner shall notify the applicant, in writing, of this finding. If the Planner determines that the application is incomplete, the notice shall specify the additional material required to make the submission complete and shall advise the applicant that the application will not be considered by the Board until the additional information is submitted.
- (c) When the submission is determined to be complete, the Planner shall:
  - [1] Notify the Planning Board that the application is complete;
  - [2] Place the item on the agenda for review by the Board; and
  - [3] Provide members of the Town's development review staff with the final plan application material.
- (d) A determination of completeness under this subsection does not preclude the Planning Board from requiring the submission of additional materials that it finds are necessary for review of the project.
- (e) At the first meeting at which the application is considered, the Planning Board shall determine whether to hold a public hearing on the final plan application.
- (f) If the Board decides to hold a public hearing, it shall hold the hearing within 30 days of determining it

has received a complete application and shall publish a notice of the date, time and place of the hearing in a newspaper of local circulation at least two times, the date of the first publication to be at least seven days prior to the hearing. In addition, the notice of the hearing shall be posted in the Town Hall at least seven days prior to the hearing. A copy of the notice shall be sent by first-class mail to the owners of all properties within 500 feet of the property under review, and to the applicant, at least seven days prior to the hearing. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

- (g) Prior to submittal of the final plan application, the following approvals shall be obtained in writing, where applicable. If the Board is unsure whether a permit or license from a federal, state or local agency is necessary, the applicant may be required to obtain a written opinion from the appropriate agency as to the applicability of its regulations.
  - [1] Maine Department of Environmental Protection, under the Site Location of Development Act.
  - [2] Maine Department of Environmental Protection, under the Natural Resources Protection Act or Stormwater Law, or if an MEPDES wastewater discharge license is needed.
  - [3] Maine Department of Transportation, for a traffic movement permit, and/or highway entrance/driveway access management permit outside of the Urban Compact.
  - [4] Town of Windham Public Works Department for a curb cut permit inside the Urban Compact. (See curb cut standards in Article 5, Performance Standards.)
  - [5] The Portland Water District if existing or proposed public water or sewer service is to be used.
  - [6] Maine Department of Health and Human Services if a central water supply system is to be used.
  - [7] A professional licensed in the State of Maine that a sufficient and healthful supply of water is available if individual wells serving each building site are to be used.
  - [8] Maine Department of Health and Human Services if a central sewage collection and treatment system is to be utilized.
  - [9] United States Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required.
  - [10] Written approval of any proposed street names from the Town of Windham E911 Addressing Officer.
- (h) If the preliminary plan identified any areas listed on or eligible to be listed on the National Register of Historic Places, in accordance with § **120-910C(2)(w)**, the applicant shall submit a copy of the plan and a copy of any proposed mitigation measures to the Maine Historic Preservation Commission prior to submitting the final plan application.
- (i) Within 30 days of the public hearing, or within 60 days of determining a complete application has been received if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact on the application, and approve, approve with conditions, or deny the final plan application. The Board shall specify, in writing, its findings of facts and reasons for any conditions or denial.

§ 120-908 **Waivers.**

- A. 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.
- B. Waiver of submission requirements. The Planning Board may waive the submission requirements identified in § **120-910** (Submission requirements) as being eligible for a waiver.

- (1) A waiver from the submission requirements shall not require the applicant or Board to follow the procedures and standards in Subsection C, below.
  - (2) In accordance with § **120-910** (Submission requirements), the applicant shall submit a list of submission requirements for which a waiver is sought. The list shall include the reasons for which the waiver is sought. The Board is not required to use any criteria in making its determination on the granting of a waiver of the submission requirements.
- C. Waiver of subdivision performance standards. The Planning Board may waive the requirements of § **120-911**, Performance and design standards, unless prohibited by Maine statutes, where it finds that there are special circumstances of a particular parcel proposed to be subdivided, or that the application is simple and minor in nature. The applicant must demonstrate 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 this chapter.
- (1) Procedure. The applicant shall submit a list of the requested waiver(s) in writing. For each waiver requested, the applicant shall submit answers to each of the criteria in Subsection C(2), Criteria, below.
  - (a) The process for requesting waivers shall be in accordance with the provisions for review procedures in §§ **120-906** and **120-907** and the provisions for submission requirements in § **120-910**.
  - (b) The Planning Board may request additional information to make a determination on a waiver request.
  - (2) Criteria. In granting site waivers, the Planning Board shall utilize the following criteria:
    - (a) The waiver will improve the ability of the project to take the property's predevelopment natural features into consideration. Natural features include, but are not limited to, topography, location of water bodies, location of unique or valuable natural resources, and relation to abutting properties or land uses.
    - (b) The waiver will not result in the following:
      - [1] Undue water or air pollution.
      - [2] Undue light pollution or glare.
      - [3] An inadequate water supply.
      - [4] Unreasonable soil erosion.
      - [5] Unreasonable traffic congestion or safety risk.
      - [6] Decreased pedestrian safety or access.
      - [7] Inadequate supply of parking spaces.
      - [8] Inadequate sewage disposal capacity.
      - [9] Inadequate solid waste disposal capacity.
      - [10] An adverse impact on scenic or natural beauty, aesthetics, historic sites, or rare or irreplaceable natural areas.
      - [11] Flooding or adverse drainage impacts on abutting properties.

[12] An adverse impact on the Town's ability to provide the subdivision with public safety services.

**[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

- (c) Recording of waivers of subdivision performance standards. When the Board grants a site waiver to any of the improvements required by these regulations, the final plan, to be recorded at the Registry of Deeds, shall indicate the waivers granted. Waivers must be listed in a separate location from either the plan's general notes or any conditions of approval. Waivers of the required application submissions do not need to be listed.

**§ 120-909 Fees.**

- A. Sketch plan fee. Prior to submitting a sketch plan, the applicant must pay the application fee as set by the Town Council in the Windham Fee Schedule.
- B. Application fee. An application for subdivision review must be accompanied by the applicable fee in the Windham Fee Schedule. This fee is intended to cover the cost of administrative processing of the application, including notification, advertising, mailings, and similar costs. The fee shall not be refundable. This application fee must be paid to the municipality, and evidence of payment of the fee must be included with the application.
- C. Consulting, review and construction observation fees.
  - (1) Applicability. Notwithstanding any other provision(s) of this chapter, Articles 1 through 12 (the "code"), to the contrary, and in addition to such fees as are otherwise specified by the code, the Town shall assess fees to cover 100% of its costs related to independent geotechnical, hydrologic, engineering, planning, legal, and similar professional consulting services incurred in the review and post-approval inspections of site plan applications. Such fees shall be subject to the following limitations:
    - (a) Such fees shall only be as expressly provided by this § **120-909C**;
    - (b) Such consultation shall be limited to reasonable and necessary review, as allowed by the pertinent ordinance, which exceeds the expertise of Town staff or their ability to review the application materials within the time limits otherwise required by law or ordinance;
    - (c) Such fees shall be assessed only to recover costs directly associated with review and post-approval inspection of the application submitted by the applicant to whom they are assessed;
    - (d) Such fees shall be reasonable in amount, based upon the consulting time involved and the complexity of the review;
    - (e) The results of the consultation for which such fees are assessed shall be available for public review, but such results shall be deemed to have been made solely for the benefit of the Town of Windham and shall remain its property; and
    - (f) Such fees shall be assessed for the privilege of review and shall be payable without regard to consultation results or the outcome of the application.
  - (2) Escrow account establishment and administration. An escrow account shall be established with the Town by the applicant to guarantee payment in advance of actual fees assessed pursuant to this § **120-909C**. The original deposit shall be an amount specific to the application, as accorded elsewhere in this code. If the balance in the escrow account shall be drawn down by 75%, the Town shall notify the applicant and require that an additional amount be deposited to cover the cost of remaining work before any such remaining work is undertaken. The Town shall continue to notify the applicant and require that any such additional amount(s) be deposited whenever the balance of the account is drawn down by 75% of the original deposit. Any excess amount deposited with the Town in advance shall be promptly

refunded to the applicant after final action on the application.

- (3) Appeal. Any dispute regarding the application of this § **120-909C** or the amount required to be paid, either in advance or upon completion, may be appealed, in writing, within 10 days to the Town Manager. The Town Manager, after due notice and investigation and for good cause shown, may affirm, modify, or reverse the disputed decision or reduce the amount assessed.
- (4) Limitations. In an effort to minimize the use of outside or independent consulting, the provisions of this § **120-909C** shall be subject to the following additional limitations:
  - (a) The Planner, based on his/her work load and in his/her sole discretion, may immediately refer to outside or independent consulting any major subdivision plan. The Town shall charge for this review based on the billing rates of the retained consultant. The first four hours of the review shall be paid for with the project's application fee. Review work beyond the initial four hours shall be paid for with the escrow established in § **120-909C(2)**, above.
  - (5) Construction observation fee. At least five days prior to the commencement of construction, the applicant shall pay to the Town a construction observation fee. The fee shall be calculated and administered as follows:
    - (a) The applicant's engineer/representative shall prepare a line-item cost estimate of all site improvements.
    - (b) The Town's consulting engineer shall review the cost estimate. This review shall be withdrawn from the escrow balance established in § **120-909C(2)**, above.
    - (c) The applicant shall post with the Town an amount equal to 3% of the cost estimate for site improvements. If, and when, a construction observation will result in the Town exceeding the 3% of site improvements amount, the Town's consulting engineer will submit a written notice stating the reasons why the estimate is to be exceeded, and by how much.
    - (d) If the balance in the observation fee account shall be drawn down by 75%, the Town shall notify the applicant and require that an additional amount be deposited to cover the cost of remaining work before any such remaining work is undertaken. The Town shall continue to notify the applicant and require that any such additional amount(s) be deposited whenever the balance of the account is drawn down by 75% of the original deposit.
    - (e) Any and all unused inspection fee funds shall be returned to the applicant.
  - (6) This § **120-909C** shall be administered by the Planning Director or other Town employee responsible for administering the ordinance under which review is sought. No building permit, commencement of any construction or site preparation, or certificate of occupancy may be issued or released until all fees assessed hereunder have been paid in full.
- D. Establishment of fees. The municipal officers may, from time to time, establish the appropriate fees following posting of the proposed schedule of fees and public hearing.

**§ 120-910 Submission requirements.**

**[Amended 11-28-2017 by Order 17-347]**

- A. Minor and major subdivision sketch plan.
  - (1) A sketch plan shall be required for both minor and major subdivision applications. The sketch plan shall show, in simple form, the proposed layout of the subdivision. The sketch plan shall show site conditions and identify important or unique natural areas and site features. The intent of the sketch plan is to

provide the applicant and the Planning Board with a flexible and low-cost means to understanding the site, and to create a development plan that reflects the site's opportunities and constraints.

- (2) The sketch plan submission shall contain five copies of the following information, including full size plan sets, along with one electronic version of the entire submission:
  - (a) A complete sketch plan application form.
  - (b) A narrative describing the existing conditions of the site, the number and size of lots, and the constraints and opportunities of the site. The narrative should outline any traffic studies, utility studies, market studies or other applicable work that will be conducted as part of the preliminary plan (major subdivision) or final plan (minor subdivision) application.
  - (c) Name, addresses, and phone numbers of the record owner and the applicant.
  - (d) Names and addresses of all consultants working on the project.
  - (e) Evidence of right, title, or interest in the property.
  - (f) Evidence of payment of the sketch plan application fee and escrow deposit.
  - (g) Any anticipated requests for waivers from the submission requirements for the preliminary plan (major subdivision) or final plan (minor subdivision) application (see § **120-908**, Waivers).
  - (h) A copy of a portion of the USGS topographic map of the area showing the boundaries of the proposed subdivision.
  - (i) A copy of that portion of the Cumberland County Medium Intensity Soil Survey covering the proposed subdivision. The boundary of the proposed subdivision site must be shown.
  - (j) A plan of the parcel, with an accurate scale, showing at a minimum the information listed below:
    - [1] Name of the subdivision, North arrow, date and scale.
    - [2] Boundary and lot lines of the subdivision.
    - [3] Approximate location, width and purpose of easements or restrictions (if applicable).
    - [4] Streets on and adjacent to the tract.
    - [5] Approximate location and size of existing utilities on and adjacent to the tract (if none, so state).
    - [6] Existing buildings, structures, or other improvements on the site (if none, so state).
    - [7] The major natural features of the site, approximated by the applicant, including wetlands, streams, ponds, floodplains, groundwater aquifers, tree lines, significant wildlife habitat and fisheries or other important natural features (if none, so state).
- (3) Note: Major subdivision applications. If the applicant decides to survey the property as part of the sketch plan submission, please refer to the GIS requirements for a major subdivision final plan review. It may be in the applicant's best interest to obtain the required GIS data while the surveyor is on-site.
- B. Minor subdivision final plan. The final plan submission shall include five copies of the following information, including full-size plan sets, along with one electronic version of the entire submission. The Board may waive the submission information that is listed in § **120-910B(1)(c)**.

- (1) Mandatory written information.
  - (a) A fully executed application form signed by a person with right, title, or interest in the property proposed for subdivision.
  - (b) Evidence of payment of the application and escrow fees as found on the Fee Schedule established by the Town Council.
  - (c) The name, registration number and seal of the Maine licensed professional land surveyor who conducted the survey.
  - (d) Name, registration number and seal of the licensed professional who prepared the plan (if applicable).
  - (e) Description of how solid waste generated from the proposed subdivision is to be collected and disposed of.
  - (f) A statement from the Maine Department of Inland Fisheries and Wildlife that no significant wildlife habitat exists on the site.
  - (g) Copies of existing or proposed deed restrictions or covenants.
  - (h) Copies of existing or proposed easements on the property.
  - (i) An acceptable title opinion proving right of access to the proposed subdivision or site for any property proposed for development on or off of a private way or private road.
  - (j) Financial capacity.
- [1] Estimated costs. Specify the estimated total cost of the development and itemize the estimated major expenses. The itemization of major costs may include, but not be limited to, the cost of the following activities: land purchase, roads, sewers, structures, water supply, erosion control, pollution abatement and landscaping.
- [2] Financing. Provide one of the following unless otherwise approved by the Town:
  - [a] Letter of commitment to fund. A letter of commitment, acceptable to the Town, from a financial institution, governmental agency, or other funding agency, indicating a commitment to provide a specified amount of funds, and specifying how those funds will be used. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
  - [b] Self-financing.
  - [i] Annual report. The most recent corporate annual report indicating availability of liquid assets to finance the development, together with explanatory material interpreting the report; or
  - [ii] Bank statement. Copies of bank statements or other evidence indicating availability of funds if the applicant will personally finance the development.
  - [c] Other. If funding is required, but a final commitment of all necessary money cannot be made until all approvals are received and other reasonable conditions are met, provide the following:
    - [i] Cash equity commitment. Cash equity commitment to the development sufficient to demonstrate the applicant's ability to go forward. The Town will consider 20% equity of the total cost of a development as the normal equity commitment but reserves the right to lower or raise this amount if special circumstances of an individual development warrant it.

