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## PLANNING BOARD MEMO

DATE: May 30, 2023

TO: Windham Planning Board  
FROM: Steve Puleo, Town Planner  
Cc: Erik Heyland, Heyland Development, LLC  
Amanda Lessard, Planning Director

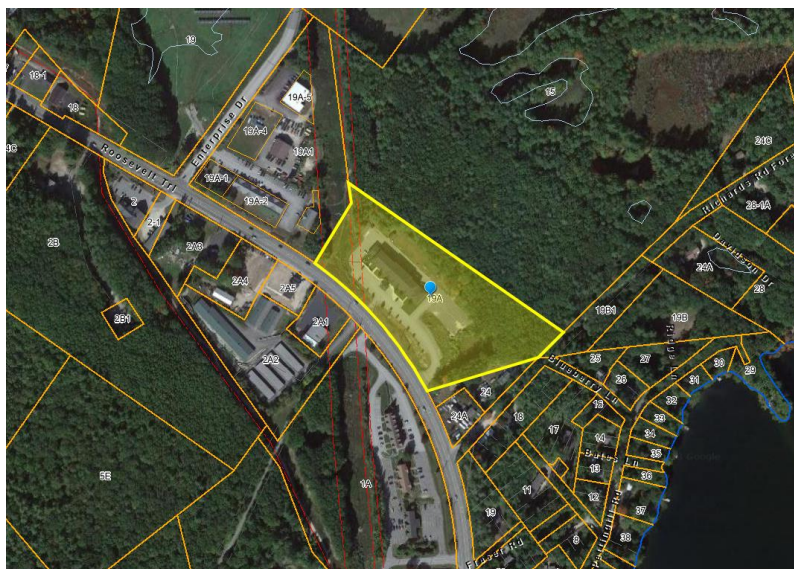
RE: #20-11 – Roosevelt Apartment Homes – 963 Roosevelt Trail – Amended Major Site Plan –  
Final Plan Review – Heyland Development, LLC  
Planning Board Meeting: **June 12, 2023**

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### Overview –

The applicant is proposing to develop a three-story, 50-unit apartment building, on a 6.91-acre site. The building will consist of a combination of 1 and 2-bedroom units and will be constructed as a wood-framed structure with a slab-on-grade foundation. All unit spaces will be accessible through interior corridors. The site currently has a 74-room hotel, a conference room that can accommodate 100 people, and parking facilities.

Note on classification: Maine Subdivision Law Section 4402.6 exempts the division of a new or an existing structure into three (3) or more dwelling units... where the project is subject to municipal site plan review.



An aerial view of the subject parcel relative to surrounding properties and streets.

The subject property is identified as Tax Map: 21; Lot: 19A; Zone: Commercial I North (C-1N) District in the Pettingill Pond watershed, which is a direct watershed of a body of water most at risk from development, as identified by the Maine Department of Environmental Protection (DEP).

This memo serves as a staff guidance document and includes suggested topics to be discussed by the Board. To distinguish new information provided by the applicant, it will be underlined, while previously reviewed or approved items will be in *italics*. Any acceptable responses that have already

been addressed by the applicant will be ~~crossed-out~~, and any unaddressed staff comments, whether existing or new, will be **bold and underlined**. Additionally, highlighted links to the [Land Use Ordinance](#) are provided for easy access. Simply click on the corresponding section reference to view the ordinance section.

## PROJECT HISTORY

The applicant had a sketch plan review with the Board on April 20, 2020, and the development received an amendment to the Maine DEP Stormwater Management Permit on April 26, 2022. A meeting with the Development Review Team and the applicant was held on June 29, 2022, and the memo below reflects the comments received during the meeting. On August 22, 2022, the Planning Board conducted a public hearing review, followed by a site walk meeting on September 12, 2022. The final plan review was held on September 26, 2022, and the board postponed their decision to the October 24, 2022, meeting. At the October 24th meeting, the board postponed their decision again until the applicant had addressed all staff comments.

**At the Planning Board meeting on April 10, 2023, the decision regarding the wastewater disposal system was postponed until the applicant addressed concerns about its impact on groundwater. To ensure that the wastewater nitrate plume did not exceed 10 ml/liter at the property, the Board required a hydrogeologist to conduct a groundwater impact analysis. The applicant requested a waiver of [Section 120-812J](#), but the Board denied it. However, the staff worked with the applicant to find an advanced engineered wastewater pretreatment system that would meet groundwater protection standards. They identified the FujiClean system, which an email dated May 12, 2023, confirmed was capable of reducing nitrate levels to the required 10 ml/liter level from the treatment tanks to the wastewater disposal fields. Other developments that had used FujiClean pretreatment systems had received submission requirement waivers, per [Section 120-811B\(2\)\(c\)](#).**

**During the meeting, the Town Attorney provided a legal opinion (see [Section 120-812E](#) Stormwater Management in the Findings of Fact) and recommended that the Board conditionally approve the project (see Conditions of Approval #6). The applicant was required to obtain a modified DEP stormwater permit for changes to the stormwater system that differed from the permitted system.**

## BACKGROUND

On January 28, 2013, the applicant received board approval to phase the development of the site. On January 28, 2013, the applicant received board approval to phase the development of the site located at 965 Roosevelt Trail with a 50-room, three-story hotel (the Microtel Hotel), parking facilities, and the future construction of a retail and office building. The Board approved, in November 2016, a site plan amendment to construct a one-story, 9,000 SF retail and office building. In 2017, the applicant received an amendment to the second phase of the development to reduce the additional 24 hotel rooms to 19 guest rooms and add a 100-person meeting room. The planner approved a minor change to the site plan in May 2018 to add a 12' x 24' shed on the property. In 2020, the applicant submitted a sketch plan application, proposing an amendment to previous approvals to convert the 9,000 SF retail and office facility into a 50-unit residential development. The applicant did not realize that the town modified the C-1 zoning district to require a maximum front yard building setback of 20 feet, among other performance standards that would have prohibited the proposed location of the proposed building. The development of the residential building required the applicant to modify the

site's MeDEP stormwater permit. After receiving the MeDEP stormwater permit in April 2022, the applicant applied to the town in May 2022 to develop the residential building. The proposed plan did not meet the dimensional standards of the C-1 district. The Land Use Ordinance was amended in July 2022 by the Council to change the C-1 district north of the Whites Bridge Road intersection with Roosevelt Trail to the Commercial I North district (C-1N), see Section 120-410.1. The new zoning district increased the required front yard setback from a maximum of 20 feet to a minimum of 40 feet, among other performance standards, see [Section 120-410.1](#).

