

# Town of Windham

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## MEMO

DATE: July 11, 2016

TO: Windham Planning Board  
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RE: Private Road ordinance & policy work

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Attached is draft ordinance language that requires all new private roads to be reviewed by the Planning Board and amends the existing private road standards to require Major Private Road standards to apply after the 5<sup>th</sup> lot on a private road rather than the existing 10<sup>th</sup> lot.

### Overview

At the Town Council meeting of June 21, 2016, the Council discussed issues associated with private roads in Town. The staff memo dated June 10, 2016, is included in this packet to provide more information on this Council discussion was framed. After this discussion, the Town Council directed staff to:

1. Further develop ordinance language regarding what development conditions would trigger upgrades to existing Private Ways and
2. Forward recommendations regarding changes to the private road standards and the review and approval process for all private roads to the Planning Board for review and comment.

### Proposed Ordinance Change Summary

#### Section 300

- Defining “Driveway” as serving no more than 2 lots and clarifying that Driveways do not provide Frontage.
- Deletion of “Lot, Frontage” as this duplicated the definition of “Frontage” which remains.
- Deletion of “Lot Width” as this is no longer a dimensional standard that appears in the ordinances.

- Update of Street Classification definitions. Note that the updates are for definitions of the current street classes. Collector Street has been deleted, Major and Minor Local Streets have been added and Major and Minor Private Roads have been added. Further text additions clarify the difference between Major and Minor Private Roads as 5 or more lots and less 5 lots, respectively.

#### Section 500

- Developable Land standards have been changed to delete reference to Backlots.
- Driveway performance standards have been deleted. The performance standards describe how Driveways existing prior to October 2009, could provide Frontage for up to four (4) lots. It also says that for a pre-2009 driveway to provide frontage to five (5) or more lots, it must meet a road standard, which is already stated in the Streets performance standards. If this section is deleted, Driveways that provide frontage to 3 or 4 lots would become legally non-conforming.
- Lot, Backlot performance standards have been deleted. These standards require backlots created after March 2012, to be accessed by streets built to a standard within a 50-foot right-of-way, which may be an easement over property so that the easement area can count toward minimum lot size requirements of the zoning district it is in. Such arrangements would not be allowed without this standard, and all existing situations would become legally non-conforming.
- Streets performance standards have been amended so that all private streets not part of a subdivision application would require site plan approval by the Staff Review Committee or Planning Board as applicable.

#### Section 800

- Change 802.A.4., so that any Development over 25,000 square feet is subject to site plan review, whether or not a new nonresidential use is established.
- Add 802.A.10, making it explicitly clear that all new Private Roads and extensions of existing Private Roads and Ways are subject to site plan review.
- Change 805.A. 1 and 2 so that new Private Roads or extensions less than 500 feet in length in a 5 year period are classified as Minor Site Plans, which are reviewed by the Staff Review Committee and that new streets or extensions of 500 feet or more in a 5 year period are classified as Major Site Plans, which are reviewed by the Planning Board.

limited to, plumbing, painting, building, well drilling, carpentry, masonry, or electrical installation.

Controlled Access Street. See definition of, "Street Classification: Controlled Access Street"

Convention Center. A building, or portion thereof, designed to accommodate 300 or more people in assembly. For the purposes of this Chapter, this definition does not include "Places of Worship."

Corner Lot. See definition of, "Lot, Corner."

Correctional Facility, Public. A publicly operated facility housing persons awaiting trial or persons serving a sentence after being found guilty of a criminal offense.

Curb Cut. The connection to a street, or opening along the curb line, at which point vehicles may enter or leave the roadway. (*See Sec. 500 Performance Standards*)

Daytime Hours. Those hours between 7:00 a.m. and 7:00 p.m.

Dead-End Street. See definition of, "Street Classification: Dead-End Street"

Demolition. The removal of part, or all, of a building or structure.

Developable Land. Parcels, lots or sites that meet the requirements of "Developable Land" in Section 500 Performance Standards.

Development. Any change of land use including but not limited to the construction of buildings, parking lots, streets or utilities or the filling or cutting of land areas, or the cutting of trees which is done as part of the site preparation. "Development" does not, however, include normal agricultural operations, e.g., cultivation of soil, the raising of livestock, or the erection of fences, nor does it include for the purpose of subdivision or site plan review, the erection of barns and other accessory farm buildings.

Distribution Center. An establishment in which a building is used for the receipt, storage, and distribution of goods, products, cargo, and materials, including transshipment by boat, rail, air, or motor vehicle. Included in this definition are the breakdown and/or consolidation of orders for shipment. However, the retail sale, assembly, or processing of goods, products, cargo, or materials are not considered part of the distribution process.