- [ii] Financial plan. Financial plan for the remaining financing.
- [iii] Letter. Letter acceptable to the Town from an appropriate financial institution, indicating an intention to provide financing subject to reasonable conditions of acceptance.
- [3] Certificate of good standing. If the applicant is a registered corporation, provide either a certificate of good standing (available from the Secretary of State) or a statement signed by a corporate officer affirming that the corporation is in good standing.
- (k) Technical capacity. Describe the technical ability of the applicant and consultant(s) to undertake the development. Include the following information:
  - [1] Prior experience. A statement of the applicant's prior experience and appropriate training relating to the nature of the development. Specify prior experience relating to developments that have received permits from the Town.
  - [2] Personnel. Resumes or similar documents detailing the experience and qualifications of full-time, permanent or temporary staff contracted with or employed by the applicant who will design the development.
- (l) The name and contact information for the road association whose private way or road is used to access the subdivision (if applicable).

(m) Draft Homeowners' Association documents and draft deed as per the requirements of § 120-911N.

- (2) Mandatory plan information. The maps or drawings must be at a scale sufficient to allow review of the items listed under the approval criteria, but in no case shall be more than 100 feet to the inch.
  - (a) Name of the subdivision, date and scale.
  - (b) Stamp of the Maine licensed professional land surveyor that conducted the survey. At least one copy shall include an original stamped seal that is embossed and signed.
  - (c) Stamp, with date and signature, of the Maine licensed professional engineer that prepared the plans.
  - (d) A North arrow identifying all of the following: grid north, magnetic north with the declination between grid and magnetic; and whether magnetic or grid bearings were used in the plan design.
  - (e) Location map. The location map shall be drawn at a size and scale adequate to allow the Board to locate the subdivision within the municipality.
  - (f) Vicinity plan. A plan drawn at a scale of not over 400 feet to the inch to show the area within 250 feet of the property line of the proposed subdivision. The vicinity plan shall show the following:
    - [1] The approximate location of all property lines and acreage of parcels.
    - [2] Locations, widths and names of existing, filed or proposed streets, easements, or building footprints.
    - [3] The location and designations of any public spaces.
    - [4] An outline of the proposed subdivision, together with its street system and an indication of the future probable street system of the remaining portion of the tract, if the proposed subdivision plan encompasses only part of the applicant's entire property holding.
- (g) A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances,

made and certified by a Maine licensed professional land surveyor. The corners of the parcel shall be located on the ground and marked by monuments. The entire parcel or tract shall be shown, including all contiguous land in common ownership within the last five years, as required by 30-A M.R.S.A. § 4401. The survey shall include the bearings and lengths of every street line, lot line, and boundary line. For curve lines, at least three elements shall be provided. These include the arc length, the radius and one of the following: the central angle, the tangent length with bearings, or the chord distance with bearings.

- (h) Existing and proposed street names, pedestrianways, lot easements, and areas to be reserved for or dedicated to public use.
- (i) All lots within the subdivision, including numbers to identify each lot and the map and lot number assigned by the Town of Windham Assessing Department.
- (j) Location of all monuments as required by this section.
- (k) The location of any important or unique natural and site features, including, but not limited to, wetlands, water bodies, streams, scenic areas, sand and gravel aquifers, significant wildlife habitats, significant fisheries, tree lines, and historic and/or archaeological resources.
- (l) Location of all yard setback lines.
- (m) A medium intensity soils map that encompasses the area to be subdivided. The Planning Board may require submission of an appropriate class high-intensity soils map in instances where poor soils are evident.
- (n) If subsurface wastewater disposal systems (septic) are proposed, the location and results of test pits performed by a Maine licensed site evaluator or certified soil scientist. At least one test pit shall be shown per lot.
- (o) Written offers of cession to the Town of Windham of all public open space shown on the plan.
- (p) All conditions of approval and/or waivers required or granted by the Planning Board shall appear on the final plan. Waivers of the submission requirements do not have to be included on the plans.
- (q) If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation, as depicted on the Town's Flood Insurance Rate Map, shall be delineated on the plan.
- (r) For conservation subdivisions that are proposed that do not maximize the development potential of the property being subdivided, a conceptual master plan for the remaining land shall be submitted. The conceptual master plan will show future road, open space, and lot layout consistent with the requirements of § **120-911K**, Conservation subdivisions.
- (3) Submission information for which a waiver may be granted. The following items shall be submitted as part of the final plan application, unless the applicant submits, and is granted by the Planning Board, a written waiver request as part of the sketch plan application review (see § **120-908**, Waivers):
  - (a) Contour lines at intervals of five feet, or at lesser intervals as the Planning Board may require.
  - (b) Description of how stumps and demolition debris will be disposed of.
  - (c) A surface drainage plan or stormwater management plan with profiles and cross sections, showing the design of all facilities and conveyances necessary to meet the stormwater management standards set forth in Article 9 (Subdivision Review). The plan shall be drawn by a Maine licensed professional civil engineer and shall include a written statement indicating that the proposed subdivision will not create

erosion, drainage or runoff problems either in the subdivision or on adjacent properties. Changes in runoff shall be calculated by using the TR-55 or TR-20 method or subsequent revisions.

- (d) A soil erosion and sediment control plan prepared by a Maine licensed professional engineer or a certified professional in erosion and sediment control (CPESC) consistent with the requirements of § 120-911C, Erosion and Sedimentation Control:-
  - (e) If subsurface wastewater disposal systems (septic) are proposed, a hydrogeologic assessment prepared by a Maine licensed site evaluator or certified geologist regarding the ability of the site to meet the performance standards and approval criteria for subsurface wastewater disposal.
  - (f) The location of driveways, if requested by the Planning Board.
- C. Major subdivision preliminary plan. The preliminary plan submission shall include five copies of the following information, including full-size plan sets, along with one electronic version of the entire submission. The Board may waive the submission information that is listed in § 120-910C(1)(c). All dimensions shown in feet or decimals of a foot, drawn to a scale of not more than 100 feet to the inch showing or accompanied by the following information:
- (1) Mandatory written information.
    - (a) A fully executed and signed application form.
    - (b) Evidence of payment of the application and escrow fees as found on the Fee Schedule established by the Town Council.
    - (c) Proposed name of the subdivision and the name of the municipality in which it is located.
    - (d) Verification of right, title or interest in the property, or any abutting property, by deed, purchase and sales agreement, option to purchase, or some other proof of interest.
    - (e) A copy of the most recently recorded deed for the parcel. A copy of all existing deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property.
    - (f) A copy of any existing or proposed covenants or deed restrictions intended to cover all or part of the lots or dwellings in the subdivision.
    - (g) A copy of any proposed easements on the property.
    - (h) The name, registration number and seal of the Maine licensed professional land surveyor who conducted the survey.
    - (i) Name, registration number and seal of any other licensed professional in the State of Maine who prepared the plan (if applicable).
    - (j) An indication of the type of sewage disposal to be used in the subdivision.
  - [1] When sewage disposal is to be accomplished by connection to the public sewer, a letter from the Portland Water District stating the district has the capacity to collect and treat the wastewater shall be provided.
  - [2] When sewage disposal is to be accomplished by subsurface wastewater disposal systems, test pit analyses, prepared by a Maine licensed site evaluator or certified soil scientist, shall be provided. A map showing the location of all test pits dug on the site shall be submitted.

- (k) An indication of the type of water supply system(s) to be used in the subdivision.
  - (l) When water is to be supplied by public water supply, a written statement from the Portland Water District shall be submitted, indicating there is adequate supply and pressure for the subdivision.
  - (m) The names and addresses of the record owner, applicant, and adjoining property owners.
  - (n) An acceptable title opinion proving right of access to the proposed subdivision or site for any property proposed for development on or off of a private way or private road.
  - (o) The name and contact information for the road association whose private way or road is used to access the subdivision (if applicable).
  - (p) Financial capacity.
- [1] Estimated costs. Specify the estimated total cost of the development and itemize the estimated major expenses. The itemization of major costs may include, but not be limited to, the cost of the following activities: land purchase, roads, sewers, structures, water supply, erosion control, pollution abatement and landscaping.
  - [2] Financing. Provide one of the following unless otherwise approved by the Town:
    - [a] Letter of commitment to fund. A letter of commitment, acceptable to the Town, from a financial institution, governmental agency, or other funding agency, indicating a commitment to provide a specified amount of funds, and specifying how those funds will be used. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
    - [b] Self-financing.
    - [i] Annual report. The most recent corporate annual report indicating availability of liquid assets to finance the development, together with explanatory material interpreting the report; or
    - [ii] Bank statement. Copies of bank statements or other evidence indicating availability of funds if the applicant will personally finance the development.
    - [c] Other. If funding is required, but a final commitment of all necessary money cannot be made until all approvals are received and other reasonable conditions are met, provide the following:
      - [i] Cash equity commitment. Cash equity commitment to the development sufficient to demonstrate the applicant's ability to go forward. The Town will consider 20% equity of the total cost of a development as the normal equity commitment but reserves the right to lower or raise this amount if special circumstances of an individual development warrant it.
      - [ii] Financial plan. Financial plan for the remaining financing.
      - [iii] Letter. Letter acceptable to the Town from an appropriate financial institution, indicating an intention to provide financing subject to reasonable conditions of acceptance.
  - [3] Certificate of good standing. If the applicant is a registered corporation, provide either a certificate of good standing (available from the Secretary of State) or a statement signed by a corporate officer affirming that the corporation is in good standing.
- (q) Technical capacity. Describe the technical ability of the applicant and consultant(s) to undertake the development. Include the following information:

- [1] Prior experience. A statement of the applicant's prior experience and appropriate training relating to the nature of the development. Specify prior experience relating to developments that have received permits from the Town.
- [2] Personnel. Resumes or similar documents detailing the experience and qualifications of full-time, permanent or temporary staff contracted with or employed by the applicant who will design the development.
- (r) For conservation subdivisions that are proposed that do not maximize the development potential of the property being subdivided, a conceptual master plan for the remaining land shall be submitted. The conceptual master plan will show future road, open space and lot layout consistent with the requirements of § **120-911K**, Conservation subdivisions.
- (2) Mandatory plan information. The maps or drawings must be at a scale sufficient to allow review of the items listed under the approval criteria, but in no case shall be more than 100 feet to the inch.
  - (a) Name of the subdivision, date and scale.
  - (b) Stamp, with date and signature, of the Maine licensed professional land surveyor that conducted the survey.
  - (c) Stamp, with date and signature, of any other professional licensed in the State of Maine that prepared the plans.
  - (d) A North arrow identifying all of the following: grid north, magnetic north with the declination between grid and magnetic; and whether magnetic or grid bearings were used in the plan design.
  - (e) Location map. The location map shall be drawn at a size and scale adequate to allow the Board to locate the subdivision within the municipality.
  - (f) Vicinity plan. A plan drawn at a scale of not over 400 feet to the inch to show the area within 250 feet of the property boundary of the proposed subdivision. The vicinity plan shall show the following:
    - [1] The approximate location of all property lines and acreage of parcels.
    - [2] Locations, widths and names of existing, filed or proposed streets, easements, or building footprints.
    - [3] The location and designations of any public spaces.
    - [4] An outline of the proposed subdivision, together with its street system and an indication of the future probable street system of the remaining portion of the tract, if the proposed subdivision plan encompasses only part of the applicant's entire property holding.
  - (g) A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances, made and certified by a Maine licensed professional land surveyor. The corners of the parcel shall be located on the ground and marked by monuments. The entire parcel or tract shall be shown, including all contiguous land in common ownership within the last five years, as required by 30-A M.R.S.A. § 4401. The survey shall include the bearings and lengths of every street line, lot line, and boundary line. For curve lines, at least three elements shall be provided. These include the arc length, the radius and one of the following: the central angle, the tangent length with bearings, or the chord distance with bearings.
  - (h) The proposed lot lines with approximate dimensions and the area of each lot.
  - (i) Contour lines at two-foot intervals, or at intervals required by the Board, showing elevations in relation to the required datum.