*The Board reviewed the final plan on October 24, 2022, the applicant met with the Town Engineer, the Town's Third-Party Engineer, and the Town Planner to address the Third-Party Engineer's comments dated October 24, 2022 and concerns of the Board. The applicant responded by revising their application and site plan for the development, dated December 29, 2022. On January 24, 2023, the Town Staff and Engineering Consultant met with the MeDEP Project Engineer, who reviewed and recommended approval of the stormwater management plan. The Planning Department issued a fourth staff review and comments memo dated February 22, 2023, and the applicant revised their application and site plan on March 6, 2023. The Town received an email for the MeDEP Licensing Director of the Bureau of Land Resources on March 15, 2023 (see attachment) stating:*

*[The] "license only approves the project shown on the plan set consisting of six plans, the first of which is titled "Roosevelt Apartment Homes, 965 Roosevelt Trail, Windham, Maine, Tax Map 21, Lot 19A for Heyland Development LLC," prepared by Engineering Alliance Inc., and dated February 26, 2021 with a latest revision date on any of the sheets of April 11, 2022."*

### **SITE PLAN REVIEW**

#### Staff Comments:

1. Jurisdiction: Review classification is the development of a three-story, 50-unit apartment building will contain a mix of one- and two-bedroom units and is classified as a major site plan. [Section 120-805A\(2\)](#), authorizes the Planning Board to review and act on the request.
2. Title, Right, or Interest: Heyland Development, LLC and NBCRE, LLC have submitted a copy of the deed found in Book: 35292 Pg: 37; recording date in CCDR on November 5, 2018.
3. Complete Application: Final Plan  
~~[I move] the amended major site plan application for the Roosevelt Apartment Homes is found complete regarding the submission requirements based on the application checklist. The Planning Board retains the right to request more information be provided where review criteria have not been fully addressed.~~

*At the August 22, 2022, meeting, Mr. Swan motioned to determine whether the application was complete for a public hearing review, and Ms. Tuttle seconded the motion. By a vote of 4-1 (Govoni opposed; Krikken absent), the Board approved the motion.*

4. Waivers:  
*Waivers of the application submission requirements: The Planning Board may waive any of the submission requirements set forth in [Section 120-811](#) based upon a written request by the*

*applicant. Such requests shall be submitted at the time of the pre-application conference for minor developments or as part of the sketch plan application for major developments. A waiver of any submission requirement may be granted only if the Planning Board finds that the information is not required to determine compliance with the standards and criteria of the Land Use Ordinance.*

*Waivers of the Site Plan Performance Standards: The Planning Board may waive the requirements of [120-812](#) if it finds that extraordinary unnecessary hardship, not self-imposed, may result from strict compliance with the site plan review standards. In all cases, waivers shall not be deemed a right of the applicant and only be granted at the discretion of the Planning Board. The applicant shall submit a list of the requested waiver(s) in writing. The applicant must respond to each of the criteria in [120-808B\(2\)](#) for each waiver requested.*

**1. ~~Section 120-812C(1)(d) – Off-Street Parking Layout. Performance Standard.~~**

~~The applicant is requesting a reduction of 10' x 20' parking spaces from 30% to 10%. The hotel provides 93 parking spaces for 74 rooms and a 100 person conference room, and the proposed 50 unit apartment will provide 70 parking spaces for a total of 166 parking spaces between both uses.~~

~~*Staff supports the waiver request because the combined site will share a parking facility with the Microtel Hotel for a total of 166 spaces.*~~

~~I move to approve the waiver request of [120-812C\(1\)\(d\)](#), requiring 10' x 20' parking spaces from 30% to 10% of the parking facility.~~

*At the September 26, 2022, meeting, Mr. Swan motioned to determine whether the application was complete for a public hearing review, and Mr. Krikken seconded the motion. By a vote of 4-1 (Govoni opposed; Yost absent), the Board approved the motion.*

**2. ~~Section 120-812J – Water Ground Protection. Performance Standard.~~**

~~**The applicant is requesting a waiver of the ground water protection standard because the Department of Health and Human Services (DHHS) has approved the proposed wastewater pretreatment units and determined they will meet the nitrogen removal standard.**~~

*At the April 10, 2023, meeting, Mr. Krikken made a motion and Mr. Moulton seconded the motion to approve the waiver request of [Section 120-812J](#) to allow sewage disposal systems with a capacity of 2,000 gallons per day (GPD) or greater to not meet the State's safe drinking water standards for groundwater at the property line following the development. By a vote of 2-4 (Krikken, Moulton, Brown, and Govoni opposed), the Board approved the motion.*

**2. [Section 120-811B\(2\)\(c\)](#) – Groundwater impact analysis. Submission Requirement.**

- 3. The applicant requests a submission requirement waiver for a hydrogeologist's analysis of groundwater impacts for projects involving on-site septic disposal facilities with a capacity of 2,000 gallons or more per day.**



**Staff supports the waiver request due to the applicant's modification to the pretreatment wastewater facility from a SeptiTech STAAR9.0 unit to a CEN21 FujiClean unit. The Planning Board has supported the waiver of the request for the submission requirements of a groundwater impact analysis from a groundwater hydrologist for several other projects. The State of Maine Department of Health and Human Services provided a letter on May 24, 2023, stating that “the substitution is a permissible exchange”.**