Drive-through Facility. Any portion of a structure from which business is transacted, or is capable of being transacted, directly with customers located in a motor vehicle during such business transactions. (*See Sec. 500 Performance Standards*)

Driveway. A route that provides access to ~~a lot(s)~~ no more than two (2) lots from either a public or private right-of-way. A Driveway shall not be used to provide Frontage. (*See Sec. ~~500 Performance Standards~~ 300, Frontage*).

Lot, Developable. (See definition of “Developable Land”)

~~Lot, Frontage. The length of the front lot line measured at the street right of way line. (See “Developable Land” in Section 500 Performance Standards)~~

Lot, Interior. A lot other than a corner lot.

Lot, Through. A lot that fronts on two parallel streets or that fronts on two streets that do not intersect at the boundaries of the lot.

Lot Line. The boundary line of a lot.

Lot Line, Front. The lot line separating a lot from a street right-of-way or the portion of a lot that abuts a street right-of-way.

Lot Line, Rear. The lot line opposite and most distant from the front lot line. In the case of triangular or otherwise irregularly shaped lots, a line 10 feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

Lot Line, Side. Any lot line other than a front or rear lot line.

~~Lot Width. The horizontal distance between side lot lines, measured at (1) the front lot line, and (2) the required front setback line of the applicable zoning district.~~

Lumber Yard. An area and structures used for the storage, distribution, and sale of finished or rough-cut lumber and lumber products. Lumber yards shall be classified as “Retail Sales.” (See definition of “Retail Sales”)

Manufactured Housing. Manufactured housing shall be defined according to 30-A, M.R.S.A. § 4358, as amended from time to time. (See Sec. 500 Performance Standards)

Manufacturing. Establishments engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials, such as oils, plastics, resins, or liquors.

Manufacturing, Hazardous. A building or structure or any portion thereof that is used for the storage, manufacture, or processing of the following:

- Highly combustible or explosive products or materials that are likely to burn with extreme rapidity or that may produce poisonous fumes or explosions;
- Highly corrosive, toxic, or noxious alkalis, acids, or other liquids or chemicals producing flame, fume, or poisonous, irritant, or corrosive gases;

Story, Mezzanine. An intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than one-third of the area of the room in which the level or levels are located.

Story, Second. The story directly above the first story of a structure.

Street. Public or private roads or ways such as alleys, avenues, boulevards, highways, roads, and other rights-of-way, as well as areas on subdivision plans designated as rights-of-way for vehicular access other than driveways. (*See Sec. 500 Performance Standards*)

Street Classification:

Arterial Street. A major thoroughfare which serves as a major traffic way for travel between and through the Town. For the purpose of this Ordinance, only the following roadways shall be classified as ~~a~~Arterial ~~s~~Streets: Route 302, Route 202, Route 115, Route 35, River Road, and Falmouth Road.

~~Collector Street. A street with average daily traffic of between 200 and 3,000 vehicles per day or greater, or streets which serve as feeders to arterial streets, and collectors of traffic from local streets.~~

Controlled Access Street. A street which serves primarily as a major traffic way for travel within the Town between two arterial streets. For the purpose of this Ordinance, only the following roadway shall be classified as a Controlled Access Street: Manchester Drive. (*See Commercial I and Commercial II District Standards*) ~~-(See “Controlled Access Street” in Sec. 500 Performance Standards)~~

Dead-End Street. A street with a single common ingress and egress.

Industrial or Commercial Street. Streets servicing industrial or commercial uses.

Local Street, Major. A street ~~servicing only residential properties and designed for public acceptance~~ which complies in width and construction with the specifications in Section 911.M.5, Traffic Conditions and Streets, and has an estimated average daily traffic ~~of less than~~count of more than 2400 vehicles per day.

Local Street, Minor. A street designed for public acceptance which complies in width and construction with the specifications in Section 911.M.5, Traffic Conditions and Streets, and has an estimated average daily traffic count of 400 or less vehicles per day.

Private Road, Major. A street constructed on or after October 22, 2009 that complies in width and construction with the specifications for private roads in Section 911.M.5, “Traffic Conditions and Streets,” and serves more than five (5) lots. ~~that has not been, or intended to be, accepted by the Town of Windham.~~

Private Road, Minor. A street constructed on or after October 22, 2009, that complies in width and construction with the specifications for private roads in Section 911.M.5, Traffic Conditions and Streets, and serves five (5) or fewer lots.