- (j) Typical cross sections of the proposed grading for roadways, sidewalks, etc., including width, type of pavement, elevations and grades.
- (k) Wetland areas shall be delineated on the survey.
- (l) The number of acres within the proposed subdivision, location of property lines, existing buildings, vegetative cover type, specimen trees, if present, and other essential existing physical features.
- (m) The location of all rivers, streams and brooks within or adjacent to the proposed subdivision. If any portion of the proposed subdivision is located in the direct watershed of a great pond, the application shall indicate which great pond.
- (n) The zoning district in which the proposed subdivision is located and the location of any zoning boundaries affecting the subdivision.
- (o) The location, size of existing and proposed sewers, water mains, culverts, bridges and drainageways on or adjacent to the property to be subdivided. The Board may require this information to be depicted via a cross section, or plan and profile view.
- (p) The location, names, and present widths of existing streets, highways, easements, building lines, parks and other open spaces on or adjacent to the subdivision.
- (q) The width and location of any streets, public improvements or open space shown upon the Official Map and the Comprehensive Plan, if any, within the subdivision.
- (r) All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
- (s) The location of any open space to be preserved or common areas to be created, and a general description of proposed ownership, improvement and management.
- (t) The approximate location of the tree line after development has been completed.
- (u) If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation, as depicted on the Town's Flood Insurance Rate Map, shall be delineated on the plan.
- (v) Areas within or adjacent to the proposed subdivision which have been identified by the Maine Department of Inland Fisheries and Wildlife "Beginning with Habitat Project" or within the Comprehensive Plan. (Copies of the Beginning with Habitat Project maps and the Comprehensive Plan are available in Town Hall.)
- (w) All areas within or adjacent to the proposed subdivision which are either listed on or eligible to be listed on the National Register of Historic Places, or have been identified in the Comprehensive Plan or by the Maine Historic Preservation Commission as sensitive or likely to contain such sites.
- (x) An erosion and sedimentation control plan prepared in accordance ~~with MDEP Stormwater Law Chapter 500 basic standards, and the MDEP Maine Erosion and Sediment Control Best Management Practices, published March 2003.~~ with the requirements of § 120-911C, Erosion and sedimentation Control.
- (y) A stormwater management plan, prepared by a Maine licensed professional engineer in accordance with the most recent edition of Stormwater Management for Maine: Best Management Practices Manual and Maine DEP Chapter 500 Stormwater Management Rules, as amended from time to time. ~~published by the MDEP 2006.~~

- (z) For conservation subdivisions that are proposed that do not maximize the development potential of the property being subdivided, a master plan for the remaining land shall be submitted. The master plan will show future roads, open space and lot layouts consistent with the requirements of § **120-911K**, Conservation subdivisions.
- (3) Submission information for which a waiver may be granted. The following items shall be submitted as part of the preliminary plan application, unless the applicant submits, and is granted by the Planning Board, a written waiver request as part of the sketch plan application review (see § **120-908**, Waivers). The Board may require additional information to be submitted, as necessary, in order to determine whether the criteria of 30-A M.R.S.A. § 4404 are met.
  - (a) A high-intensity soil survey by a certified soil scientist.
  - (b) A landscape plan, including a list of proposed plant species and their size at the time of installation and maturity.
  - (c) Hydrogeologic assessment.
    - [1] A hydrogeologic assessment prepared by a certified geologist or Maine licensed professional engineer, experienced in hydrogeology, when the subdivision is not served by public sewer and:
      - [a] Any part of the subdivision is located over a sand and gravel aquifer, as shown on a map entitled "Hydrogeologic Data for Significant Sand and Gravel Aquifers," by the Maine Geological Survey, 1998, File No. 98-138, 144 and 147; or
      - [b] The subdivision has an average density of more than one dwelling unit per 100,000 square feet.
      - [2] The Board may also require a hydrogeologic assessment in cases where site considerations or development design indicate greater potential of adverse impacts on groundwater quality. The hydrogeologic assessment shall be conducted in accordance with the provisions of § **120-911H**, Impact on groundwater quality or quantity, below.
      - [3] If a hydrogeologic assessment is submitted, the assessment shall contain at least the following information:
        - [a] A map showing the basic soils types.
        - [b] The depth to the water table at representative points throughout the subdivision.
        - [c] Drainage conditions throughout the subdivision.
        - [d] Data on the existing groundwater quality, either from test wells in the subdivision or from existing wells on neighboring properties.
        - [e] An analysis and evaluation of the effect of the subdivision on groundwater resources. In the case of residential developments, the evaluation shall, at a minimum, include a projection of post-development nitrate-nitrogen concentrations at any wells within the subdivision, or at the subdivision boundaries, or at a distance of 1,000 feet from potential contamination sources, whichever is a shortest distance.
        - [f] A map showing the location of any subsurface wastewater disposal systems and drinking water wells within the subdivision and within 200 feet of the subdivision boundaries.
  - (d) An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours. Trip generation rates used shall be taken from the most recent available edition of the Trip Generation Manual, published by the Institute of Transportation Engineers. Trip generation rates from

other sources may be used if the applicant demonstrates that these sources better reflect local conditions.

- (e) Traffic impact analysis. For subdivisions involving 28 or more parking spaces or projected to generate more than 140 vehicle trips per day, a traffic impact analysis, prepared by a Maine licensed professional engineer with experience in traffic engineering, shall be submitted. The analysis shall indicate the expected average daily vehicular trips, peak-hour volumes, access conditions at the site, distribution of traffic, types of vehicles expected, effect upon the level of service of the street giving access to the site and neighboring streets which may be affected, and recommended improvements to maintain the desired level of service on the affected streets.
- (f) If any portion of the proposed subdivision is in the direct watershed of a great pond, and meets the criteria of § **120-911J**, Stormwater management, the following shall be submitted or indicated on the plan:
  - [1] A phosphorus impact analysis and control plan conducted using the procedures set forth in MDEP Manual; "Stormwater Management for Maine Phosphorus Control in Lake Watersheds," published by the MDEP, January 2008, and subsequent revisions. The analysis and control plan shall include all worksheets, engineering calculations, and construction specifications and diagrams for control measures, as required by the Phosphorus Design Manual.
  - [2] A long-term maintenance plan for all phosphorus control measures.
  - [3] Contour lines at an interval consistent with § **120-910C(2)(i)** above. Off-site areas draining onto the development site may use the best available data from aerial topographic mapping or USGS topographic maps.
  - [4] Areas with sustained slopes greater than 25% covering more than one acre shall be delineated.
- D. Major subdivision final plan. The final plan submission shall include five copies of the following information, including full-size plan sets, along with one electronic version of the entire submission.
  - (1) Mandatory written information.
    - (a) A fully executed and signed final plan application form.
    - (b) Evidence that the escrow account balance is greater than 25% of the initial preliminary plan deposit.
    - (c) If public open space is to be provided, written offers of cession to the Town of Windham shall be provided.
    - (d) Copies of agreements or other documents showing the manner in which spaces, title to which is reserved by the subdivider, are to be submitted.
    - (e) Copies of any approvals from outside agencies per the requirements of § **120-907C(4)(f)**, review procedures for major subdivisions.
    - (f) Assessor's proposed Map and Lot numbers.
    - (g) Digital transfer of any subdivision plan data on the Town's Horizontal Datum: Maine State Plane Coordinate System: Maine West Zone FIPS Zone 1802, North American Datum 1983; Units: US Survey Feet.
  - [1] The preferable vertical datum is North American Vertical Datum 1988 (NAVD88). However, if only National Geodetic Vertical Datum 1929 (NGVD29) is possible, this is permissible. The choice of vertical datum must be indicated on the digital submission. The Ellipsoid is GRS 80 (Geodetic

Reference System 1980).

- [2] Data shall have survey-grade positional accuracy. Data could be developed using either real time kinematic (RTK) GPS, survey-grade static GPS data collection or traditional methods of occupying known, high-precision surveyed monuments. The datum, survey methods, and type of survey equipment used shall be identified.

(h) Draft Homeowners' Association documents and a draft lot deed as per the requirements of § 120-911N.

- (2) Mandatory plan information.
  - (a) All of the information presented on the preliminary plan, and any amendments thereto suggested or required by the Board.
  - (b) Map and lot numbers for all lots as assigned by the Town of Windham Assessing Department.
  - (c) The seal of the Maine licensed professional who prepared the plan.
  - (d) By proper designation, all public open space for which offers of cession are made by the subdivider and those spaces to which title is reserved by him.
  - (e) The location of all permanent monuments.

**§ 120-911 Performance and design standards.**

**[Amended 4-27-2010 by Order 10-075; 5-10-2011 by Order 11-070; 7-24-2012 by Order 12-091; 12-16-2014 by Order 14-491; 2-28-2017 by Order 17-038; 10-10-2017 by Order 17-161]**

The performance and design standards in this section are intended to clarify and expand upon the statutory review criteria found in § 120-902. In reviewing a proposed subdivision, the Board shall review the application for conformance with the following performance and design standards. In all instances, the burden of proof shall be upon the applicant to present adequate information to indicate all performance and design standards and statutory criteria for approval have been or will be met.

**A. Basic subdivision layout.**

- (1) Lots.
  - (a) Calculation of density. See § 120-541, Net residential area or acreage, in Article 5, Performance Standards.
  - (b) Wherever possible, side lot lines shall be perpendicular to the street.
  - (c) The subdivision of tracts into parcels with more than twice the required minimum lot size shall be laid out in such a manner as either to provide for or preclude future division. Deed restrictions or notes on the plan shall either prohibit future divisions of the lots or specify that any future division shall constitute a revision to the plan and shall require approval from the Board, subject to the criteria of the subdivision statute, the standards of these regulations and conditions placed on the original approval.
  - (d) If a lot on one side of a public street fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of the public street to meet the minimum lot size.
  - (e) Lot numbering. Even numbers shall be assigned to lots on one side of the street, and odd numbers on the opposite side. Where the proposed subdivision contains the extension of an existing street or street approved by the Board, but not yet constructed, the lot numbers shall correspond with the existing lot numbers. The lot numbering shall be reviewed by the E-911 Addressing Officer and the comments shall

be considered by the Board.

- (2) Utilities. The size, type and location of public utilities, such as sewers, water lines, storm drains, streetlights, electric lines, telephones lines, fire hydrants, etc., shall be approved by the Board and installed in accordance with the requirements of the Board and these standards.
    - (a) Utilities shall be installed underground.
    - (b) All public utilities and facilities, such as sewer, gas, electrical and water systems, shall be located and constructed to minimize or eliminate flood damage.
  - (3) Monuments. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
    - (a) Street line monuments. Monuments shall be set at all street intersections and points of curvature, but no further than 750 feet apart along street lines without curves or intersections. Street line monuments shall be granite and have minimum dimensions of four inches square at the top and four feet in length. The monuments shall be set in the ground with the top of the monuments no more than six inches above the final grade level. A drill hole at least 0.5 inch deep shall locate the point or points described above and include the registration number of the Maine licensed professional land surveyor that set the monuments. Monuments shall be capable of being detected by commonly used magnetic or electronic equipment, as required by the Maine Board of Licensure for Professional Land Surveyors.
    - (b) Other monuments. All other subdivision boundary corners and angle points, as well as all lot boundary corners and angle points, shall be marked by suitable permanent monumentation solidly embedded in the ground and capable of being detected by commonly used magnetic or electronic equipment, as required by the Maine Board of Licensure for Professional Land Surveyors. The monument shall clearly show the registration number or temporary certificate number of the Maine licensed professional land surveyor responsible for the survey. Where the placement of a required monument at its proper location is impractical, it shall be permissible to set a reference monument close to that point.
- B. Sufficient water; water supply.
- (1) A subdivision shall connect to the public water system if the closest water main is within a distance equal to 100 feet multiplied by number of lots in the subdivision. A proposed subdivision shall not generate a demand on the source, treatment facilities or distribution system of the Portland Water District beyond the capacity of those system components, considering improvements that are planned to be in place prior to occupancy of the subdivision. The applicant shall be responsible for paying the costs of system improvements to the Portland Water District's system as necessary in order to facilitate connection.
  - (2) When a subdivision is to be served by a public water system, the complete supply system within the subdivision, including fire hydrants, shall be installed at the expense of the applicant. The size and location of mains, gate valves, hydrants, and service connections shall be reviewed and approved, in writing, by the Portland Water District and the Windham Fire-Rescue Chief.
  - (3) When a proposed subdivision is not within a distance required for connection to the public water system, water supply shall be from individual wells or a private community water system. The following standards shall apply to individual wells or private community water systems:
    - (a) Individual wells shall be sited and constructed to prevent infiltration of surface water, and contamination from subsurface wastewater disposal systems and other sources of potential contamination.
- [1] Due to the increased chance of contamination from surface water, dug wells shall be prohibited on lots of smaller than one acre. On lots of one acre or smaller, the applicant shall prohibit dug wells by deed

restrictions and a note on the plan.

- [2] On lots greater than one acre, dug wells may only be installed where it is not possible to utilize another well system.
- [3] Wells 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.
- (b) Lot design shall permit placement of wells, subsurface wastewater disposal areas, and reserve sites for subsurface wastewater disposal areas in compliance with the Maine Subsurface Waste Water Disposal Rules and the Well Drillers and Pump Installers Rules.
- (c) If a central water supply system is provided by the applicant, the location and protection of the source and the design, construction and operation of the system shall conform to the standards of the Maine Rules Relating to Drinking Water (10-144 CMR 231).
- (d) In residential subdivisions where the Fire-Rescue Department identifies the need for additional water storage capacity for firefighting purposes, the applicant shall provide adequate water storage facilities.
- [1] Facilities may be ponds with dry hydrants, underground storage reservoirs or other methods acceptable to the Fire-Rescue Chief.
- [2] A minimum storage capacity shall meet the requirements of the National Fire Protection Association Life Safety Code (NFPA 101). The Board may require additional storage capacity upon a recommendation from the Fire-Rescue Chief.
- [3] Where surface ponds are proposed for water storage, the capacity of the pond shall be calculated based on the lowest water level less an equivalent of three feet of ice. An easement shall be granted to the municipality, granting access to and maintenance of dry hydrants or reservoirs where necessary.
- [4] Hydrants or other provisions for drafting water shall be provided to the specifications of the Fire-Rescue Department. Minimum pipe size connecting dry hydrants to ponds or storage vaults shall be six inches. A suitable accessway to the hydrant or other water source shall be constructed.
- [5] The Board may waive the requirement for water storage only upon submittal of evidence that the soil types in the subdivision will not permit their construction or installation and/or that the Fire-Rescue Chief has indicated, in writing, that alternate methods of fire protection are available and incorporated into the subdivision plan.

C. Erosion and sedimentation ~~and impact on water bodies control.~~

(1) An Erosion 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:

(a) Maine DEP Erosion and Sediment Control Best Management Practices (BMPs) Manual for Designers and Engineers

(b) Maine Erosion and Sediment Control Practices Field Guide for Contractors

(c) Applicants are required to utilize contractors who are certified in erosion control through the Maine DEP's Voluntary Contractor Certification Program.

~~(1) Where a subdivision is traversed by a watercourse or drainageway or where the Board feels that surface water drainage to be created by the subdivision should be controlled for the protection of the subdivision and owners of property abutting it, there shall be provided an easement or drainage right-of-way and culverts, catch basins or other means of channeling surface water within such subdivision and over the property of owners abutting upon it, of such nature, width and location as the Board deems adequate.~~

~~(a) The applicant shall transfer the easement to a homeowners' association.~~

~~(b) Maintenance of the easement will be the responsibility of the homeowners' association.~~

~~(c) The easement shall specify that in the event that the applicant or homeowners' association neglects its maintenance responsibilities, the Town reserves the right to maintain the features of the easement and charge the homeowners' association for all expenses.~~

(2) The developer shall provide a statement from a Maine licensed professional civil engineer that the plan shall prevent soil erosion and sedimentation from entering water bodies, wetlands and adjacent properties.

(3) Topsoil shall be considered part of the subdivision. Except for surplus topsoil for roads, parking areas and building excavations, it 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.