**The Town Engineer stated: “I have reviewed the information submitted by Erik Heyland for the Roosevelt Trail Apartments site plan application. They are proposing to use FujiClean CEN21 advanced treatment units to treat the wastewater from the proposed apartment building. The general approval letter from the Maine DHHS concluded that the CEN Series produces effluent with combined BOD5 and TSS levels of 10 mg/l or less but doesn’t provide a specific performance number for nitrogen, which is the number that we are concerned with since our ordinance incorporates the 10 mg/l nitrate drinking water standard at the property line. However, manufacturer documentation for the FujiClean CEN21 units does indicate that it treats total nitrogen to 10 mg/l or less so contingent on the applicant providing the documentation from DHHS that they approve the change I am satisfied that there will not be a nitrate plume exceeding 10 mg/l reaching the property boundary.”**

**I move to approve the waiver request of [Section 120-811B\(2\)\(c\)](#), requiring groundwater impact analysis prepared by a groundwater hydrologist for projects involving on-site water supply or sewage disposal facilities with a capacity of 2,000 gallons or more per day.**

5. The Planning Board held a public hearing at the August 22, 2022, meeting.
6. The Planning Board held a site walk on September 12, 2022, for this project.

## **FINDINGS OF FACT, CONCLUSIONS, AND CONDITIONS OF APPROVAL FOR THE WINDHAM PLANNING BOARD**

**Motion: I move that the amended major site plan application for project #20-11 Roosevelt Apartment Homes as identified on Tax Map: 21, Lot 19A be (approved with conditions/denied) and that the final and amended 965 Roosevelt Trail Hotel site plan approval is to be superseded with the following findings of facts, conclusions, and conditions of approval:**

## **FINDINGS OF FACT**

### **[Section 120- 812](#) MAJOR SITE PLAN PERFORMANCE STANDARDS**

#### **[Section 120-812A](#)-Utilization of the Site**

- The subject parcel is approximately 6.91 acres (300,999 SF). The site is improved with an existing 74-room hotel, a conference room with a capacity of 100 people, stormwater facilities, 93 parking facilities, and drive isles.

- The proposal is to construct a three-story, 50-unit apartment building. Multi-unit dwellings are permitted for use in the C-1N District.
- The new building and support facilities are grouped with the existing ones.
- The State has provided a letter dated August 21, 2020, from the Department of Agriculture, Conservation, and Forestry stating that "there are no rare botanical features documented specifically within the project area."

#### **Section 120-812B-Vehicular Traffic**

- (1) The proposed project would utilize access from Route 302 through the existing road openings currently used by the hotel.
  - (a) A traffic impact study was included with the final plan set for review. The project will generate fifty (50) or more trips during the a.m. or p.m. peak hour. The applicant states that the 50-unit apartment building will generate 60 AM peak hour vehicle trips, 76 PM peak hour vehicle trips, and 90 Saturday peak hour vehicle trips.
  - (b) In 2019, the Maine DOT extended the center turn lane on Route 302 from Anglers' Road/Whites Bridge Road north to the Assembly of God Church.
    - The project is subject to the North Route 302 Road Improvements Impact Fee ([120-1204](#)). A traffic report determined the traffic impact generated by a development project that passes through the North Route 302 Road Improvement District during the peak commuter hour (the ordinance required the impact fee to be determined by the applicant's traffic engineer; see Conditions of Approval #5).
- (2) A traffic study was conducted by Elizabeth Oltman, P.E. of TEC on August 7, 2020. The study concluded that the street system could accommodate the traffic generated by the project.
  - The proposed project would utilize access from Route 302 through the existing road opening, currently used by the hotel.
  - A center left-turn lane has been constructed on Route 302.
  - A secondary exit located to the north of the main entrance/exit is designed for right-only turns. This feature has been incorporated into the designs.
  - There are no high crash locations in the vicinity of the project.
  - Adequate sight distance exists at the site's entrances and exits.
- (4)(d)[3] Deputy Fire Chief Wescott requested that the access way behind the hotel building be posted, "No Parking Fire Lane." The signs have been added to the plans.

#### **120-812C-Parking and Loading.**

- (1) The applicant is proposing the develop parking areas in front of the building with 90° with 24' foot wide two-way drive isles. The parking facilities provide a 24' wide drive aisle on the east side of the new building allowing for 360° access around the building. The applicant designed the parking layout to match the existing hotel parking facilities.
  - (b) All parking areas, access drives, and impervious surfaces shall be set back from the boundary properties by at least five (5) feet.
  - (d) Parking lots using 90-degree parking angles require 30% of the parking spaces to be 10' x 20' in size (see applicant's waiver request). The applicant's waiver request was approved at the Planning Board meeting on September 26, 2022, to allow for 10% of parking stalls to be 10' x 20' in size.
- (2) The Land Use Ordinance does not have a minimum number of spaces required, but the applicant shall demonstrate that the number of spaces provided onsite will meet the

needs of the proposed use. The proposal will provide for 166 total parking spaces on site for the 74 hotel rooms, 100-person conference rooms, and the proposed 50-unit apartment building.

- In the November 9, 2016, response to the comment, the applicant stated that a 74-room hotel requires 93 spaces, and the meeting space is an accessory to the hotel's use where the hotel guests will be using the meeting space, so no additional parking is necessary.

#### **Section 120-812D-Pedestrian Traffic**

- Per [Section 120-400F6.\(g\)\(1\)](#) Sidewalks. "The Planning Board may require the construction of public sidewalks on Roosevelt Trail (Route 302) as part of the site plan or subdivision application."
- The applicant is requesting that the Planning Board not require the installation of a sidewalk along the Route 302 frontage. Per [Section 120-400F6.\(g\)\(2\)](#), the Board may require the applicant to pay the North Windham Sidewalk Impact Fee according to [Section 120-1202F\(2\)](#).
- The applicant will pay the Sidewalk Impact Fee in accordance with [Section 120-1202](#) of the Land Use Ordinance (see Conditions of Approval #5).
- The applicant is providing a five-foot-wide paved walkway in front of the building and along the rear building to the building's entrance doors.
- The applicant is providing any pedestrian crosswalks within the parking lot to connect the front parking area of the apartment building to the front parking area of the hotel.