Private Way. A street that was constructed prior to October 22, 2009, that does not meet the specifications for private roads in Section 911.M.5 "Traffic Conditions and Streets," and that has not been accepted by the Town of Windham. Private ways do not include access ways typically referred to as tote roads or woods roads.

Public Street. Any street that complies in width and construction with the standards for public streets in Section 900 Subdivision Review, or a street meeting lesser standards that the Town of Windham agrees to accept. (*See Sec. 900 Subdivision Review*)

Structure. A combination of materials that form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water. For the purpose of this chapter, antennas shall be considered "structures"; however, fences, doghouses, tree houses designed for children's use, and bus shelters shall not be considered "structures."

Subdivision. A subdivision is a division of a tract or parcel of land as defined in 30-A, M.R.S.A. § 4401, as amended from time to time; provided, however, that the Town of Windham does hereby elect to count lots of 40 or more acres as lots for purposes of subdivision review.

Subdivision, Amended. The division of an existing subdivision or any change of to an approved subdivision that requires Planning Board approval.

Substantial Improvement. Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or structural part of the building commences, whether or not that alteration effects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or for any alteration of a structure listed on the National Register of Historic Places or a State or Local Inventory of Historical Places.

Theater. A building, or part of a building, used to show motion pictures or for drama, dance, musical, or other live performances.

Truck Terminal. An area and building where trucks load and unload cargo and freight and where the cargo and freight may be broken down or aggregated into smaller or larger loads for transfer to other vehicles or modes of transportation.

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- (a) The maximum sidewalk longitudinal transition slope is not to exceed 1 vertical to 12 horizontal.
  - (b) The maximum sidewalk cross-slope is not to exceed 2%.
  - (c) No abrupt changes in grade are permitted and the maximum curb reveal crossing a walkway is 0.5 inch or less.
4. The sidewalk area at all entrances shall meet the standards of the Americans with Disabilities Act.

## 519 Developable Land

A. Land proposed for development shall meet the following standards:

1. A parcel of land that meets the standards of the zoning district in which it is located, or

~~2. A parcel of land that meets one of the following conditions:~~

~~(a) An approved backlot (See Section 529 "Lot, Backlot")~~

3. If located in an approved subdivision, a parcel of land that meets the standards for "Net Residential Area or Acreage" in section 500 Performance Standards.

## 520 Drive-through Facility

- A. A drive-through facility shall only be allowed as part of a principle use that is allowed as either a permitted use or conditional use in the applicable zoning district. (*See Sec. 400 Zoning Districts*)

## ~~521 Driveway~~

~~A. A driveway created after October 22, 2009 shall not be used to provide the minimum frontage required by the zoning district in which a lot is located, except for driveways constructed to provide lot frontage prior to October 22, 2009 that meet the following standards:~~

~~1. The driveway must be located within a defined right-of-way or easement.~~

~~2. The driveway shall not be used to obtain the required minimum frontage for more than four (4) lots.~~

~~(a) A driveway may only be used to provide the required lot frontage for five (5) or more lots, if the entire length of the driveway is improved to applicable private way or public street standards.~~

~~3. Where a lot is created on an existing driveway after October 22, 2009 the minimum frontage required by the zoning district in which the proposed lot is located must be provided on the driveway.~~



9. If renting or leasing, the tenant must demonstrate the property owner's approval.

- G. Conditions. The Board of Appeals may place conditions on the home occupation to minimize impacts on area properties. The conditions must be related to the Board of Appeal's findings on the standards listed in Subsection 524.F.

#### **525 Hotel**

- A. Rental for more than 30 cumulative days in a calendar year to the same guest, or guests, is prohibited.

#### **526 Industry, Light**

- A. All manufacturing processes must be wholly contained within a building,
- B. The manufacturing, stockpiling or distribution of hazardous materials shall not be permitted; however
1. The storage and use of hazardous materials as part of a production process shall be permitted.

#### **527 Kennel, Major**

- A. The kennel, including all uses accessory to the kennel, must be set back a minimum of two hundred (200) feet from an abutting residential structure, or
- B. A minimum of one hundred (100) feet from the lot line where there is no abutting residential structure.

#### **528 Kennel, Minor**

- A. The kennel, including all uses accessory to the kennel, must be set back a minimum of two hundred (200) feet from an abutting residential structure, or
- B. A minimum of one hundred (100) feet from the lot line where there is no abutting residential structure.