~~(5) The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction, and clean up stages. (See Chapter 201, Stormwater Management, Article I, Surface Water Protection.)~~

D. Sewage disposal.

(1) Public sewer system. Where an existing or proposed public sanitary gravity sewer main is located within 1,500 feet of a proposed subdivision at its nearest point, the applicant shall provide, at his expense, a connection to, or extension of, the public gravity sewer main.

(a) The Portland Water District shall certify that providing service to the proposed subdivision is within the capacity of the system's existing collection and treatment system or improvements planned to be complete prior to the construction of the subdivision.

(b) The Portland Water District shall review and approve, in writing, the construction drawings for the public sewerage system. This includes, but is not limited to, the size and location of laterals, collectors, manholes, and pump stations.

(2) Private systems. When a proposed subdivision is not within a distance required for public sewage disposal service, sewage disposal shall be private subsurface wastewater disposal systems. The subdivision may be served by a private central sewage system in accordance with the provisions for central sewage systems in Article 5, Performance Standards. The applicant shall submit evidence of site suitability for subsurface sewage disposal prepared by a Maine licensed site evaluator in full compliance with the requirements of the State of Maine Subsurface Waste Water Disposal Rules. The site evaluator

shall certify, in writing, that all test pits which meet the requirements for a new system represent an area large enough to provide a disposal area on soils which meet the Disposal Rules.

E. Impact on natural beauty, aesthetics, historic sites, wildlife habitat, rare natural areas or public access to the shoreline.

(1) Preservation of natural beauty and aesthetics.

(a) The plan shall, by notes on the final plan and/or deed restrictions, not allow the clearing of trees in areas where tree cover is depicted on the plan for a period of at least five years from the date of Planning Board approval. Mandatory buffers for stormwater or other reasons depicted on the plan shall not be cleared of vegetation unless the Planning Board grants an amendment to the subdivision or for maintenance that does not alter the purpose for which the buffer was required.

(b) The plan shall include the planting of street trees. Street trees shall be of a variety capable of withstanding winter street maintenance and planted no more than 50 feet apart.

(2) Reservation or dedication and maintenance of open space and common land, facilities and services.

(a) All open space common land, facilities and property shall be owned by:

[1] The owners of the lots or dwelling units by means of a lot owners' association;

[2] An association which has as its principal purpose the conservation or preservation of land in essentially its natural condition; or

[3] The Town of Windham, subject to the approval of the Windham Town Council.

(b) Further subdivision of the common land or open space and its use for other than noncommercial recreation, agriculture, or conservation purposes, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to noncommercial recreational or conservation uses may be erected on the common land.

(c) The common land or open space shall be shown on the final plan with appropriate notations on the plan to indicate:

[1] It shall not be used for future building lots; and

[2] Which portions of the open space, if any, may be dedicated for acceptance by the municipality.

~~(d) The final plan application shall include the following:~~

~~[1] Covenants for mandatory membership in the lot owners' association setting forth the owners' rights, interests, and privileges in the association and the common property and facilities, to be included in the deed for each lot or dwelling.~~

~~[2] Draft Articles of Incorporation of the proposed lot owners' association as a not for profit corporation; and~~

~~[3] Draft bylaws of the proposed lot owners' association, specifying the responsibilities and authority of the association and the operating procedures of the association and providing for proper capitalization of the association to cover the costs of major repairs, maintenance and replacement of common facilities.~~

~~(e) In combination, the documents referenced in § 120-911E(2)(d), above, shall provide for the following:~~

**Commented [GU1]:** Moved to new Section 911.N  
Maintenance of Common Elements

- ~~{1} The homeowners' association shall have the responsibility of maintaining the common property or facilities.~~
  - ~~{2} The system by which the association shall levy annual charges against all owners of lots or dwelling units to defray the expenses connected with the maintenance, repair and replacement of common property and facilities and tax assessments.~~
  - ~~{3} The association shall have the power to place a lien on the property of members who fail to pay dues or assessments.~~
  - ~~{4} The developer or subdivider shall maintain control of the common property, and be responsible for its maintenance until rights have been transferred to the association per the bylaws or covenants.~~
- F. Conformance with land use ordinances. All lots shall meet the dimensional requirements of the zoning district in which they are located. The proposed subdivision shall meet all applicable performance standards or design criteria of this chapter. Note: See § **120-533**, Lot, backlot, in Article 5, Performance Standards, for additional standards regarding backlots in subdivisions.
- G. Financial and technical capacity.
- (1) Financial capacity. The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria of the standards of these regulations. In making its determination, the Planning Board shall consider all relevant evidence to the effect that the developer has the financial capacity to construct, operate, and maintain all aspects of the development. The Board shall also consider the proposed time frame for construction and the effects of inflation.
  - (2) Technical ability.
    - (a) The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed subdivision.
    - (b) In determining the applicant's technical ability, the Board shall consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted to the applicant.
- H. Impact on groundwater quality or quantity.
- (1) Groundwater quality.
    - (a) Projections of groundwater quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation). See § 120-910C(1)(c)[3] for hydrogeologic assessment submission requirements.
    - (b) No subdivision shall increase any contaminant concentration in the groundwater at any subdivision water supply well or any project boundary to more than the primary drinking water standards. No subdivision shall increase any contaminant concentration in the groundwater at said locations to more than the secondary drinking water standards. A hydrogeological evaluation shall demonstrate that the groundwater concentrations of nitrate as nitrogen meet the maximum contaminant level standard of 10 mg/L of the EPA's National Primary Drinking Water Regulations at the project boundaries. Where past land activities, such as agriculture, indicate the potential for high background levels of nitrate nitrogen or other groundwater contaminants, the Planning Board may require testing to determine background levels and may place limitations on total groundwater discharges to ensure safe drinking water supplies for existing and/or proposed households. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

- (c) If groundwater is to be used for potable purposes and contains contaminants in excess of the primary standards, and the subdivision is to be served by on-site groundwater supplies, the applicant shall demonstrate how water quality will be improved or treated.
  - (d) If groundwater contains contaminants in excess of the secondary standards, the subdivision shall not cause the concentration of the parameters in question to exceed 150% of the ambient concentration.
  - (e) Subsurface wastewater disposal systems and drinking water wells shall be constructed as shown on the map submitted with the assessment. If construction standards for drinking water wells or other measures to reduce groundwater contamination and protect drinking water supplies are recommended in the assessment, such as required well-exclusion zones, those standards shall be included as a note on the final plan, and as restrictions in the deeds to the affected lots.
  - (f) Whenever the Board determines that there is a potential that some lots in the proposed subdivision may have difficulty obtaining a well with adequate quantity and quality for potable water, the developer shall be required to drill wells and verify the water supply before the lot is sold.
- (2) Groundwater quantity.
- (a) Any water table drawdowns beyond the subdivision boundaries, due to groundwater withdrawals by the proposed subdivision, shall not adversely impact groundwater supply availability to existing wells nor cause structural damage (e.g., settlement).
  - (b) A proposed subdivision shall not result in a lowering of the water table at the subdivision boundary by increasing runoff with a corresponding decrease in infiltration of precipitation. This standard shall be met by one of the following measures:
    - [1] Limiting the impervious surfaces within the project site to no more than 10% of the land surface.
    - [2] Providing analysis by a hydrogeologist or qualified engineer that soil and substrate conditions are such that a groundwater drawdown due to increased runoff will not significantly reduce infiltration or cause long-term settlements in clay that could result in structural damage. Upon recommendation of peer review consultants engaged by the Town, the Board may require test borings to verify assumptions made by the hydrologist or engineer.
    - [3] Installation of groundwater infiltration measures to ensure that water table recharge is not depleted by more than 10%.
- I. Floodplain management. When any part of a subdivision is located in a special flood hazard area as identified by the Federal Emergency Management Agency:
- (1) All public utilities and facilities, such as sewer, gas, electrical and water systems, shall be located and constructed to minimize or eliminate flood damages.
  - (2) Adequate drainage shall be provided so as to reduce exposure to flood hazards.
  - (3) The plan shall include the finished floor elevation of all proposed structures within the flood hazard area.
  - (4) The plan shall meet the requirements of Chapter **82**, Floodplain Management.
- J. Stormwater management.
- (1) Stormwater management for subdivisions shall incorporate appropriate treatment measures for water quantity and quality to meet the requirements specified below for development of the lots as well as the

infrastructure to support the project. Each application shall include maximum developed, disturbed and impervious areas for each lot based upon the definitions contained in Section 3, DEP Chapter 500, Stormwater Management.

- (2) For subdivisions that require a DEP review under the Site Location of Development Act (SLDA), a stormwater management plan shall be submitted which complies with the SLDA permit and the requirements of DEP Chapter 500, Stormwater Management.
- (3) For subdivisions that do not require a SLDA permit but require a DEP permit under the Stormwater Law, a stormwater management plan shall be submitted which complies with the requirements of DEP Chapter 500, Stormwater Management.
- (4) For subdivisions outside of the watershed of a great pond that require neither a SLDA permit nor a DEP stormwater permit, a stormwater management plan shall be submitted that complies with Sections 4B, Basic Standards, and 4C, General Standards, of the DEP Chapter 500, Stormwater Management.
- (5) For subdivisions within the watershed of a great pond that require neither a DEP SLDA permit nor a DEP stormwater permit, a stormwater management plan shall be submitted that complies with Section 4B, Basic Standards, of DEP Chapter 500, Stormwater Management. In addition, the stormwater management plan shall comply with Section 4D, Phosphorous Standards, of DEP Chapter 500, Stormwater Management.
- (6) For all subdivisions, regardless of size, a stormwater management plan shall be submitted that complies with Section 4E, Flooding Standard, of the DEP Chapter 500, Stormwater Management, as amended. For a project that does not require a DEP SLDA permit, the Planning Board, upon a request by the applicant, may waive the flooding standard in the event that greater than 75% of the impervious and developed areas (as defined in Section 3 of DEP Chapter 500) for both the lots and infrastructure are treated through the use of buffers in accordance with DEP Chapter 500, Stormwater Management. ~~(See also Chapter 201, Stormwater Management, Article I, Surface Water Protection, of the Town Code.)~~
- (7) For all subdivisions, regardless of size, located in the Highland Lake watershed, the following additional standards shall be met: **[Amended 5-22-2018 by Order 18-905]**
  - (a) Projects in the Highland Lake watershed shall not be allowed to pay the compensation fee for exceeding the project's phosphorus allocation. Notwithstanding 1 M.R.S.A. § 302, this amendment shall be applicable to and shall govern any application for subdivision plan approval that did not receive lawful final approval by, and so was pending on or at any time after, September 5, 2017, regardless of whether that application was a pending proceeding under 1 M.R.S.A. § 302.

**K. Conservation subdivisions. [Amended 1-15-2019 by Order 18-257; 6-9-2020 by Order 20-140]**

- (1) Purpose.
  - (a) This subsection establishes standards and procedures for developing conservation subdivisions that set aside a significant portion of the site as open space that is permanently protected while allowing the homes to be grouped on smaller lots on the portions of the site that have the least natural, cultural, or historical resource value for conservation purposes. The standards are intended to ensure that those areas of the site that are not developable or that have natural resource value are included in the open space.
  - (b) Development under this provision is intended to promote imaginative, well-designed subdivisions which preserve open space, forests and agricultural uses, and an overall rural character. Additionally, conservation subdivisions should provide public access to land for passive and active recreation; protect natural features, environmentally sensitive areas and wildlife cover; respect the physical qualities of the land; and, in some instances, reduce the overall development costs of a subdivision. The standards for

conservation subdivisions allow for the creation of lots that are smaller than those that would otherwise be required by the applicable zoning district regulations and in some cases can be combined with density bonuses to allow additional lots, in return for setting aside the balance of the property as permanent open space.

- (c) These provisions are designed to ensure that conservation subdivisions developed in the Town:
  - [1] Preserve those areas of the site that have the highest natural resource value for conservation purposes (refer to the primary and secondary listed below);
  - [2] Preserve rural character and functions in rural portions of Windham;
  - [3] Provide a well-designed approach to the overall roadway and site layout that results in a landscape that provides a sense of a unique and appealing place;
  - [4] Preserve identified historic, archaeological, and cultural features located on the site;
  - [5] Locate the buildings and structures on those portions of the site that are most appropriate for development;
  - [6] Create continuous open spaces, or "greenways," by linking the open spaces in adjoining subdivisions wherever possible; and
  - [7] Minimize the impact of residential development on the Town, neighboring properties, and the natural environment.
- (d) In addition to all applicable standards of this chapter, the Planning Board may approve a single-family conservation subdivision, provided the following conditions are met:
  - (2) Applicability.
    - (a) All submissions for single-family subdivisions in the Farm Zoning District and Farm-Residential Zoning District that meet the space and bulk requirements listed in the appropriate zoning district must be designed as a conservation subdivision or a country subdivision.
    - (b) All submissions for subdivisions in all other zoning districts that meet the space and bulk requirements listed in the appropriate zoning district may be designed as a conservation subdivision or a traditional subdivision.
    - (c) Property located within more than one residential zoning district. The overall density of the subdivision shall not exceed the combination of the density requirements of the districts in which the subdivision is located, before density bonuses are applied.
  - (3) Procedure for conservation subdivisions; design process for conservation subdivision open space.
    - (a) Delineation of open space. The area to be designated as open space or otherwise preserved as part of the development shall be delineated based upon the primary and secondary conservation areas. The proposed open space in conservation subdivisions shall be identified in accordance with the following:
      - [1] The minimum percentage and acreage of required open space shall be calculated by the applicant and submitted in accordance with the provisions of § **120-911K** and of this chapter.
      - [2] The proposed open space shall be designated using an existing resources inventory and site analysis sketch plan as a base. This plan shall describe the property proposed to be subdivided and analyze the opportunities and constraints for open space preservation and development. This should be submitted

for preapplication review with planning staff prior to submitting a formal application for subdivision approval.