#### **Section 120-812E-Stormwater Management**

[\(1\)\(f\)](#) The applicant has submitted with the final plan a Maine DEP issued Amendment Stormwater Order #L-23535-NB-D-A. The permit revised the site plan/subdivision recording plan with all the Department Orders #L-23535-NJ-A-N issued May 22, 2007, #L-23535-NJ-C-N dated December 6, 2012, #L-23535-NB-D-A dated April 26, 2022 meeting Section 4C(2) and Section 4C(3) of the General Standards of the DEP Chapter 500 Stormwater Management Law, as amended from time to time.

#### **New Comments from March 27, 2023 and revised on March 30, 2023.**

- ~~1. The applicant corrected the underdrain elevation in their March 30, 2023 update of the Grading and Utility Plan.~~
  - ~~• On Sheet 5 of 9, for GUSF 2&3, the emergency overflow spill is shown as having a lower elevation (325.0) than the highest component of the overflow weir (325.2') so this should be corrected.~~
  - ~~• In the HydroCAD analysis, the invert elevation of the underdrain is shown as 318.0', but with the bottom of GUSF 2&3 now at 322.0', the underdrain should be at 319.83' (322'-21.7') based on the soil filter cross section on Sheet 5. This needs to be corrected on the Grading & Utility Plan on Sheet 2.~~
- ~~2. The applicant updated the stage storage and hydro graph in the March 30, 2023 revision t the Drainage Report. The Drainage Report also included updated treatment volume calculations that show that the design treatment volume for the underdrain soil filter exceeds the Ch. 500 Stormwater Law required volume.~~
  - ~~• Update the stage storage analysis and the hydrograph in Appendix D of the Drainage Report since these values will have changed with the revisions shown in the plans.~~

- In Appendix E, the Applicant should update the calculation of treatment volume provided by the filters since this number has changed with the new soil filter floor and outlet elevations; the treatment volume should only include volume that solely drains through the filter.

**Pervious comments for the engineering review:**

3. The Treatment Plan only illustrates using color coding to show the area treated by the new BMPs for the proposed development, but the area treated so the color coding should include those as well. However, I sufficiently understand which other areas are treated so updating the Treatment Plan at this point is not critical.
  - The Town Engineer reviewed and stated the “color-coded areas in the “Treatment Plan” figure in the Drainage Report don’t correspond to the areas shown in the Treatment Area Calculations” figures in that same report. Don’t the ponds and swales treat larger areas than the color coding shows? “The treatment plan does not show all the area that flows to the underdrain soil filters. Areas next to the existing hotel also flow to the filters.”
  - Town Engineer’s comments from October 14, 2022, “One of my comments from earlier in the week related to the fact that what is referred to as Soil Filter #1 is not really a MDEP soil filter per Ch. 500 requirements since the plans don’t show an underdrain. The stormwater BMP sizing calculations provided in the application include the area and volume for Soil Filter #1, but since it’s not designed as MDEP approved BMP, it shouldn’t be included in the number. Or alternatively, it should be designed appropriately.
    - The stormwater management system for the project replaced the existing underdrained soil filter and added a subsurface sand filter and two (2) underdrained soil filters. Together with the existing hotel development on the parcel, the proposed apartment building will create 4.8 acres of developed area, an increase of 0.3 acres, of which 2.5 acres are impervious surfaces.
    - What’s referred to as underdrain soil filter (UDSF) #1 isn’t really an underdrain soil filter as defined by Maine DEP since the plans don’t seem to show an underdrain. If there is an underdrain, what size is it and where is it located?
    - The outlet control structure is located in UDSF #3 where the plans show the pond bottom at 320.0. Based on what’s shown in the cross-section the lowest outlet is at 322.25, which makes the pond depth at least 2.25’, which is greater than the required Maine DEP UDSF depth of 1.5’. Please provide some clarification on this.
4. Since the applicant’s design now appears to comply with Ch. 500 Stormwater Law General Standards and the Phosphorous Standard. Further compliance is no longer critical since Ch. 500 allows for compliance with either the General Standards of the Phosphorous Standard if the developed area is less than 5 acres and impervious cover is less than 3 acres.
  - I took another look at their stormwater phosphorous compliance, which I had assumed was all set since MEDEP issued a permit. However, it doesn’t look like that is the case. Page 2 of the stormwater report in their SLODA application includes a calculation of Treatment Factor for Phosphorous Removal, however it appears to be misapplied. There is no calculation of the Project Phosphorous Budget or of the Project Phosphorous Export, which are the first things to start with in determining compliance with the phosphorous requirements in MEDEP Ch. 500. My rough calculations indicate that the