#### **~~529 Lot, Backlot~~**

~~A. Zoning Districts. Backlots shall be permitted in the following zoning districts:~~

- ~~• Farm~~
- ~~• Farm Residential~~

- ~~• Light Density Residential~~
- ~~• Medium Density Residential~~

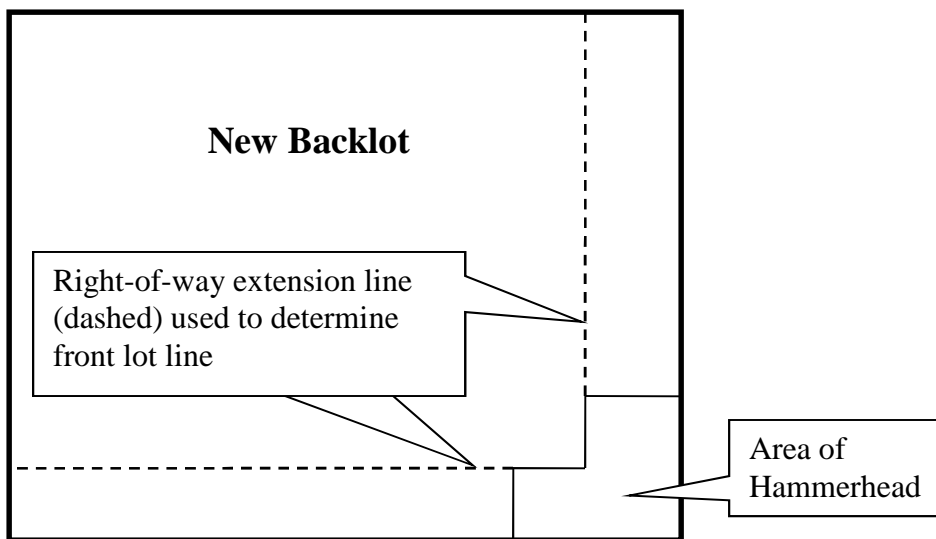
- ~~B. Standards. The following standards shall apply to the creation of backlots, or the extension of existing backlot right of ways, in accordance with the applicable effective dates:~~
- ~~1. General Standards. The following general standards apply to backlots that are created after March 14, 2012 that are accessed via rights of way that are created after March 14, 2012:~~
- ~~(a) Rights of Way.~~
- ~~(1) Backlots must be accessed by a right of way having a minimum width of fifty (50) feet. The required minimum width must be continued for the entire length of the right of way.~~
- ~~(2) Extension of a right of way to serve additional backlots shall meet the applicable street construction standards of Section 550.~~
- ~~a) If the addition of lots on a right of way falls within a different street standard, the entire right of way shall be improved in accordance with the street standards in Section 550.~~
- ~~(3) A hammerhead turnaround shall be provided in accordance with Section 550(B)(8)(f)(2).~~
- ~~(4) Right of Way Extensions:~~
- ~~a) The first hammerhead created after March 12, 2012 may be retained as part of the right of way and may continue to be used to meet the minimum frontage requirement of the zoning district. Hammerheads created prior to that date will not be required to be removed, even if this results in more than one hammerhead on a right of way.~~
- ~~b) All subsequent hammerheads created after March 12, 2012 shall be removed if a road is extended beyond the location of said existing hammerhead turnaround(s). After the hammerhead turnaround is removed, all lots must continue to comply with the minimum frontage requirement of the zoning district.~~
- ~~(b) Frontage. The backlot shall meet the minimum frontage requirement of the applicable zoning district along the right of way.~~
- ~~1) All sides of a hammerhead turnaround right of way may be used in the calculation of frontage. If the hammerhead turnaround is removed to accommodate future right of way extensions, the original lot must still meet the minimum lot frontage requirement.~~
- ~~(c) Minimum Setback Requirements~~
- ~~(1) The required minimum front setback standard for structures constructed on a backlot shall be measured from the closest edge of the right of way.~~

- ~~(2) Minimum setbacks from a new right-of-way do not apply to structures on abutting properties that do not obtain their frontage from said right-of-way.~~
- ~~(3) Front Lot Line. For purposes of determining the front lot line, and the front setback, the right-of-way shall be deemed to run from one side of the lot to the other side of the lot if it ends prior to that point. (See Diagram A)~~
- ~~(4) Corner Lots. If a corner lot is created by the installation of a right-of-way, the minimum setbacks shall be met in accordance with the corner lot standards in Section 500. The installation of a hammerhead turnaround does not constitute the creation of a corner lot. Backlots that obtain their frontage from a hammerhead turnaround shall choose which side of the hammerhead turnaround will constitute the front lot line. The designated front lot line shall be stated on the building permit and shall not be changed after said designation. Note: If a choice of front lot lines is available, care should be taken to plan for the setback requirements necessary for future right-of-way extensions.~~