- [3] The primary conservation areas on the site shall be delineated and shall be incorporated into the open space. The primary conservation areas shall include floodplains, wetlands, and areas with sustained slopes over 25%.
  - [4] The secondary conservation areas on the site shall then be delineated. In delineating secondary conservation areas, the applicant shall prioritize natural and cultural resources on the tract in terms of their highest to lowest suitability for inclusion in the proposed open space based upon the priorities set forth in § **120-911K(6)(c)**.
  - [5] On the basis of those priorities and practical considerations related to the tract's configuration, its context in relation to resource areas on adjoining and neighboring properties, and the applicant's subdivision objectives, sufficient secondary conservation areas shall be identified to be included in the open space to meet at least the minimum area percentage requirement for open space. This delineation shall clearly indicate the boundaries as well as the types of resources included within them.
  - [6] The proposed open space shall include all primary conservation areas and the secondary conservation areas with the highest resource significance as identified. For subdivisions that are not conservation subdivisions, the primary and secondary conservation areas shall be identified using the existing resources inventory and site analysis sketch plan as a base. The layout of the subdivision shall consider these resources and shall preserve them to the extent reasonable.
- (b) Open space design.
- [1] All open space areas shall be part of a larger continuous and integrated open space system within the parcel being developed. At least 75% of the open space shall be contiguous to another open space area. For the purposes of this subsection, areas shall be considered contiguous if they are within 100 feet of each other and there are no impediments to access between the areas.
  - [2] Open space shall, to the greatest extent possible, protect site features identified in the existing resources inventory and site analysis sketch plan.
  - [3] Natural features shall generally be maintained in their natural condition but may be modified to improve their appearance or to restore their overall condition and natural processes.
  - [4] No area of open space shall be less than 50 feet in its smallest dimension and less than 10,000 square feet in area. Open space not meeting this standard is allowed as an added project enhancement but shall not be counted toward the required project open space.
  - [5] The boundaries of open spaces shall be marked by natural features wherever possible, such as hedgerows, stone walls, edges of woodlands, streams, or individual large trees. Where no such existing demarcations are present, additional plantings, fences, or other landscape features shall be added to enable residents or the public, if applicable, to distinguish where the open space ends and private lot areas begin. Where structural demarcations such as fences are used, they shall be the minimum needed to accomplish this objective.
  - [6] Open space shall include lands located along existing public streets in order to preserve existing rural landscape character as seen from these streets and shall, in no case, contain less than the required buffer, setback area, or separation distance.
- (c) Location of building sites. Potential building sites shall be tentatively located taking into consideration the proposed open space and/or the primary and secondary conservation areas identified in § **120-**

**911K(6)(c)**, as well as other relevant data from the existing resources inventory and site analysis sketch plan, such as topography and soils.

- [1] Building envelopes should generally be located at least 100 feet from primary conservation areas and at least 50 feet from secondary conservation areas, taking into consideration the potential negative impacts of development on such areas as well as the potential positive benefits of such locations to provide attractive views and visual settings for residences and other uses.
- [2] Buildings shall be set back at least 100 feet from existing public and private streets. This buffer may be part of the conservation subdivision open space. When buildings will be visible from the existing streets, the applicant shall minimize the visual impact of new development through larger setbacks or screening with elements such as low walls, split-rail fencing, trees or other plantings.
- [3] Buildings shall be set back at least 50 feet from the external perimeter of the property line of the conservation subdivision, with the exception of property lines along public or private streets. The buffer strip shall be naturally vegetated or landscaped. This buffer may only be part of the open space if the area is a primary or secondary conservation area delineated in accordance with § **120-911K(3)(a)**.
- (d) Alignment of streets and ways and creation of a trail system. Based upon the designated building sites, a circulation plan shall be designed to provide vehicular and pedestrian access to each site. The street layout shall bear a logical relationship to topographic conditions. Impacts of the street plan on proposed conservation lands shall be minimized, particularly with respect to crossing environmentally sensitive areas such as wetlands and minimizing cut and fill. Street connections shall generally be encouraged to minimize the number of new culs-de-sac and to facilitate access to and from buildings in different parts of the subdivision. A trail system shall be created within the open space to provide access from the subdivision homes to the open space network created by the subdivision.
- (e) Drawing in the lot lines. Upon completion of the preceding steps in § **120-911K(3)(a)** through (d), lot lines shall be drawn as required to delineate the boundaries of individual lots. Lots shall be designed in keeping with the standards for individual lots found in Article 4 and shall be further designed to provide each residence with a clear delineation of its property bounds and with usable yard spaces.
- (4) Basic standards for conservation subdivisions.
  - (a) Conservation subdivisions shall meet all applicable requirements of this chapter.
  - (b) The Planning Board shall allow lots within conservation subdivisions to be reduced from standard subdivision standards as specified in the applicable zoning district. In return for the reduction in the requirements for lot area, frontage, and structure setbacks, the applicant shall provide common open space.
  - (c) In order to determine the maximum number of dwelling units permitted on a tract of land, the net residential acreage of the parcel shall be divided by the net residential density standard of the applicable zoning district. Density bonuses are applicable, per the appropriate zoning district standards (see Article 4).
  - (d) A landowner may choose not to maximize the development potential of a tract of land in the first subdivision application and reserve remaining development rights for a future subdivision application. In this instance, a conceptual master plan showing the location of future lots must be submitted. The conceptual master plan shall include the minimum information required for a sketch plan submission.
- [1] The subdivider may retain ownership of the remaining land from which the subdivision lots are to be created, provided the portion of the remaining land counted toward the subdivision open space is subject to a permanent conservation or agricultural easement, or the subdivider may transfer ownership of the

open space to a third party per § **120-911E(2)**.

- [2] The land remaining will be a numbered lot within the subdivision.
- [3] The open space standards in § **120-911K(5)** shall apply.
- (e) Each building envelope shall be an element of an overall subdivision plan for site development. Only developments having a total site plan for structures will be considered. The application shall illustrate the placement of building envelopes and the treatment of spaces, paths, roads, service and parking and in so doing shall take into consideration all requirements of § **120-911K** and of other relevant sections of these regulations.
- (f) For conservation subdivisions that are not served by a public water supply, the applicant must demonstrate on the plan that it is possible to locate a subsurface wastewater disposal field and a well on each lot. When determined that it is necessary for specific lots, by the Planning Board, as a condition of approval, the location of these elements shall be elements of the subdivision plan, and any future changes to the location of these elements will require an amended subdivision plan review.
- (g) Up to 30% of individual lots or dwelling units may have direct vehicular access onto a public street existing at the time of development.
- [1] Driveways may cross the buffer and must run essentially perpendicular to the street.
- [2] Driveways serving individual lots in a conservation subdivision on an existing public street must be separated from new driveways and street intersections by 300 feet.
- (5) Arrangement of lots.
  - (a) Diversity and originality in lot layout and individual building site design shall be encouraged to achieve the best possible relationship between the proposed development and the land under consideration.
  - (b) Factors considered by the Planning Board when evaluating the proposed arrangement of lots shall include, but not be limited to:
    - [1] Arrangement of roads, stormwater facilities, wastewater and other utilities in conformance with the natural features of the parcel, minimizing changes to the topography.
    - [2] Minimization of impervious cover.
    - [3] Protection of stream corridors and other important habitat areas.
    - [4] Protection of wetlands.
    - [5] Feasibility of continued or future agricultural use.
    - [6] Feasibility of continued or future forest management.
    - [7] Relationship to neighboring property, including conservation easements or natural, cultural, recreational or scenic features.
- (6) Open space requirements for conservation subdivisions.
  - (a) The open space provided by the conservation subdivision shall be identified on the recorded subdivision plan as "Open Space — Reserved for Recreation, Agricultural and/or Conservation Purposes."

- (b) Minimum amount required. The amount of open space provided within the subdivision shall be equal to or greater than the sum of the following:
  - [1] All of the areas of the parcel that are deducted from the gross area of the site to determine the net residential area (see § **120-541**, Net residential area or acreage); plus
  - [2] At least 50% of the remaining land that is not deducted from the calculated net residential area (see § **120-541**, Net residential area or acreage).
- (c) Priorities for land included in open space. The land set aside in the open space shall be selected based upon the following priorities:
  - [1] Primary conservation priorities.
    - [a] Streams, wetlands, floodplains, vernal pools, and areas with a slope in excess of 25%. Buffers that are required by ordinance along these protected resources shall also be considered primary conservation areas.
    - [b] Areas that maintain the rural character of roadsides.
    - [c] Scenic resources, including viewsheds and agricultural fields, along with the forested margin adjacent to these resources.
    - [d] Areas that are adjacent to other protected open space.
  - [2] Secondary conservation priorities.
    - [a] Areas that provide protection for unique or irreplaceable resources, including the habitat of rare, significant, or endangered species, archaeological or historic sites, landmarks, and cemeteries.
    - [b] Areas that provide for the continuation of resource systems into or through the site such as shorelands, river or stream corridors, wildlife travel corridors, trails, and unfragmented habitat blocks. The width of such corridors shall be as follows:
      - [i] Shorelands, river or stream corridors: 100% of the width of any required vegetative buffer, in addition to the required buffer.
      - [ii] Wildlife travel corridors: 300 feet.
      - [iii] Recreational trail corridors: 25 feet on either side of the trail. Unfragmented habitat blocks shall have a minimum contiguous area of 150 acres.
    - [c] Areas that encompass groups of small wetlands not included in primary conservation areas, as well as streams or ponds in a continuously forested area.
    - [d] Other secondary conservation areas, including fields, aquifer recharge areas, deer yards, and other identified habitat.
- (d) For open space not retained by the subdivider, one principal access point having a minimum width of 20 feet shall be provided from the road network within the conservation subdivision. Additional, secondary points of access having a minimum width of 10 feet may be provided from individual lots when these lots abut or are located within a portion of the open space area.
  - [1] The size and location of the principal and secondary access points shall be reviewed and approved by the Planning Board as part of the Board's review of the conservation subdivision.

- [2] In order to be eligible for any density bonus described in the applicable zoning district standards, the following conditions must be met: the open space must be open for general public use, not just homeowners within the subdivision or the subdivider; and the open space must either be accessed from an existing public street, or access is from an abutting property that is public, permanent open space or recreation land; or access must be formalized in easement language if access is to be provided over the new subdivision street or streets until such time as the subdivision street or streets are adopted by the Town. Access easements for the open space must be recorded at the registry prior to the issuance of building permits.
- (e) The required open space shall not be used for commercial recreation or for private clubs whose membership is different from the homeowners' association.
- (f) The proposed location of open space areas should also be considered in relation to other open space areas on abutting properties, and logical connections to and from open space areas on abutting properties should be given consideration by the Planning Board.
- (7) Country subdivisions. As an alternative to conservation subdivision design in the Farm Zoning District and the Farm-Residential Zoning District, an applicant may choose a country subdivision design. This alternative does not include the reservation of open space or the level of site analysis and design required by a conservation subdivision. As a result, large residential lots are required in order to meet Town goals of protecting water quality and wildlife habitats and preserving rural character.
- (a) Layout and design of the development.
- [1] Minimum property line setbacks. All principal buildings shall be set back a minimum of 75 feet from any property line. Accessory buildings and structures with less than 200 square feet of footprint area shall be set back a minimum of 50 feet from any property line. Any other accessory buildings and structures shall be set back a minimum of 75 feet from any property line.
- [2] Streetscape buffers. A vegetated buffer strip shall be maintained on any country lot that fronts on or otherwise abuts any existing public and private street to minimize the visual impact of the development on the streetscape. The depth of the buffer strip shall be at least 50 feet. The buffer strip may be crossed by driveways or access drives that run essentially perpendicular to the street. The buffer strip shall be naturally vegetated or landscaped in a manner appropriate to the existing site conditions and the secondary conservation value of the strip.
- [3] Perimeter buffers. A vegetated buffer strip shall be maintained along the external perimeter or property line of the country subdivision, with the exception of property lines along public or private streets, to minimize the impact of the country subdivision on abutting properties. The width of the buffer strip shall be at least 50 feet. The buffer strip shall be naturally vegetated or landscaped.
- (b) Conceptual master plan. A landowner may choose not to maximize the development potential of a tract of land in the first subdivision application and reserve remaining development rights for a future subdivision application. In this instance, a conceptual master plan showing the location of future lots must be submitted. The conceptual master plan shall include the minimum information required for a sketch plan submission.
- L. Compliance with timber harvesting rules.
- (1) The Board shall ascertain that any timber harvested on the parcel being subdivided has been harvested in compliance with rules adopted pursuant to 12 M.R.S.A. § 8869, Subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the Planning Board must determine prior to granting approval for the subdivision that five years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel.

- (2) For the purposes of this subsection, "liquidation harvesting" has the same meaning as in 12 M.R.S.A. § 8868, Subsection 6, and "parcel" means a contiguous area within one municipality, township or plantation owned by one person or a group of persons in common or joint ownership.
  - (3) The Planning Board may request technical assistance from the Department of Agriculture, Conservation and Forestry, Bureau of Forestry, to determine whether a rule violation has occurred, or the Board may accept a determination certified by a forester licensed pursuant to 32 M.R.S.A. Ch. 76.
    - (a) If the Bureau agrees to provide assistance, it shall make a finding and determination as to whether a rule violation has occurred.
    - (b) If the Bureau notifies the Planning Board that it will not provide assistance, the Board may require a subdivision applicant to provide a determination certified by a licensed forester.
- M. Traffic conditions and streets.
- (1) General standards. The proposed subdivision shall meet the following general transportation performance standards:
    - (a) The subdivision transportation system shall provide safeguards against hazards to vehicles, bicyclists and pedestrians in interior subdivision streets and access connections to external streets;
    - (b) The subdivision transportation system shall have design standards that avoid traffic congestion on any street;
    - (c) The subdivision transportation system shall provide safe and convenient circulation for vehicles, bicyclists and pedestrians on interior subdivision streets and access connections to external streets;
    - (d) The subdivision transportation system shall have design standards that are compatible with the estimated average annual daily traffic of the street, the land uses accommodated by the street, and the lot density of the street; and
    - (e) The subdivision transportation system shall have a positive relationship to the natural setting of the proposed subdivision site.
  - (2) General access standards. All subdivision accesses connecting with external streets shall meet the following standards (see § 120-522, Curb cuts and driveway openings, in Article 5, Performance Standards):
    - (a) Accesses connecting to any state or state aid highway shall meet the minimum access permitting requirements of the Maine Department of Transportation "Highway Driveway and Entrance Rules."
    - (b) Accesses that are expected to carry more than 100 passenger-vehicle-equivalent trips in the peak hour shall meet the minimum access permitting requirements of the Maine Department of Transportation "Rules and Regulations Pertaining to Traffic Movement Permits."
    - (c) Existing and proposed streets and intersections that can be expected to carry traffic generated by the subdivision shall have the capacity or be suitably improved to accommodate that traffic and avoid unreasonable congestion. For the purposes of this section, "suitably improved" shall mean that all of the existing and proposed private roads in the road network back to the closest public street shall meet the applicable private road standard.
  - [1] Signalized intersection. The level of service (LOS) at a proposed signalized intersection shall be "D" or better. At an existing signalized intersection, the LOS shall not be reduced below "D" by the development. If an existing signalized intersection is operating below a LOS "D" predevelopment, then

the development shall not increase the delay at the intersection.