- Phosphorous Budget for runoff to Pettengill Pond is about 0.17 lbs/yr, and the phosphorous export from the project is at least 2.5 lbs/yr. The proposed stormwater treatment system needs to make up the gap between the two, which would require a treatment factor of 0.07. Although the proposed underdrain soil filter is large, it doesn't appear to be sufficient to meet the phosphorous budget limitation. I have copied Gorrill Palmer on this e-mail so that they can take a look at this as well."
- The applicant stated that "The project is not subject to the Phosphorous removal standards as it does not meet the area thresholds and was confirmed by David Waddell. As for your comment on the underdrain for soil filter no. 1, the detail clearly shows the underdrain and we will add it to the plan view if you would like."
5. The proposed development is in the Pettingill Pond Watershed, a 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. In accordance with [120-807F\(6\)](#), the project shall be additionally reviewed by an independent third party (in this case, Gorrill Palmer) for 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 the performance standards outlined in these ordinances' Sections [120-812E](#), [Section 120-812F](#), [Section 120-812H](#), and [Section 120-812K](#).
6. **The plans/stormwater design have changed from those that were approved by Maine DEP. Revised plans and calculations should be resubmitted to Maine DEP so they can review and approve the changes.**
- Consulting and Town Engineers commented, "It is our understanding that MDEP will contact the Applicant to discuss the project stormwater design. The treatment volume in the calculations provided appears to assume a volume that includes water that is released through the outlet structure rather than the filter. It should only include the volume below the lowest opening into the outlet control structure, which would be 321.5, 1.5' above the floor of the pond, not 324.0 as used in the calculations. The actual treated volume is much less than that presented in the submittal and does not appear to exceed the required volume that they calculated to be 11,267 CF."
7. **The Consulting Engineer requested the applicant provide "calculations showing that the minimum filter surface area meets the Maine DEP design standards."**
- **"There is no physical separation between filters #2 and #3, therefore, it will act as one filter. The filter surface is pitched which does not meet Maine DEP design guidance. Pitching the filter service will concentrate the water at the lower end of the filter and will result in the lower end of the filter to require more frequent maintenance. We recommend that these filters be redesigned to meet Maine DEP design standards."**
  - "Although the stormwater treatment ponds were discussed at the December 1, 2022, meeting between the Town, the Applicant, and Gorrill Palmer, we indicated at that meeting that the ponds do not meet MDEP design requirements and therefore may not provide the required treatment to the stormwater runoff. Since stormwater treatment is required to prevent pollution of Petingill pond, the Town needs to ensure that the required treatment is provided. The swale does not provide the required treatment because the invert of the outlet culvert is at the

pond surface which allows the water quality volume to bypass the soil filter and flow from the pond through the culvert. Since the required treatment is not provided, the next downstream pond will need to provide treatment. Soil Filter #2 does not meet requirements since the pond bottom is sloped. Soil Filter #3 is receiving untreated or partially treated runoff from the swale and Soil Filter #2, therefore, provide calculations to the Town showing that Soil Filter #3 has the required treatment surface area or revise the swale and soil filter #2 to comply with the design requirements of MDEP Chapter 500. An alternative approach would be to redesign all three filters, so they meet the Maine DEP design requirements.”

- “Filter #1 (swale) parallel to Route 302 will not function as a filter. We recommend that an outlet structure be added to the outlet pipe to allow water to filter through the filter layer to the underdrain.”

8. The applicant’s March 30, 2023 plan set Sheet 5 shows specifies a 30-mil liner thickness.

- “The impermeable liner shall be specified with a 30-mil thickness.”

9. **In order to ensure drainage between 24 and 48 hours, the installed underdrain media should be tested to confirm the filtration rate of value added on the underdrain pipe to control the outflow.**

- “It does not appear that the filters meet the requirement that the water quality volume drain within 24 to 48 hours. A valve may need to be added to the underdrain system to control the flow so that it drains within the desired time frame.”
- “Per MDEP Chapter 500, the water quality volume must be released between 24 hours and 48 hours solely through the filter. The water quality volume is 1-inch of runoff from impervious areas and 0.4 inches from landscaped areas which is less than the runoff from a 2-year storm. Flow calculations have been submitted, but the flows appear to be from a storm equal to or greater than the 2-year storm. It appears that an assumed value of 2.41 inches per hour was used as a filtration rate through the soil filter and sand filter and this is supposed to act as the control on the outflow. The soil filter exfiltration rate will not remain the same over time and it is unlikely that you will be able to provide a soil material that exactly meets this filtration rate. Typically, we see designs that use a valve on the underdrain pipe or an outlet control structure with an orifice to control the outflow from the soil filters rather than counting on the soil filter material to provide a consistent outflow over time. A calculation needs to be provided showing that the water quality volume is discharged in 24-48 hours. If the soil media is the assumed controlling factor in the outflow, testing will need to be done on the constructed soil media to ensure that the assumed flow value is correct. Alternatively, an outflow control such as a valve on the underdrain can be used to control the outflow from the ponds.”

Additional engineering concerns from the October 14, 2022 applicant’s response

- Provide a groundwater impact analysis prepared by a groundwater hydrologist for projects involving on-site water supply or sewage disposal facilities with a capacity of 2,000 gallons or more per day. Specifically include the nitrate transport analysis at the property boundary for compliance with 10 mg/l limit.
- Stormwater phosphorous compliance including Treatment Factor for Phosphorous Removal may have been misapplied or not addressed in the Maine DEP permit.

- Please note, the Town's Third Party Engineer consultant will provide additional comments of concern at the October 24<sup>th</sup> Planning Board meeting.

During the Planning Board's site walk on September 12, 2022, the Board was concerned about the following issues:

- The property boundary line concerns the abutting residences.
  - screening and buffer for the abutting residences.
  - Whether the applicant should install a sidewalk along the frontage of the site or propose an alternative.
  - lighting fixtures and a new photometric plan.
  - The C 1N and Farm zoning districts are buffered between them.
  - Board wanted the applicant to sign and mark the residential use to restrict the hotel patrons from using those parking spaces.
10. The applicant's March 30, 2023 plan set Sheet 5 included a note that specifies underdrain spacing no greater than 15 feet.
- "Add a note to the grassed underdrain filter detail requiring that the underdrain spacing be no greater than 15 feet."
1. **The Staff requested an opinion of the Town Attorney on the interaction of the Planning Board's review of the stormwater management plan for the Roosevelt Apartment Homes project located at 963 Roosevelt Trail (the "Project") and the DEP's prior approval of a stormwater management plan for the Project. "Specifically, I have been asked whether DEP's approval meets the requirements of [Section 120-807\(F\)\(1\)](#) of the Land Use Ordinance (the "LUO") if the Town's approval process will result in a stormwater management plan that differs from the approval granted by DEP.**
2. **The following is a summary of the relevant LUO provisions:**
- **[Section 120-812\(E\)](#) sets forth the performance standards and approval criteria for a stormwater management system proposed as part of a site plan application.**
  - **[Section 120-807\(F\)\(1\)](#) requires that an applicant for final site plan review have all required approvals from State agencies, including DEP.**
  - **A prior development on the Project site received a permit from DEP under the Stormwater Management Law on May 22, 2012. On April 25, 2022, DEP approved an amendment to the 2012 stormwater permit for the Project. This amended approval was provided to the Town as part of the current application for current site plan approval.**
  - **Because the Town's site plan review provisions contain review standards that differ from those applied by DEP, it is likely that the final stormwater management plan reviewed by the Board will in turn differ from that approved by the DEP. Since the Town's permitting process is completely separate from the State's review process, with different submission and review requirements, this is a result that may occur from time to time. When this does happen, the Planning Board has the authority under [Section 120-807\(H\)\(1\)](#) to grant a conditional approval, with a requirement that the applicant provide to the Town evidence of an amended approval from DEP that incorporates the revisions required by the Planning Board. While [Section 120-807\(F\)](#) requires submission of the DEP approval, an approval has in fact been submitted with this application. If the Planning Board does not grant conditional approval, it puts the applicant in the difficult position of having to pause its Town review process**