~~If the minimum setbacks for corner lots cannot be met, the applicant may apply for a dimensional variance in accordance with Section 1100 of this Ordinance.~~

- ~~(5) No dwelling unit shall be erected on a backlot that is closer than two hundred (200) feet from an existing public street or private way.~~

**Diagram A**  
**Front Lot Line**



- ~~2. Standards for backlots, rights-of-way, and the extension of rights-of-way in existence prior to March 14, 2012.~~

- ~~(a) Rights-of-way~~

- ~~(1) — A right-of-way serving one (1) or more backlots that is less than fifty (50) feet in width may continue to provide access to that existing lot or any lot divided from that lot which does not involve the extension of the right-of-way.~~
- ~~(2) — Extension of an existing right-of-way used to access a backlot(s) shall meet the following standards:~~
  - ~~a) — The width of the right-of-way extension shall be at least 50 feet in width.~~
  - ~~b) — A hammerhead turnaround shall be provided in accordance with Section 550(B)(8)(f)(2).~~
    - ~~(i) — The first hammerhead created after March 12, 2012 may be retained as part of the right-of-way and may continue to be used to meet the minimum frontage requirement of the zoning district. Hammerheads created prior to that date will not be required to be removed, even if this results in more than one hammerhead on a right-of-way.~~
    - ~~(ii) — All subsequent hammerheads created after March 12, 2012 shall be removed if a road is extended beyond the location of said existing hammerhead turnaround(s). After the hammerhead turnaround is removed, all lots must continue to comply with the minimum frontage requirement of the zoning district.~~
  - ~~c) — The aggregate sub-base and base courses of the road extension shall meet the standards of Table 4 of Appendix B.~~
  - ~~d) — The minimum travel way width of the road extension shall be 18 feet.~~
  - ~~e) — Existing hammerhead turnaround(s) must be removed if a road is extended beyond the location of said existing hammerhead turnaround(s). After the hammerhead turnaround is removed, all lots must continue to meet the minimum frontage requirement of the zoning district.~~
- ~~(b) — Frontage~~
  - ~~(1) — Division on Existing Right-of-way. New backlots, created on an existing right-of-way that serves an existing backlot, shall meet the minimum frontage requirement of the applicable zoning district.~~
  - ~~(2) — Extension of Existing Right-of-way. Backlots created on the extension of an existing right-of-way shall meet the minimum frontage requirement of the applicable zoning district.~~
  - ~~(3) — All sides of a hammerhead turnaround right-of-way may be used in the calculation of frontage.~~
- ~~(c) — Minimum Setback Requirement.~~
  - ~~(1) — The required minimum front setback for existing or new structures located on an existing backlot or existing right-of-way shall be measured from the property line rather than from the closest edge of the right-of-way after a right-of-way is placed on the property.~~
  - ~~(2) — Existing or new structures located on the extension of an existing right-of-way shall meet the required minimum front setback from the closest edge of the right-of-way after a right-of-way is placed on the property. If the minimum~~

~~setback requirements cannot be met, the applicant may apply for a dimensional variance in accordance with Section 1100 of this Ordinance.~~

- ~~(3) — Corner Lots. If a corner lot is created by the extension of a right-of-way, the minimum setbacks shall be met in accordance with the corner lot standards in Section 500. The installation of a hammerhead turnaround does not constitute the creation of a corner lot. Backlots that obtain their frontage from a hammerhead turnaround shall choose which side of the hammerhead turnaround will constitute the front lot line. The designated front lot line shall be stated on the building permit and shall not be changed after said designation. *Note: If a choice of front lot lines is available, care should be taken to plan for the setback requirements necessary for future right-of-way extensions.*~~

~~If the minimum setbacks for corner lots cannot be met, the applicant may apply for a dimensional variance in accordance with Section 1100 of this Ordinance.~~

- ~~(4) — Minimum setbacks from the extension of an existing right-of-way do not apply to structures on abutting properties that do not obtain their frontage from said right-of-way.~~
- ~~(5) — No dwelling unit shall be erected on a backlot that is closer than two hundred (200) feet from an existing public street or private way.~~

### **530 Lot, Corner**

- A. Front Setbacks. The required front setback shall be required on both sides of the lot that front on a public or private right-of-way.
- B. The remaining two sides of the lot shall meet the side yard requirements of the applicable zoning district.
- C. Rear Setbacks. A rear setback is not required for corner lots.

### **531 Manufactured Housing**

- A. Manufactured housing, as defined, shall be allowed in any district in which single-family detached dwellings are permitted.
- B. Manufactured housing shall meet all applicable standards of 30-A, M.R.S.A. § 4358.