- [2] Unsignalized intersection. At an unsignalized intersection, if the LOS is forecasted to be less than a "D" post-development, then the installation of a traffic signal and/or additional turning lanes shall be investigated. If these improvements are found not to be warranted, then a LOS less than "D" may be acceptable.
- (d) Accesses to nonresidential subdivisions or to multifamily developments shall be designed to avoid queuing of entering vehicles on any street. Left-lane storage capacity on the existing external street shall be provided to meet anticipated demand. A study or analysis to determine the need for a left-turn storage lane shall be done.
- (3) General internal subdivision street standards. All internal subdivision streets shall meet the following minimum standards:
  - (a) The public street or public street system of the proposed subdivision shall be designed to coordinate with existing, proposed, and planned streets. Where a proposed development abuts unplatted land, or a future development phase of the same development, the Board may require the dedication of a right-of-way equal to the right-of-way width of the internal subdivision street to provide continuation of the road where future development is possible.
- [1] The Planning Board may require the construction of the dedicated right-of-way connection to the abutting property.
- [2] All dead-end streets or street connection rights-of-way shall be provided with a hammerhead turnaround unless specifically exempted by the Planning Board. The hammerhead shall meet the standards in § **120-911M(5)(b)[5]**, Dead-end streets.
- [3] The land area outside of the public street's fifty-foot right-of-way that is necessary for the hammerhead may be in the form of an easement given by the property owner(s) to the Town of Windham and may provide that the easement shall be extinguished upon removal of the hammerhead in the event that the street is extended and the Town Council approves the removal of the hammerhead and extinguishing of the easement. The area of any hammerhead easement shall not be used for purposes of satisfying the frontage requirement of the applicable zoning district.
- [4] The Planning Board may require a developer to connect to an existing street connection right-of-way on an abutting property. The developer that connects to the street connection right-of-way shall be responsible for any required repair or expansion of the existing public street.
- [5] Collector and local public streets shall connect with surrounding streets to permit convenient movement of traffic or facilitate emergency access and evacuation.
- (b) Where necessary to safeguard against hazards to vehicle drivers, bicyclists and pedestrians and/or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, sidewalks, bicycle lanes or paths, transportation demand management techniques, and traffic controls within existing public streets.
- (c) Street names and signs. Streets shall be named, signed and addressed in accordance with the Code of the Town of Windham, Chapter **204**, Article **II**, Street Naming and Addressing. In addition, streets which join and are in alignment with streets of abutting or neighboring properties shall bear the same name. The developer shall either install street name, traffic safety and control signs meeting municipal specifications or reimburse the municipality for the costs of their installation.
- (d) Streetlights. Streetlights may be required at intersections with existing public streets. The use of

additional streetlights shall be discouraged to avoid excessive light pollution.

- (e) During street construction, the entire right-of-way shall not be cleared unless clearing is necessary for utilities, drainage or other infrastructure necessities beyond the clear zone. If on-site disposal of the stumps and debris is proposed, the site shall be indicated on the plan and be suitably covered with fill and topsoil, limed, fertilized, and seeded.
- (4) Specific access standards; access control.
  - (a) To the maximum extent practical, all subdivision accesses shall be constructed perpendicular to the external street providing access to the subdivision. The minimum intersection angle shall meet the requirements of Table 3 in Appendix B (see Appendix B, Street Design and Construction Standards).
  - (b) Where a subdivision abuts or contains an existing or proposed arterial street, no lot may have vehicular access directly to the arterial street.
  - (c) Where a lot has frontage on two or more streets, the access to the lot shall be provided to the lot across the frontage and to the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians. This restriction shall appear as a deed restriction to the affected lots. In cases where creating an access to a lesser traveled way is problematical, the Board may allow an access on the higher volume street if the access does not significantly detract from public safety.
  - (d) The subdivision access, including all radii, must be paved from the edge of pavement of the existing external street to a distance in accordance with the criteria in § 120-911M(5)(a)[5][e][iii], unless the external street is not paved (see Table 3 in Appendix B, Street Design and Construction Standards).
  - (e) Minimum sight distance standards. Minimum sight distance requirements for all subdivision accesses connecting to external streets shall be contingent on the posted speed of the external street connecting to the subdivision access. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- [1] For accesses that are expected to carry primarily passenger vehicles, the standards in Table 2 in Appendix B, Street Design and Construction Standards, shall apply.
- [2] For accesses that are estimated to carry more than 30% of their traffic in vehicles larger than standard passenger vehicles, the standards in Table 2 in Appendix B, Street Design and Construction Standards, shall apply.
- [3] On roads that are designated by the Maine Department of Transportation as mobility or retrograde arterials, the standards in Table 2 in Appendix B, Street Design and Construction Standards, shall apply (see Appendix C for the list of state highways).
- (f) Access design shall be based on the traffic volume estimates anticipated to be carried by the internal subdivision street. Traffic volume estimates shall be defined by the latest edition of the Trip Generation Manual published by the Institute of Transportation Engineers. The following traffic volume standards shall apply to the design of subdivision accesses connecting to external streets:
  - [1] Low-volume access. An access with 50 or fewer passenger-car-equivalent trips per day.
  - [2] Medium-volume access. Any access with more than 50 passenger-car-equivalent trips per day but fewer than 100 passenger-car-equivalent trips during the peak hour.
  - [3] High volume access. Any access with 100 or more passenger car equivalent trips during the peak hour.
- (g) Basic access design standards for low- and medium-volume accesses. The minimum access design

standards in Table 2 in Appendix B, Street Design and Construction Standards, shall apply to all low- and medium-volume street and private road accesses connecting to external streets. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

- (h) Additional access requirements for medium-volume accesses. In addition to the basic access standards outlined in Table 2 in Appendix B, Street Design and Construction Standards, medium-volume accesses on state or state aid highways designated by the Maine Department of Transportation as major collectors or arterials shall also comply with the following standards (see Appendix C for the list of state highways): **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- [1] The Planning Board may require the minimum curb radius on the edge of the access to exceed the minimum curb radius standard in Table 3 if a larger design radius is needed to accommodate a larger design vehicle (see Table 3 in Appendix B).
- [2] A throat shall be constructed around the access in order to store vehicles waiting to exit the access. The throat shall be of sufficient length to prevent incoming vehicles from queuing back into the highway. Access from the throat to parking or other areas shall be prohibited.
- [3] A separator strip, or strip of land that separates the roadway from the throat or parking area, shall be constructed. The access separator strips shall be installed between the parking area and the roadway and along the throat. The Board shall determine if the separator strip shall include curbing, walkways, ditching, and/or vegetation. The separator strip shall extend away from the traveled way of the external road at a minimum of the greater of nine feet or the required landscaped buffer distance of the applicable zoning district.
- (i) All high-volume accesses shall meet the requirements of the Maine Department of Transportation's "Rules and Regulations Pertaining to Traffic Movement Permits." A copy of the Maine Department of Transportation's required traffic study shall be submitted to the Board. The design standards shall be compatible with the performance standards cited in § **120-911M(2)** of this chapter.
- (5) Specific street design and construction standards.
  - (a) General requirements.
    - [1] The Board shall not approve any subdivision plan unless the proposed streets are designed in accordance with the specifications contained in these regulations, including Table 3 and Table 4 in Appendix B. Approval of the final plan by the Board shall not be deemed to constitute or be evidence of acceptance by the municipality of any street, right-of-way or easement [see § **120-911M(6)** for street acceptance procedures].
    - [2] Applicants shall submit to the Board, as part of the preliminary plan, detailed construction drawings showing a plan view, profile, and typical cross section of the proposed streets. The plan view shall be at a scale of one inch equals no more than 50 feet. The vertical scale of the profile shall be one inch equals no more than five feet. The plans shall include the following information:
      - [a] Date, scale, and North point (as required in § **120-910**, Submission requirements).
      - [b] Intersections of the proposed street with existing streets.
      - [c] Roadway and right-of-way limits, including edge of pavement or aggregate base, edge of shoulder, clear zone, sidewalks, and curbs.
      - [d] Kind, size, location, material, profile and cross section of all existing and proposed drainage structures and their location with respect to the existing natural waterways and proposed drainageways.

- [e] Complete curve data shall be indicated for all horizontal and vertical curves.
  - [f] Turning radii at all intersections.
  - [g] Center line gradients.
  - [h] Size, type, vertical clearance and locations of all existing and proposed overhead and underground utilities, to include but not be limited to water, sewer, electricity, telephone, lighting, and cable television.
  - [i] Locations and results of any test borings performed as part of the design process.
- [3] Upon receipt of plans for a proposed public street as part of a final plan application, the Board shall forward one copy to the Town Council for informational purposes. Plans for streets which are not proposed to be accepted by the Town shall be sent to the Director of Public Works and the Town's consulting engineer for review and comment.
- [4] Where the applicant proposes improvements within existing public streets, the proposed design and construction details shall be approved, in writing, by the Director of Public Works or the Maine Department of Transportation, as appropriate.
- [5] Private roads. The following standards, in addition to those in Tables 3 and 4, apply to private roads used for the purpose of providing frontage for, and access to, individual lots of land (see Tables 3 and 4 in Appendix B). Note: For additional standards for private roads that are not part of a subdivision application, see § **120-555**, Streets, in Article 5, Performance Standards).
- [a] All private roads shall be designated as such and will be required to have adequate signage indicating the road is a private road and not publicly maintained.
  - [b] Each lot having access from an approved private road may be improved with no more than two dwelling units.
  - [c] Except for sidewalk, bicycle provisions and minimum grade requirements stipulated in this section, all private roads shall adhere to the road design standards of this section.
  - [d] All properties served by the private road shall provide adequate access for emergency vehicles and shall conform to the approved local street numbering system. For the purposes of this section, "adequate access" shall mean that all existing and proposed private roads in the road network back to the closest public street shall meet the applicable private road standard.
  - [e] Where the subdivision streets are to remain private roads, the following words shall appear on the recorded plan: "All roads in this subdivision shall remain private roads to be maintained by the developer, lot owners or road association, and shall not be offered for acceptance, or maintained, by the Town of Windham until they meet all municipal street design and construction standards."
  - [f] The applicant shall provide evidence that the private road shall be maintained either by the applicant or by the lot owners or a homeowners' association. Proof may consist of a declaration of covenants that will be recorded and become part of each deed and specify how the costs of maintenance will be apportioned among the lot owners, or appropriate homeowners' association documents. In the event that a homeowners' association is formed, each lot deed shall refer to the association and shall require the lot owner to be a member of the association. No private road will be maintained by the Town unless the Town has accepted the road. No private road shall be offered to the Town for acceptance until it meets the design requirements of this chapter.
  - [g] A paved apron shall be constructed when a gravel private road connects to a paved public street or

paved private road in accordance with the standards in Table 3 and Table 4 (see Appendix B, Street Design and Construction Standards).

- [h] Private roads shall be designed to conform with the appropriate standards presented in Tables 1, 2, 3 and 4 and the applicable cross sections in Appendix B.
- [i] Notwithstanding other provisions of this chapter to the contrary, no gravel-surfaced private road shall provide access to or serve in any way to provide compliance with the requirements of this chapter for more than the greater of 10 lots or 10 dwelling units. A private road providing access to or serving in any way to provide compliance with the requirements of this chapter for more than 10 lots or 10 dwelling units shall meet all design and construction standards for a major private road, as defined. Nothing in this subsection shall serve to limit the use of a private road for occasional use by and for agricultural purposes.
- [6] Access drive standards for condominium and multifamily subdivisions. Subdivisions in which the property will be held in common ownership shall be served by an access drive. Access drives shall remain private and shall not be maintained or repaired by the Town. Access drives shall meet the following standards:
  - [a] Design standards. Access drives shall be designed to conform to the standards for major private roads in these regulations, including the standards contained in Table 3, Table 4, and the applicable cross sections in Appendix B, Street Design and Construction Standards.
  - [b] Rights-of-way. The minimum right-of-way width for a major private road in Table 3 of Appendix B is not applicable to an access drive.
  - [c] Setbacks. The setback requirements of the applicable zoning district shall be applied to the parcel as a whole and shall be measured from the property boundaries to the closest improvement subject to setback requirements. There shall be no minimum setback required between an access drive and a structure.
- (b) Street design standards.
  - [1] These design guidelines shall control the roadway, shoulders, clear zones, curbs, sidewalks, drainage systems, culverts, and other appurtenances associated with the street, and shall be met by all streets within a subdivision, unless the applicant can provide clear and convincing evidence that an alternate design will meet good engineering practice and will meet the performance standards of § **120-911**.
  - [2] Reserve strips controlling access to streets shall be prohibited except where their control is definitely placed with the municipality.
  - [3] Curbs.
    - [a] Curbs shall be installed for stormwater management purposes, to protect the pavement edge from unraveling along parking lanes, in developments where heavy use may erode the planted area at the edge of the pavement, in areas where the street passes through a cut of land, or on public streets where the average lot frontage is 100 feet or less. The Board may require curbs based on the unique conditions of the site.
    - [i] Curbs for stormwater management shall be contingent on the stormwater design standards specified in § **120-911J**.
    - [ii] Catch basins or other methods of directing stormwater acceptable to the Board shall be required on the sides of streets on which a curb is installed. The maximum distance between catch basins or drainage control shall be 300 feet. The Planning Board may require additional catch basins or drainage control

measures at specific locations due to site conditions, such as, but not limited to, slopes and soil conditions.