**and return to DEP with proposed changes. Once the changes were approved by the DEP, the applicant could be in the position of returning to the Planning Board and being asked for additional revisions that could, in turn, require an additional revision to the DEP approval.**

- **This recommendation for conditional approval is limited to permits that have received the required DEP approval for their initial or a revised stormwater management plan. An application that had not received any DEP approval, even if such approval was pending, would not meet the requirements of [Section 120-807\(F\)\(1\)](#). The condition of approval should require submission of evidence of the amended DEP stormwater management plan approval prior to the commencement of any construction on the site.” See Condition of Approval #6.**

[\(2\)](#) During the site improvement construction activities, the applicant must use erosion and sedimentation control practices that meet the Basic Standards outlined in Section 4(A) of the MeDEP Chapter 500 Stormwater Rules.

- The soil erosion and sediment control plan was submitted as part of the final plan submission.
- A minimum of three construction inspections must be completed during the active earth-moving phase of construction (with one of these being completed at project completion to ensure permanent site stabilization and temporary ESCs are removed) and a minimum of one inspection must be completed annually until a project reaches substantial completion.
- Corrective actions will be included in the inspection and must be implemented in a timely manner. Remediation tasks not completed are eligible for enforcement action.
- The annual post-construction inspection and certification requirements should be included as a condition of approval. The developer or designated entity (established condominium association, property owner, or responsible party) must submit an annual inspection report and certification of the stormwater facilities by a qualified third-party inspector. Any maintenance deficiencies determined by the 3PI must be remediated within 60 days of the date identified with follow-up correspondence of corrective actions to the Town.

#### **120-812G-Water Supply Provisions**

- [\(1\)](#) The development proposal will utilize the domestic water supply from Portland Water District (PWD) to supply both domestic and fire suppression service extensions.
- [\(2\)](#) An "Ability to Serve" letter dated October 26, 2020, from PWD for the installation of new 6-inch fire service and 4-inch domestic service lines, with a 1.5-inch meter connected from a water main in the Roosevelt Trail ROW.

#### **120-812H-Sewage Disposal Provisions**

- [\(5\)](#) The applicant received an on-septic system approval from the Maine Department of Health and Human Services (DHHS) in a letter dated July 16, 2021.
- Maine DHHS modify the SeptiTech System to a FujiClean system in a letter dated May 24, 2023.
  - The designed on-septic system is an "engineered system" wastewater system to meet Table 4C of the Maine State Plumbing Subsurface Waste Disposal Rules. The system is designed for a flow of 8,000 gallons per day (GPD).
  - Test pits soil analysis is provided in the final plan.



### 120-812I-Utilities

- All utilities will be placed underground.
- The Portland Water District has confirmed its ability to serve the project in a letter dated October 26, 2020.
- The proposed apartment complex will require a sprinkler system.
- The requested note has been added to Sheet 2 of the revised plans.
  - ~~Add a note to the Grading & Utility Plan that Owner/Contractor shall contact the Town at least 48 hours prior the water service taps to coordinate and schedule the inspection of the trench backfill, gravel placement and compaction, and paving of the utility trench in the Route 302 right-of-way.~~

### 120-812J-Groundwater Impacts.

- ~~The final plan provided a groundwater impact analysis, as required for on-site sewage disposal facilities with a capacity of 2,000 gallons per day or more.~~
- ~~The Town Engineer performed the research he requested from the applicant of the area and now supports the waiver request. “There are two houses on Richards Road whose property is within 300’ of the proposed wastewater disposal system and there is no public water in Richards Road. However, I checked with Portland Water District and they both have some frontage on Rte. 302 and water lines extended onto their property, so I am OK with the waiver.”~~
- ~~Town Engineer comments from October 14, 2022, “Some of the performance data for the Septitech treatment units show average nitrogen concentrations above 10 mg/l and some shows below; the website for Septitech says the following about the STAAR system, “In addition, processors with dedicated denitrification units are available for total nitrogen reduction down to 14 mg/L and below.” So it’s not clear to me that the effluent will be below 10 mg/l at the outlet or the property line. Also the Maine Geologic Survey well database shows a well on the property at the entrance to Richards Road within 300 ft of the proposed development. Maybe this isn’t a well used for drinking water, but this is not clear. Finally, there is a troublesome item in the Maine DHHS approval. It says that the development/septic system is not in a Watershed of a Water Body Most at Risk from Development, which is not true. Its in the Pettengill Pond Watershed, which is a water body most at risk from development.~~
- ~~In order to provide closure to this issue, some additional information should be provided to confirm there are no nearby drinking wells or to demonstrate that Nitrogen will be below 10 mg/l at the boundary. Contact with Maine DHHS should also be made to confirm that their approval is still valid considering that their approval assumed that the site was not in a Watershed at Most Risk from Development.”~~
- ~~The applicant responded, “[O]n the nitrogen removal we are looking at possibly another technology and evaluating some additional data on effluent to meet the 10 MG/L. We are still working on this with information and will present it at the meeting.~~

### 120-812K-Water Quality Protection.

- (3) The site is in the Pettingill Pond watershed and the direct watersheds of lakes most at risk from new development and urban impaired streams of the Maine Department of Environmental Protection.