### **532 Medical Marijuana**

Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, these performance standards, when enacted, shall govern any proposed medical marijuana dispensary for which an application has not been submitted and acted on by the Review Authority identified in Section 516 prior to January 11, 2010.

The following standards apply to all medical marijuana dispensaries:

**550 Streets**

- A Public Streets. All public streets, as defined in Section 300 - and private roads submitted as part of a subdivision application - constructed on or after October 22, 2009 shall meet the street design standards in Section 900 Subdivision Review.
1. Waivers of the street design standards may only be granted by the Planning Board as part of a site plan or subdivision application.
- B. Private Roads Not Part of a Subdivision Application.

1. Applicability. These standards apply to private roads used to obtain the required ~~lot width~~ Frontage in the applicable zoning district. (*See "Developable Land" in Sec. 500 Performance Standards*)
- ~~2. Submission Requirements. An application form and accurately sealed plan shall be prepared by a Maine Licensed Professional authorized by the State of Maine to design streets or roads. At a minimum, the plan shall include the location and width of the right of way, a plan view and profile view of the roadway, the location and size of culverts and proposed drainage features.~~
- ~~32. Review Authority. For a~~All private roads require Site Plan approval and, the application form and plan shall be submitted to, and approved by the Planning Board or Staff Review Committee as appropriate. See Section 803 of the Site Plan Ordinance for project classification thresholds, the Director of Code Enforcement. For private roads that provide frontage to four (4) or more lots, the plan must be reviewed by the Town's consulting engineer.
- ~~34. Submission Requirements, Performance Standards, Approval Criteria. See Section 800, Site Plan Reivew for information pertaining to approval of Private Roads not Part of a Subdivision application.~~

~~Site Walk. The Director of Code Enforcement may require a site walk with the applicant, or his or her authorized representative.~~

- ~~5. Recording. Upon approval, a mylar copy of the private road plan shall be filed with the Town.~~
- ~~6. Construction Observation. The Code Enforcement Officer may require that observations by the Town's consulting engineer be conducted during construction. The property owner shall be responsible for the costs of all observations.~~
- ~~7. Final Approval. Prior to the issuance of any Certificates of Occupancy for the lots fronting on said private road, the applicant shall provide the following:~~

- ~~(a) Private Roads with three (3) or fewer lots. A statement, from the Maine Licensed Professional that prepared the plans, that the road was constructed in general conformance with the approved plans. The Director of Code Enforcement may observe the road to confirm that the road was constructed in general conformance with the approved plans.~~
- ~~(b) Private Roads with four (4) or more lots. A statement from a Licensed Maine Professional Civil Engineer that the road was constructed in general conformance with the approved plans. If the Town's consulting engineer reviewed the design and observed the construction, the Town's consulting engineer may provide the required statement.~~

#### ~~8. Standards~~

- ~~(a) Design Standards. Private roads shall be designed to conform to the appropriate standards presented in Subsection 911.M.5.(b)(8) Street Construction Practices; and the standards for "Major or Minor Private Roads" in Table 3, Table 4, and the applicable cross sections in Appendix B Street Standards.~~
- ~~(b) Street Lights. Street lights may be required at intersections with existing public streets. The use of additional street lights shall be discouraged to avoid excessive light pollution.~~
- ~~(c) Drainage. The private road shall have adequate provisions for drainage and stormwater runoff.~~
- ~~(d) Paved Apron. In addition to the standards in Section 518 Curb Cuts and Driveway Openings, 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 C, Street Standards).~~
- ~~(e) Gravel Surface Limit. Notwithstanding other provisions of the Land Use Ordinance to the contrary, no gravel surfaced private road shall provide access to or serve in any way to provide compliance with the requirements of the Ordinance for more than the greater of ten (10) lots or ten (10) dwelling units; provided; however, nothing in this paragraph shall serve to limit the use of such private road for occasional use by and for agricultural purposes. Private roads providing access to eleven (11) or more lots shall meet the standards for a "Major Private Road" contained in Table 3 and Table 4 of Appendix B Street Standards.~~
- ~~(f) Dead End Streets. The following standards shall apply to dead end private roads. (See Sec. 300 for definition of "Dead End Street")~~
- ~~(1) Maximum Length. Dead end private roads shall meet the following standards:~~