- [b] Minimum shoulders for curbed streets. Standards shall be in accordance with Table 3 in Appendix B.
- [c] Construction standards. Curbs shall be constructed of either vertical granite, sloped granite, sloped cape cod bituminous, or Type 2 bituminous where a sidewalk is adjacent to a street.
- [i] Curb radii at all intersections on a public street shall be constructed of granite.
- [ii] Granite curb radii shall be installed in such a manner as to match the height of any existing curbing on a public street.
- [iii] Granite curb radii shall be tipped down to match the grade of any existing external public street that is not curbed at the time of construction.
- [iv] Granite curbing shall be installed in accordance with Maine DOT Section 609 Specifications.
- [4] Shoulders. See Subsection **M(5)(b)[6]**, Sidewalks or shoulders, below.
- [5] Dead-end streets.
  - [a] Maximum length. Dead-end streets, as defined, shall meet the following standards:
    - [i] Streets and roads served by public water. There is no maximum length limit for streets served by the Portland Water District that have fire hydrants and hammerhead turnarounds installed every 1,000 linear feet. However, the street connectivity standards of Subsection **M(5)(b)[7]**, Street connection requirements, below, shall apply.
    - [ii] Streets and roads not served by public water. Dead-end streets not supplied with fire hydrants served by the Portland Water District shall have a maximum length of 1,000 linear feet unless all dwellings beyond 1,000 linear feet from the closest public street or private way, as defined, have a National Fire Protection Association (NFPA) 13D monitored sprinkler system installed and approved by the Windham Fire-Rescue Chief and hammerhead turnarounds installed every 1,000 linear feet. The street connectivity standards of Subsection **M(5)(b)[7]**, Street connection requirements, below, shall apply.
  - [A] Existing rights-of-way. The maximum length of 1,000 linear feet shall commence at the terminus of any dead-end rights-of-way existing on, or before, October 22, 2009.
  - [B] A private road constructed within an existing right-of-way which does not contain an existing private way constructed on, or before, October 22, 2009, shall meet the design and construction standards for private roads contained in this Article 9 to the greatest extent practical. (See definition of "street classification: private way and private road" in Article 3.)
  - [iii] Industrial/commercial streets. There is no maximum length limit for a dead-end industrial or commercial street, as defined in Article 3.
- [b] Cul-de-sac requirement. Except for the standards in § 120-911M(5)(b)[5][d], below, dead-end streets shall be constructed to provide a cul-de-sac turnaround. The following standards shall be used in the design of culs-de-sac:
  - [i] Width. A single travel lane and width equal to the minimum width required for the internal subdivision street.
  - [ii] Radius. For all residential culs-de-sac, the minimum radius shall be 42 feet. For commercial/industrial

culs-de-sac, the minimum radius shall be 55 feet.

- [iii] Drainage. The center of the cul-de-sac must reserve area for snow storage and provide adequate drainage that does not result in ice formation on the travel way.
- [iv] Center area. The center of the cul-de-sac may include natural ground cover and vegetation.
- [v] Pedestrian and utility easement. The Board may require the reservation of a minimum twenty-foot easement in line with the street to provide continuation of pedestrian traffic to the next street, or a thirty-foot-wide utility easement to provide continuation of utilities.
- [c] Street connectivity. The Board may require the reservation of a right-of-way easement equal to the right-of-way width of the internal subdivision street in line with the street to provide continuation of the road where future development is possible.
- [d] Hammerhead requirement. A hammerhead turnaround is permissible on all private roads, or on public streets at which the Planning Board has required an extension of a right-of-way to provide access to undeveloped land. [See § **120-911M(3)** for additional street connectivity standards.]
- [e] A hammerhead turnaround shall meet the following standards:
  - [i] The right-of-way or easement area of the turnaround side branch shall be at least 50 feet by 50 feet.
  - [ii] The paved surface shall extend at least 50 feet from the center line of the adjacent roadway.
  - [iii] The width of the paved surface shall be equal to the street width.
  - [iv] The hammerhead shall have a minimum twenty-five-foot turning radius.
  - [v] Larger dimensions may be required to accommodate larger design vehicles anticipated to use the turnaround.
- [6] Sidewalks or shoulders. The applicant shall provide either a sidewalk or a paved shoulder as follows:
  - [a] Commercial/industrial streets.
    - [i] Sidewalks shall be required on all new commercial and industrial streets.
    - [ii] Connections to existing sidewalks. The Planning Board may require the construction of sidewalks on existing roads on which the property being subdivided fronts if a connection to an existing sidewalk can be made.
  - [b] Major local streets and minor local streets. To provide for safe pedestrian or bicycle travel, the applicant shall provide either a shoulder or a sidewalk in accordance with the following standards:
    - [i] Sidewalk required. Major and minor local streets in subdivisions located 1,000 linear feet or less from an existing convenience store or public building shall be required to construct a sidewalk in all zoning districts except the Farm District. The Board may also require a sidewalk in locations where the vehicular trips generated by the subdivision will create unsafe pedestrian conditions.
    - [ii] Connections to existing sidewalks. The Planning Board may require the construction of sidewalks on existing roads on which the property being subdivided fronts if a connection to an existing sidewalk can be made.
    - [iii] Sidewalk optional. If a sidewalk is not required in accordance with Subsection M(5)(b)[6][b][i], above,

the applicant shall construct either a sidewalk or a street with a widened shoulder. At a minimum, an additional one foot of paved shoulder, on each side of the street, shall be added to the required minimum shoulder width. The applicable design and construction standards for shoulders or sidewalks are located in Appendix B, Table 3 and Table 4.

- [c] Location. Sidewalks shall be located as follows:
  - [i] Major local streets and minor local streets. The sidewalk shall be set back from the curb or shoulder a minimum of seven feet from the curb facing or edge of shoulder if the street is not curbed. The Planning Board may reduce the seven-foot-setback requirement due to a condition that is unique to the site, or due to the location of an adjacent steep slope.
  - [ii] All other streets. The sidewalk may be located adjacent to the curb or shoulder or, if set back from the street, a minimum of seven feet from the curb facing or edge of shoulder if the street is not curbed. The Planning Board may reduce the seven-foot-setback requirement due to a condition that is unique to the site, or due to the location of an adjacent steep slope.
  - [iii] The Planning Board shall determine if sidewalks will be installed on one side or both sides of the street.
- [7] Street connection requirements. The following standards determine the number of connections a residential subdivision street must have with an existing public street. The cumulative number of lots or dwelling units created through the addition of lots or dwelling units to an existing subdivision shall be included in the minimum number of required street connections.

Number of Lots or Dwelling Units	Minimum Connections
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Lots: 30 or fewer	1
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Lots: 31 or more	2
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Units: 30 or fewer	1
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Units: 31 or more	2
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- [a] Street connection separation requirements. Subdivisions with two or more connections to an existing public street shall be separated according to the standards in Table 2 [see Table 2 in § 120-911M(4)].
- [8] Street construction practices. Streets shall be designed and constructed to conform to the standards presented in Table 4, the typical cross sections diagrams in Appendix B, Maine DOT Standard Specifications, latest revision (as applicable), and the following:
  - [a] Preparation.
    - [i] Before any clearing has started on the right-of-way, the center line and side lines of the new road shall be staked or flagged at fifty-foot intervals.
    - [ii] Before grading is started, the entire area within the right-of-way necessary for traveled way, shoulders,

clear zones, sidewalks, drainageways, and utilities shall be cleared of all stumps, roots, brush, and other objectionable material. All shallow ledge, large boulders and tree stumps shall be removed from the cleared area.

- [iii] All roadway excavation and embankment construction shall comply with Maine DOT Specification Section 203, Excavation and Embankment.
- [iv] Except in a ledge cut, side slopes shall be no steeper than a slope of three feet horizontal to one foot vertical, and shall be graded, loamed, limed, fertilized, and seeded according to the specifications of the erosion and sedimentation control plan. Where a cut results in exposed ledge, a side slope no steeper than four feet vertical to one foot horizontal is permitted.
- [v] All underground utilities shall be installed prior to paving to avoid cuts in the pavement. Sewer and/or water service connections shall be installed at least two feet beyond the edge of the right-of-way prior to paving. Temporary markers shall be placed to aid in the location of service stubs until connection is made to the building.
- [b] Bases and pavement.
  - [i] Subbase and base courses. The aggregate subbase course and base course shall meet the specifications of Table 4 in Appendix B (see Appendix B, Street Design and Construction Standards). All aggregate base and subbase construction shall comply with Maine DOT Specification Section 304, Aggregate Base and Subbase Course.
  - [ii] Pavements. The base layer and surface layer shall meet the specifications of Table 4 in Appendix B (see Appendix B, Street Design and Construction Standards). All paving work shall comply with Maine DOT Specification Section 401, Hot Mix Asphalt Pavements.
  - [c] Pavement joints. Where pavement joins an existing pavement, the existing pavement shall be cut along a smooth line and form a neat, even, vertical joint. A twelve-inch ship lap shall be required where the surface course overlays the base course.
  - [d] Subsurface roadway drainage.
  - [i] Geotextile fabric. The Planning Board or Director of Public Works, or his designee, may require the use of geotextile fabric on a case-by-case basis due to poor soil conditions or the height of the water table.
  - [ii] Underdrain. The Planning Board or Director of Public Works, or his designee, may require the installation of underdrain and catch basins on the curbed side of a street. The required use of underdrain shall be made on a case-by-case basis due to poor soil conditions, the height of the water table, or where the bottom of drainage ditches is above the lowest point of the roadway subbase layer.
  - [iii] Drainage ditches. Drainage ditches must be at least as deep as the lowest point of the road subbase.
- (6) Process for Town acceptance of streets. A street constructed on private lands by the owner, developer, or association thereof and not dedicated for public travel prior to October 22, 2009, may be laid out and offered for acceptance as a public street by the Town Council. For the Town Council to accept a public street, the procedures and conditions of this section must be met. In the event that all procedures and conditions are met, the Town Council reserves the right to reject any street offered for public acceptance.
  - (a) The street proposed for acceptance shall be constructed, or improved, to the standards for the construction of a public street.
  - (b) The owner(s) shall give the Town a deed to the property within the boundaries of the right-of-way at the

time of its acceptance by the Town, a separate deed to areas reserved for the future development of streets, and separate easements for the provision of street stub hammerheads. [See § **120-911M(3)**, General internal subdivision street standards.]

- (c) A plan of said street or way shall be recorded in the Cumberland County Registry of Deeds at the time of its acceptance.
- (d) A petition for the acceptance of said street shall be submitted to the Town Council upon a form to be prescribed by the Town Attorney. Said petition shall be accompanied by a plan, profile and cross section of said street as follows:
  - [1] A plan drawn when practical to a scale of 50 feet to one inch, and to be on one or more sheets of paper not exceeding 24 inches by 36 inches in size. Said plan shall show the North point, the location and ownership of all adjoining lots of land, underground utilities, passageways, streetlights and electric lines, boundary monuments, waterways, topography and natural drainage courses with contours at two-foot intervals (or lesser intervals approved by the Planning Board), all angles, bearing and radii necessary for the plotting of said street and lots and their reproduction on the ground.
  - [2] A profile of said street or way drawn to a horizontal scale of 50 feet to one inch, and a vertical scale of five feet to one inch, or other suitable engineering scale as required by the Town's consulting engineer.
  - [3] Said profile shall show the profile of the center line of said street and the proposed grades thereof. Specific cross sections shall be submitted as required by the Town's Engineer. Any buildings abutting on said street shall be shown on said profile.
  - [4] A typical cross section of said street drawn to a horizontal scale of five feet to one inch and a vertical scale of five feet to one inch.
  - [5] The location and size of the proposed water and/or sewer mains in accordance with these regulations.
  - [6] The location and size of all culverts, storm drains, catch basins and manholes.
- (e) Streets offered for acceptance.
  - [1] Streets to be offered to the Town for acceptance must have a written report of investigation prepared by the Town's Engineer after completion of construction based on review and observation of construction by the Town's Engineer.
  - [2] The owner shall warranty all public improvements for a period of one year from the date of acceptance and post a maintenance guarantee per the subdivision regulations. This maintenance guarantee shall ensure the workmanship and the durability of all materials used in the construction of the roadways, curbing, esplanades, sidewalks, sanitary sewerage systems, storm drainage systems, streetlighting, tree planting, and other public improvements located within the right-of-way which may become defective within the one-year period, all as determined by the Public Works Director or Town Engineer in accordance with § **120-911M(6)**. The amount of the maintenance guarantee shall be 10% of the total construction costs of all required improvements.
  - [3] At the conclusion of the one-year warranty period, the owner shall request the Town's Engineer to prepare a second written report of investigation prior to the release of the improvements guarantee.
  - [4] No street shall be placed on the Town Council's agenda for consideration or accepted by the Town Council until the following tasks have been completed:
    - [a] The applicant shall submit a complete set of as-built plans of the street proposed for acceptance showing all works of man.

- [b] The Town's consulting Engineer shall have made an investigation thereof and shall have reported to the Planning Department their recommendations, in writing, with respect thereto. Such investigation may include a minimum of the results of at least one core sample and may include more than one core sample for each road proposed for acceptance as a public way with the core sample and reports paid for by the applicant.
- [5] The surface pavement shall not be placed until the base paving has gone through at least one complete winter. The application of a tack coat and/or shim coat to the base may be required by the Town, when necessary, to ensure the appropriate bonding between base and final surface coats of pavement.
- [6] Notwithstanding the provisions of any other section thereof, the Town may at any time lay out and accept any street or way in the Town of Windham, Maine, as a public street of said Town whenever the general public interest so requires. The cost of said street or way may be borne by said Town or may be borne by another party.

~~(f) Provisions for streets that are offered for acceptance but not accepted.~~

~~[1] Any subdivision application that includes the creation of one or more public streets must provide draft homeowners' association documents to the Planning Board. The association documents shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair, and plowing of the subdivision street(s) should they not be accepted by the Town Council.~~

~~[2] The homeowners' association documents shall be in a form acceptable to the Town Attorney.~~

~~[3] The homeowners' association documents shall be recorded in the Cumberland County Registry of Deeds within 90 days of the date that the Board votes to approve the subdivision.~~

#### N. Maintenance of Common Elements

(1) Any subdivision application must provide draft homeowner's association documents. The final plan application shall include the following:

(a) Covenants for mandatory membership in the homeowners' association setting forth the owner's rights, interests, and privileges in the association and the common property and facilities, to be included in the deed for each lot or dwelling.

(b) Draft articles of incorporation of the proposed homeowner's association as a not-for-profit corporation; and

(c) Draft bylaws of the proposed homeowners' association, specifying the responsibilities and authority of the association, the operating procedures of the association, including an inspection and maintenance schedule, and providing for proper capitalization of the association to cover the costs of inspection, maintenance, repair and replacement of common facilities.

(2) In addition, the documents referenced in § 120-91 IN(1), above, shall provide for the following:

(a) The homeowners' association shall have the responsibility of maintaining the common property or facilities, including any required stormwater improvements.

(b) The system by which the association shall levy annual charges against all owners of lots or dwelling units to defray the expenses connected with the inspection, maintenance, repair and replacement of common property and facilities and tax assessments.