### 120-812L-Hazardous, Special, and Radioactive Materials

- The proposed multi-family use does not anticipate handling, storing, or using any materials identified by the Federal or State as hazardous, special, or radioactive.

#### **120-812M-Shoreland Relationship**

- The proposed development is not in a shoreland zoning district.

#### **120-812N-Technical and Financial Capacity**

- (1) **The applicant has not provided a cost estimate for the multi-family building's development.** The applicant has provided a letter dated May 2, 2022, from Ms. Elizabeth Hayward, Senior Vice President, Business Banker of Machias Savings Bank, stating the bank has issued a commitment letter to the Roosevelt Apartment, LLC for the construction of the apartment complex.
- (2) The applicant is Heyland Development, LLC, and Engineering Alliance, Inc. contracted with Erik Heyland to prepare the plans and applications and obtain outside agencies' permits. Mr. Heyland is a Maine Licensed Professional Engineer, and his license number is 7949. The applicant has developed Microtel Inn and Suites at 965 Roosevelt Trail, Windham, and 6 Marketplace Drive, York, Maine; Cedarwood Farm Multi-Family Condominium, Kennebunk, Maine, Chestnut Lane Residential Subdivision, Kennebunk, Maine; and Madaket Lane Residential Subdivision, Kennebunk, Maine. **The applicant has not provided the surveyor's information.** Mark Hampton Associates, Inc. Soil Evaluation and TEC Traffic Engineer performed the traffic and parking report.

#### **120-812O-Solid Waste Management**

- Solid waste will be the responsibility of the property owner.
- Dumpster pad locations and construction details have been identified on the plans.

#### **120-812P-Historical and Archaeological Resources**

- The applicant has provided a letter from the Maine Historic Preservation Commission dated August 28, 2020, from Ms. Zina DeSimone stating there are no National Register-eligible properties on or adjacent to the parcel. The project area is not considered sensitive to archaeological resources.

#### **120-812Q-Floodplain Management.**

- The project area is not in a special flood hazard area identified by the Federal Emergency Management Agency (FEMA).

#### **120-812R-Exterior Lighting.**

- The photometric plan shows cut sheets with details of lighting fixtures and pole heights.

#### **Section 120-812S-Noise.**

- The proposed multi-family use shall not exceed 55 dB between 7:00 AM to 10:00 PM and 45 dB between 10:01 PM to 6:59 AM.

#### **Section 120-812T-Storage of Materials and Screening (Landscape Plan)**

- In accordance with the C-1N District, the first 20 feet of the front landscape buffer.
- A landscaping plan is part of the final submission.

## **Section 120-813 Commercial District Design Standards for Commercial I North (C-1N)**

### **Section 120-813A-Architecture/Building (Required for Final Plan Review)**

- (1) Building style. The building is not a national franchise prototype and is not stylized to the point where it is a form of advertising.
- (2) Materials. The building will consist of vinyl clapboard siding with vinyl trim. Awnings or canopies are not proposed.
- (3) Color. The colors used for the siding will be stone-colored and will be low-reflectance and non-fluorescent.
- (4) Non-traditional roof forms. The plan shows a flat roof with no horizontal line greater than 50 feet. The mechanical and other equipment are mounted and screened from public view.
- (5) Facades that face public streets. The first-floor area will provide 40% transparent openings.
- (6) Building style coordination (multi-building). The existing building façade has gable fenestrations like the Microtel Inn & Suite.
- (7) Entrances. The buildings are designed with a porch roof canopy over the main and secondary entrances and clearly define the entrance locations.
- (8) Architectural detailing. The architectural detailing and trim are proportional to the scale and design of the building.

### **Section 120-813B-Site/Parking**

- (6) Screening, Utility, and Service Areas. The dumpster will be screened with fencing and located behind the structure.

### **Section 120-813C-Landscaping/Lighting**

- (1) Lighting/Photometric Plan. Lighting specifications are contained on plan sheets 8 of 8.
- (2) Lighting Coordinated with Architecture. The proposed lighting will draw attention to the doorway entrance elements without creating glare or distraction.
- (3) Lighting Coordinated with Landscaping. The proposed lighting over the doorway entrances will not be negatively impacted by the mature growth of landscaping on the property and will not result in eventual dark spots.
- (5) Snow Storage Areas Designated. The site has been designed to provide snow storage in multiple areas adjacent to the parking spaces, without damaging the landscaped areas or conflicting with the stormwater drainage.

### **Section 120-813D-Bicycle/Pedestrian**

- (1) Internal walkways. A paved sidewalk is proposed to be built around the structure with direct sidewalk access to the parking lot.
- (2) Links community. The project utilizes an existing driveway to create a pedestrian and vehicle link between the adjacent properties.
- (4) Sidewalks and planted esplanades. There is no sidewalk along the Roosevelt Trail and the applicant is not proposing to construct a sidewalk due to the high speed of traffic along that section of the Roosevelt Trail. The applicant is willing to contribute to the North Windham Sidewalk Impact Fee.
- (5) Crosswalks for sidewalks. The applicant has shown an internal crosswalk with this proposal.
- (6) Bicycle parking and racks. Five bike racks will be installed in front of the building.

### ***Optional Standards:***

**Section 120-813A(9)** LEED certification. The project shall obtain any level of leadership in energy and environmental design (LEED) certification from the United States Green Building Council

(USGBC) for any of the USGBC rating systems. The certification shall be provided to the Town Planner.

[Section 120-813B\(2\)](#) Internal traffic flow. A traffic engineer hired by the applicant has designed the circulation patterns for parking lots to meet the Land Use Ordinance.

[Section 120-813B\(4\)](#) Orientation of building. The building is located the same distance from Roosevelt Trail as the existing structure.

[Section 120-813B\(8\)](#) Low-Impact Design Stormwater. The stormwater basin has been designed utilizing low-impact development techniques to infiltrate runoff on-site and provide water quality treatment.