- ~~(i) Private Roads Served by Public Water. There is no maximum length limit for private roads 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 (g) below shall apply.~~
- ~~(ii) Private Roads Not Served by Public Water. Dead-end private roads 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 Chief and hammerhead turnarounds installed every 1,000 linear feet. The street connectivity standards of Subsection (g) below, shall apply.~~
- ~~1. 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.~~
- ~~2. Any existing right of way which does not contain an improved private way existing on, or before, October 22, 2009 shall construct any future improvements in accordance with the standards for private roads contained in this Section 548 to the greatest extent practical.~~
- ~~(2) Hammerhead Requirement: At a minimum, a hammerhead turnaround is required at the terminus of all dead-end private roads.~~
- ~~(i) All hammerhead turn-around shall meet the following standards:~~
- ~~a) The right of way or easement area of the turnaround side branch shall be at least 50 feet by 50 feet.~~
- ~~b) The gravel or paved surface shall extend at least 50 feet from the centerline of the adjacent roadway.~~
- ~~c) The width of the gravel or paved surface shall be equal to the street width.~~
- ~~d) The hammerhead shall have a minimum 25 foot turning radius.~~
- ~~e) Larger dimensions may be required by the Director of Code Enforcement to accommodate larger design vehicles anticipated to use the turnaround.~~
- ~~(g) Connection Requirements. The following standards determine the number of connections a private road 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~~

~~Lots: 30 or less — 1~~

~~Lots: 31 or more — 2~~

~~Units: 30 or less — 1~~

~~Units: 31 or more — 2~~



- ~~(1) Street Connection Separation Requirements. Private roads with two (2) or more connections to an existing public street shall be separated according to the standards in Table 2 of Section 900 Subdivision Review.~~
- ~~(h) Maintenance Agreement. 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 until the Town has accepted the road. No private road shall be offered to the Town for acceptance until it meets the design requirements for a public street contained in this Ordinance.~~
- ~~C. Sidewalks~~
- ~~1. Where required by this Ordinance, or by the Planning Board as a condition of subdivision or site plan approval, sidewalks shall be constructed in accordance with the standards in Tables 3 and 4 or Appendix B of this Ordinance.~~
- ~~2. Accessibility. Sidewalk construction shall meet all applicable American with Disabilities Act (ADA) Standards.~~

#### Section 500 Amendments

Order 10-075; Date 04-27-10	Changes to Central Sewer System; Child Care Facility; Net Residential Density; and Dead End Streets
Order 10-164; Date 09-14-10	Changes to Outdoor Sales
Order 10-230; Date 12-14-10	Addition of Restaurants in C1 zone
Order 11-206; Date 12-13-11	Addition of siting and regulation for Medical Marijuana Dispensaries
Order 12-014; Date 03-14-12	Changes to Backlot standards
Order 12-099; Date 08-14-12	Addition of Domesticated Chickens
Order 12-148; Date 10-23-12	Addition of Retirement Community and Care Facility Overlay District
Order 12-149; Date 10-23-12	Addition of Accessory Apartments
Order 13-001; Date 01-22-13	Change to waiver of Curb Cuts
Order 13-002; Date 01-22-13	Change to list of Controlled Access Streets.
Order 13-072; Date 05-14-13	Addition of Sidewalk Impact Fee
Order 14-164; Date 07-08-14	Changes to Automobile Repair Services, addition of Automobile Storage Lot
Order 14-223; Date 07-08-14	Change of Conditional Use Submission deadlines
Order 14-387; Date 10-14-14	Addition of Automobile Auction Facility

**801 Purpose**

The site plan review provisions set forth in this Section are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential and multifamily construction is designed and developed in a manner which 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 the 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.

**802 Applicability**

- A. A person who has right, title, or interest in a parcel of land shall obtain site plan approval prior to commencing any of the following activities on the parcel, obtaining a building or plumbing permit for the activities, or undertaking any alteration or improvement of the site including grubbing or grading:
1. The construction or placement of any new building or structure for a nonresidential use, including accessory buildings and structures, if such buildings or structures have a total area for all floors of all structures of two thousand (2,000) square feet or more measured cumulatively over a five (5) year period.
  2. The expansion of an existing nonresidential building or structure, including accessory buildings, if the enlargement increases the total area for all floors within a five (5) year period by more than twenty (20) percent of the existing total floor area or two thousand (2,000) square feet, whichever is greater.
  3. The conversion of an existing building in which two thousand (2,000) or more square feet of total floor area are converted from residential to nonresidential use.
  4. ~~The establishment of a new nonresidential use even if no buildings or structures are proposed, that involves the~~ Development of more than twenty-five thousand (25,000) square feet of land. This includes uses such as gravel pits, cemeteries and, golf courses, ~~and other nonstructural nonresidential uses.~~
  5. The conversion of an existing nonresidential use, in whole or in part, to another nonresidential use if the new use changes the basic nature of the existing use such that it increases the intensity of on- or off-site impacts of the use subject to the standards and criteria of site plan review described in Section 812 of this Section.