(c) The association shall have the power to place a lien on the property of members who fail to pay dues or

assessments.

- (3) The developer or subdivider shall maintain control of the common property and be responsible for its maintenance, including snow plowing, until either of the following has occurred:
  - (a) The legislative body accepts said improvements; or
  - (b) The developer or subdivider has transferred responsibility for ongoing maintenance of the improvements to the homeowners' association.
- (4) The homeowners' association shall be in a form acceptable to the Town Attorney.
- (5) The homeowners' association documents shall be recorded in the Cumberland County Registry of Deeds within 90 days of the date that the subdivision plan is recorded in the Cumberland County Registry of Deeds. Evidence of such recording shall be provided to the Code Enforcement Office. No lots shall be sold in the subdivision prior to recording and all deeds shall reference the Declaration establishing the homeowners' association.

**§ 120-912 Final approval and filing.**

- A. Upon findings of fact and determination that all standards in 30-A M.R.S.A. § 4404 and Article 9 of this chapter have been met, and upon voting to approve the subdivision, the Board shall sign the final plan. The Board shall specify, in writing, its findings of fact and reasons for any conditions or denial.
- B. The applicant shall record and file the plan as follows:
  - (1) The Mylar(s) of an approved subdivision shall include the signed stamp of the licensed professional who prepared the plans.
  - (2) Major subdivisions must resubmit the application's GIS data if revisions have been made during the preliminary plan or final plan review phase. The revised data must in the format required for preliminary plan submissions and all revisions made to the plan following the preliminary plan submission must be included. The Planning Board shall not sign any Mylars until the GIS data has been resubmitted.
  - (3) One original Mylar of the signed plan shall be retained by the Board as part of its permanent records.
  - (4) One original Mylar of the signed plan shall be recorded in the Registry of Deeds.
  - (5) Within seven days of recording, the applicant shall provide the Town with a copy of the recorded plan. No site work shall commence, or building permits issued, prior to the Town's receipt of a copy of the recorded plan.
  - (6) One complete, full-sized paper set of the approved plans shall be filed with the Planning Department, plus one full-size paper copy of the plan sheet containing the signature block, and one electronic copy of the subdivision plan in a format acceptable to the Town.
  - (7) Documentation shall be submitted to the Town confirming that all required ~~open-space-related~~ deeds, covenants, or legal agreements have been filed with the Registry of Deeds.
- C. Plan sections.
  - (1) At the time the Board grants final plan approval, it may permit the plan to be divided into two or more sections subject to any conditions the Board deems necessary in order to ensure the orderly development of the plan.
  - (2) If any Town or quasi-municipal department head notified of the proposed subdivision informs the Board

that their department or district does not have adequate capital facilities to service the subdivision, the Board shall require the plan to be divided into two or more sections subject to any conditions the Board deems necessary in order to allow the orderly planning, financing and provision of public services to the subdivision. If the expansion, addition or purchase of the needed facilities is included in the Town's capital improvements program, the time period of the phasing shall be no longer than the time period contained in the capital improvements program for the expansion, addition or purchase.

- D. No changes, erasures, modifications, or revisions shall be made in any final plan after approval has been given by the Board and endorsed, in writing, on the plan, unless a revised final plan is first submitted and the Board approves any modifications, in accordance with § **120-914**, Post-approval activities. The Board shall make findings that the revised plan meets the criteria of 30-A M.R.S.A. § 4404 and the standards of Article 9 of this chapter.
- E. The approval by the Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the Town of Windham of any street, easement, or other open space shown on such plan. When a park, playground, or other recreation area shall have been shown on the plan to be dedicated to the Town, approval of the plan shall not constitute an acceptance by the Town of Windham of such areas.
  - (1) The Board shall require the plan to contain appropriate notes to this effect.
  - (2) The Board may also require the filing of a written agreement between the applicant and the municipal officers covering future deed and title dedication, and provision for the cost of grading, development, equipment, and maintenance of any such dedicated area.
- F. Filing of as-built plans. All subdivisions that include streets proposed for acceptance by the Town of Windham shall submit as-built plans as required in § **120-911M(6)(e)[5]**. Any field changes that affect the accuracy of the project's GIS data require the revision and resubmission of said data.
- G. No subdivision plan shall be released for recording at the Registry of Deeds until the required performance guarantee has been posted. If an approved plan is not recorded in the Registry of Deeds within three years of the original approval, it shall become null and void. If a plan has received a phased approval, the first phase shall be recorded within three years of the original approval and subsequent phases shall be recorded within five years of the original approval. If a phased plan is not recorded within those time periods, the phases that have not been recorded shall become null and void.

**§ 120-913 Revisions to approved plans.**

- A. Authority. Any application for subdivision approval which constitutes a revision or amendment to a subdivision plan which has been previously approved shall indicate that fact on the application and shall identify the original subdivision plan being revised or amended. In reviewing such an application, the Planning Board shall make findings of fact establishing that the proposed revisions do or do not meet the criteria of 30-A M.R.S.A. § 4404.
- B. Procedure.
  - (1) An applicant for a revision to a previously approved plan shall, at least 21 days prior to a scheduled meeting of the Board, request to be placed on the Board's agenda.
  - (2) If the revision involves the creation of additional lots or dwelling units, the procedures for preliminary plan approval shall be followed. If the revision involves only modifications of the approved plan, without the creation of additional lots or dwelling units, the procedures for final plan approval shall be followed.
  - (3) The applicant shall submit the following information:

- (a) Ten copies of the approved plan.
- (b) Ten copies of the proposed revisions.
- (c) The application shall also include enough supporting information to allow the Board to make a determination that the proposed revisions meet the standards of Article 9 and the criteria of the state statute.
- (d) The revised plan shall indicate that it is the revision of a previously approved and recorded plan and shall show the title of the subdivision and the book and page or cabinet and sheet on which the original plan is recorded at the Registry of Deeds.
- (4) The Board's scope of review shall be limited to those portions of the plan which are proposed to be changed.

**§ 120-914 Post-approval activities.**  
**[Amended 2-28-2017 by Order 17-038]**

**A. Performance guarantees.**

- (1) Types of guarantees. The applicant shall provide one of the following performance guarantees for an amount adequate to cover 110% of the total construction costs of all required improvements, taking into account the time span of the construction schedule and the inflation rate for construction costs. A performance guarantee shall not expire between October 31 and April 15 of the following year.
  - (a) Either a certified check payable to the municipality or a savings account or certificate of deposit naming the municipality as owner, for the establishment of an escrow account;
  - (b) A performance bond payable to the municipality issued by a surety company, approved by the municipal officers, or Town Manager; or
  - (c) An irrevocable letter of credit, from a financial institution establishing funding for the construction of the subdivision, from which the municipality may draw if construction is inadequate, approved by the Town Manager.
- (2) Contents of guarantee. The performance guarantee shall contain the following:
  - (a) Construction schedule.
  - (b) Cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction, provisions for the release of part or all of the performance guarantee to the developer, and a date after which the applicant will be in default and the municipality shall have access to the funds to finish construction. The amount will be based upon a schedule of values maintained by the Town and based on construction costs of similar projects. The cost estimate shall be submitted in a format containing a schedule of values for each construction item. The acceptable format is available from the Town Engineer and on the Town's website.
  - (3) Escrow account. A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the municipality, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the applicant, the Town of Windham shall be named as owner or co-owner, and the consent of the Town shall be required for a withdrawal.
  - (4) Performance bond. A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the applicant, and the procedures for collection by the municipality. The bond documents shall specifically reference the subdivision for which approval is

sought.

- (5) Letter of credit. An irrevocable letter of credit from a bank or other lending institution with offices in the region shall indicate that funds have been set aside for the construction of the subdivision for the duration of the project and may not be used for any other project or loan. The letter of credit shall use the template established by the Town of Windham, unless waived by the Planning Board in consultation with the Town Attorney.
  - (6) Phasing of development. The Board may approve plans to develop a major subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision street which is covered by a performance guarantee.
    - (a) When development is phased, road construction shall commence from an existing public way, when available.
    - (b) The Board shall grant final approval of lots in subsequent phases only upon satisfactory completion of all requirements pertaining to previous phases. Evidence of satisfactory completion shall be a report from the Code Enforcement Officer or consulting engineer retained by the Town of Windham.
  - (7) Release of guarantee. Prior to the release of any part of the performance guarantee, the Town Manager shall determine to his/her satisfaction, in part upon the report of the Town's Engineer or other qualified individual retained by the municipality and any other agencies and departments which may be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion or phase of the subdivision for which the release is requested.
    - (a) Performance guarantees may be reduced periodically, but in no event more than one time per month. In no case shall the performance guarantee be reduced by less than \$10,000 at one time or in any line item where improvements remain to be completed. No performance guarantee shall be reduced to less than 10% of the performance guarantee. The remainder of the guarantee will be released upon completion of the improvements.
    - (b) The Town of Windham shall retain 10% of the performance guarantee for a period of one year from the date of final paving for any streets to be offered to the Town Council for acceptance. This guarantee shall ensure the workmanship and the durability of all materials used in the construction of the roadways, curbing, esplanades, sidewalks, sanitary sewerage systems, storm drainage systems, streetlighting, tree planting, and other public improvements located within the right-of-way which may become defective within the one-year period, all as determined by the Public Works Director or Town Engineer in accordance with § 120-911M(6).
  - (8) Default. If, upon investigation, the Town's Engineer or other qualified individual retained by the Town finds that any of the required improvements have not been constructed in general conformance with the plans and specifications filed as part of the application, he or she shall so report, in writing, to the Code Enforcement Officer, the Town Manager, the Board, the Planner, and the applicant or builder. The Town Manager, or his designee, shall take any steps necessary to preserve the municipality's rights.
  - (9) Improvements guaranteed. Performance guarantees shall be tendered for all improvements required to meet the standards of these regulations and for the construction of the streets, stormwater management facilities, public or private sewage collection or disposal facilities, public water systems, and erosion and sedimentation control measures.
- B. Investigation of required improvements.
- (1) Notice of construction. At least 15 days prior to commencing construction of required improvements, the subdivider shall notify, in writing, the Town Planner of the time when he proposes to commence

construction of such improvements so that the Town Manager and Town Planner can cause investigation to be made to observe construction of required improvements to confirm general conformance to the approved plans and specifications, and to confirm satisfactory completion of improvements and utilities required by the Board. Investigation shall be made of all required public improvements, including, but not limited to, public streets or private roads, drainage structures and ditches, erosion control measures, utilities, landscaping and recreation facilities and of all survey monuments as required by § 120-911A(3) of this chapter to ensure they have been placed.

- (2) Construction observation fee. At least five days prior to commencing construction of required improvements, the subdivider shall pay a construction observation fee in accordance with the requirements of § 120-909, Fees. No building permits shall be issued on the project and no work begun until the inspection fee has been paid. A preconstruction meeting shall be held with Town staff prior to commencing construction.
  - (3) Improvements not constructed to plan. If the Town's representative shall find, upon investigation of the improvements performed before the expiration date of the performance bond, that any of the required improvements have not been constructed in general conformance with plans and specifications filed by the subdivider, he shall so report to the Town Manager, Public Works Director, Code Enforcement Officer, and Town Planner. The Town Planner shall then notify the subdivider and, if necessary, the bonding company or bank, and take all necessary steps to preserve the municipality's rights under the bond or letter of credit. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
  - (4) Modifications to required improvements. If at any time before or during the construction of the required improvements it is demonstrated to the satisfaction of the Town Engineer that unforeseen conditions, such as encountering hidden outcrops of bedrock, natural springs, etc., make it necessary or preferable to modify the location or design of any required improvement, the Town Engineer may, upon approval of the Town Planner, authorize modifications. The modifications must be within the spirit and intent of the Board's approval and do not extend to the waiver or substantial alteration of the function of any improvements required by the Board. The Town Engineer shall issue and transmit a written authorization under this section to the Town Planner.
  - (5) Completion of construction of required improvements. Construction of improvements covered by any subdivision plan approval shall be completed within two years of the date upon which the performance guarantee is accepted by the Town Manager. If construction has not been completed within the specified period, the Town shall, at the Town Manager's discretion, use the performance guarantee to either reclaim and stabilize or to complete the improvements as shown on the approved plan.
- C. Maintenance of all improvements. The applicant shall be required to maintain all improvements and provide for snow removal on streets and sidewalks until either of the following has occurred:
- (1) The legislative body accepts said improvements; or
  - (2) The applicant has transferred responsibility for ongoing maintenance of the improvements to a homeowners' association.

**§ 120-915 Violations and penalties.**

- A. Approval required before filing. No plan of a subdivision of land within the boundaries of the Town of Windham which would constitute a subdivision as defined herein shall hereafter be filed or recorded in the Cumberland County Registry of Deeds until a final plan thereof shall have been approved by the Board in accordance with all of the requirements, design standards and construction specifications set forth elsewhere in these standards, nor until such approval shall have been entered on such final plan by the Board.

- B. Approval required before conveyance. No person, firm, corporation or other legal entity may convey, offer or agree to convey any land in a subdivision which does not meet the following requirements:
- (1) The subdivision has been approved by the Board and recorded in the Cumberland County Registry of Deeds;
  - (2) The street upon which the lot fronts is completed in accordance with these regulations, up to and including the entire frontage of the lot.
- C. Occupancy of multifamily dwellings. No unit in a multifamily development shall be occupied before the street upon which the unit is accessed is completed in accordance with these regulations.
- D. No vote if violation exists. No plan shall be approved by the Board as long as the applicant is in violation of the provisions of a previously approved plan within the municipality.
- E. Commencement of site work. Not only is creating a subdivision without Board approval a violation of law, but so also within such a subdivision is grading or construction of roads, grading of land or lots, or construction of buildings until such time as a final plan of such subdivision has been duly prepared, submitted, approved and endorsed as provided in these standards, and until the original copy of the final plan so approved and endorsed has been duly recorded in the Cumberland County Registry of Deeds in accordance with § 120-912.
- F. Utility service connections. No public utility, water district, sanitary district or any utility company of any kind shall serve any lot in a subdivision for which a final plan has not been approved by the Board.
- G. Nuisance. Violations of the above provisions of this section are a nuisance and shall be punished in accordance with the provisions of 30-A M.R.S.A. § 4452.

**§ 120-916 Appeals.**

An appeal of any order, relief or denial made by the Board may be taken by any aggrieved party to the Superior Court within 30 days pursuant to Maine Rules of Civil Procedure 80-B.