[Section 120-813C\(7\)](#) Planting suitability. The chosen plant species require a low degree of maintenance and are suitable for Maine climate conditions.

[Section 120-813C\(9\)](#) Illumination Levels. The light fixtures installed on the building are in scale with the site and building development. The illumination levels are appropriate for the site and use.

[Section 120-813D\(3\)](#) Outdoor activity area. The applicant is proposing to install a playground area/recreational dog exercise area behind the structure.

## **Conformity with Local Plans and Ordinances**

### **1. Land Use**

#### **District Standards:**

- The proposal meets the space and bulk requirements of the C-1N Zoning District.
  - The proposal is for a multi-family building.
  - The ZBA granted a conditional use permit for hotel use on October 4, 2007.
  - The proposal meets the maximum impervious standards of the Aquifer B zone. As noted on page 1 of 8 of the plans, the proposal is for 38% impervious coverage of the lot. This is below the maximum coverage of 50% allowed in the overlay district.
  - The proposed apartment building is located at least a 40-foot minimum setback from Route 302. The building meets the minimum side and rear six (6) foot setback.
- Fire Department: Deputy Chief Wescott requested the following items:
  - All rooms and void spaces should have approved/listed automatic sprinklers with standpipes in accordance with NFPA 13.
  - All rooms, roof units, storage spaces, utility rooms, and kitchens should have an approved/listed fully addressable fire alarm system in accordance with NFPA 72.
  - The Fire Department would like to request a copy of all correspondence with the fire marshal's office regarding sprinkler and fire alarm plans review, as well as any approval or acceptance letters or plans.
  - The Fire Department would also request to be at any developer/contractor meeting regarding any life safety issues during the construction of this project.
- Easements: The applicant has submitted a signed agreement from Bob Grondin that converts the existing 60 ft. wide rights-of-way into a 20 ft. wide utility easement. The utility easement requires all utilities to be located in the easement and must be installed subsurface.

#### **Comprehensive Plan**

- The plan meets the goals of the 2017 Comprehensive Plan. The property is in the North Windham Growth Area.

### **2. Other:**



- The proposed project is subject to the recreation impact fee. At the Development Review Team Meeting, the applicant may request a waiver from the Council and cite the proposed on-site recreation facility in place of the impact fee.

### **Impacts on Adjacent/Neighboring Properties**

- The project will not impact the ability of adjacent properties to develop their land or unreasonably affect its value.
- The project will not negatively impact the ability of adjacent properties to develop their land or unreasonably affect its value.
- The applicant has shown the 50-foot buffer requirement, per Section 120-410.1F(2) Commercial District I North (C1N), "[A]ll properties in the C1N district that abut a residential zoning district shall provide a fifty (50) foot buffer along the zoning district boundary line."
  - The applicant is showing a 50-foot district buffer along the zoning district along the southwestern property boundary, adjacent to Richard Road.
  - The applicant is proposing to install a 6-foot-tall solid fence with 2" caliper white pine trees along the 50-foot setback district buffer line.
  - The applicant is proposing to minimize the amount of tree clearing within the 50-foot district buffer to construct the stormwater infiltration basin.
  - The fence and trees will be located at the top of the berm to provide a visual shield for the new building.

### **CONCLUSIONS**

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

14. All freshwater wetlands within the proposed subdivision **have** been identified in the plan.
15. Any river, stream, or brook within or abutting the subdivision **has** been identified on any maps submitted as part of the application.
16. The proposed subdivision **will** provide for adequate stormwater management.
17. ~~If any lots in the proposed subdivision have shore frontage on a river, stream, brook, or great pond as these features are defined in Title 38, section 480-B, none of the lots created within the subdivision **has/do have** a lot of depth to shore frontage ratio greater than 5 to 1.~~
18. ~~The long-term cumulative effects of the proposed subdivision **will/will not** unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.~~
19. ~~For any proposed subdivision that crosses municipal boundaries, the proposed subdivision **will/will not** cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.~~
20. The timber on the parcel being subdivided **has not** been harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14.

#### CONDITIONS OF APPROVAL

1. Approval is dependent upon and limited to, the proposals and plans contained in the application dated May 25, 2022, amended June 12, 2022; supporting documents and oral representations submitted and affirmed by the applicant; conditions, if any, imposed by the Staff Review Committee; and any variation from such plans, proposals, supporting documents, and representations are subject to review and approval by the Staff Review Committee or the Town Planner in accordance with [120-814G](#) of the Land Use Ordinance.
2. Approval is subject to the requirements of the Post-Construction Stormwater Ordinance, per Chapter 201. Any person owning, operating, leasing, or having control over stormwater management facilities required by the post-construction stormwater management plan must annually engage the services of a qualified third-party inspector who must certify compliance with the post-construction stormwater management plan on or by May 1st of each year.
3. Per [Section 120-814C1\(b\)](#), construction of improvements covered by any site plan approval shall be completed within two (2) years of the date upon which the performance guarantee is accepted by the Town Manager. If construction has not been completed within a specified period, the Town shall, at the Town Manager's discretion, use the performance guarantee to either reclaim and stabilize the site or to complete the improvements as shown on the approved plan.
4. Any change of use that requires a greater number or ratio of parking spaces than the approved uses shall require the approval of the Windham Planning Board.
5. The development is subject to the following [Article 12 Impact Fees](#), to be paid with the issuance of a building permit North Windham Sidewalk Impact Fee of \$99,750.00 plus the cost of the annual inflation rate at the time submitting for building permits; [North Route 302 Road Improvements Impact Fee](#) of \$12,244.80; [Recreation Impact Fee](#), [Open Space Impact Fee](#), [Public Safety Impact Fee](#); and [Municipal Office Impact Fee](#). All fees will be determined and collected for any building, or any other permit for the development, [Section 120-1201C](#).
6. Prior to the required pre-construction meeting and any land use activity, the applicant is required to submit evidence of an amended or revised #L-23535-NB-D-A dated April 26, 2022 from the Maine Department of Environmental Protection to the Town Planner, which matches the Planning Board's approved site plan for the development.