6. The construction of a residential building containing three (3) or more dwelling units.
7. The modification or expansion of an existing residential structure that increases the number of dwelling units in the structure by three (3) or more in any five (5) year period.
8. The conversion of an existing nonresidential building or structure, in whole or in part, into three (3) or more dwelling units within a five (5) year period.
9. The cumulative Development of an area equal to, or greater than, one (1) acre within any three (3) year period. The applicability of this section does not include the construction of streets that are reviewed as part of a subdivision application under the standards of Section 900 of this Ordinance. *For Developments of less than one (1) acre, the standards of Chapter 142 Surface Water Protection Ordinance may apply.*

10. All new Private Roads and extensions of existing Private Roads and Private Ways.

- B. The following activities shall not require site plan approval. Certain of these activities will, however, require the owner to obtain a building permit, plumbing permit or other state or local approvals:
  1. The construction, alteration, or enlargement of a single family or two-family dwelling, including accessory buildings and structures.
  2. The placement, alteration, or enlargement of a single manufactured housing or mobile home dwelling, including accessory buildings and structures on individually owned lots.
  3. Agricultural activities, including agricultural buildings and structures.
  4. Timber harvesting and forest management activities.
  5. The establishment and modification of home occupations.
  6. Activities involving nonresidential buildings or activities that are specifically excluded from review by the provisions of this section.

### **803 Review and Approval Authority**

- A. Application Classification. The review and approval authority for site plans shall depend on the classification of the project:
  1. Major Developments. The Planning Board is authorized to review and act on all site plans for major developments. In considering site plans under this section, the Planning Board may act to approve, disapprove, or approve the project with such conditions as are authorized by this section.
  2. Minor Developments. The Staff Review Committee is authorized to review all site plans for minor developments and may approve, disapprove, or approve the project with such conditions as are authorized by this Section. In addition, the Committee

may reclassify a minor development as a major development, due to the scope or anticipated impacts of a project, and forward it to the Planning Board with its recommendations for Planning Board action. (*See Sec. 805 Classification of Projects*)

- B. Staff Review Committee Established. There is hereby created a Staff Review Committee. The Staff Review Committee shall consist of the Director of Planning (Planner), Director of Code Enforcement, Fire Chief, Director of Public Works, or their designees, and a designee of the Town Manager.
- C. Operation of the Staff Review Committee. The Planner shall serve as Chair of the Staff Review Committee and shall be responsible for calling meetings of the Committee, presiding at its meetings, and maintaining the records of the Committee. In the absence of the Planner or his/her designee, the Director of Code Enforcement shall serve as chair pro tem.
  - 1. Attendance. If any member of the Staff Review Committee is unable to attend any meeting of the Committee, he/she shall designate another member of that department to serve in his/her place. Such designation shall be in writing and shall apply only to that meeting. This designee shall have the same power and authority as the member.
  - 2. Meeting Dates. The Staff Review Committee shall meet once each month as needed. The Committee may schedule additional meetings, as needed.
  - 3. Advertisement. Meetings of the Committee shall be advertised in the same manner as those of other Town committees and shall be open to the public.
  - 4. Vacancy. If a vacancy exists in any of the positions serving on the Committee, the Town Manager shall name an interim committee member with appropriate expertise in the respective department, until such vacancy is filled.
  - 5. Quorum. A quorum is necessary to conduct any official meeting of the Committee, and a quorum shall consist of at least three (3) members.
  - 6. Voting. A majority vote of the quorum is required to constitute an action (passage or denial) on any motion before the Committee. Should a Committee member need to be recused due to a conflict once a quorum is established and a meeting is in session, the meeting may proceed and the Committee may take action on any motion before the Committee with less than three (3) voting members present. In this event, the applicant shall have the right to have a vote postponed to the next Committee meeting.
  - 7. Minutes. The Staff Review Committee shall keep a record of its proceedings.
- D. Attendance of Applicant. The Planning Board or Staff Review Committee shall not review any site plan application unless the applicant, or his 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 Planning Board or Staff Review Committee shall reschedule the review of the application to its next available meeting.

**804 Joint Application and Hearing**

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

**805 Classification of Projects**

- A. The Planner shall classify each project as a major or minor development. Minor developments are smaller scale projects for which a minor review process is adequate to protect the Town's interest. Major developments are larger, more complex projects for which a more detailed review process and additional information are necessary. The following thresholds shall be used by the Planner in classifying each project. However, the Planner may, due to the scope or anticipated impacts of a project, classify any project as a major development.
1. Minor developments shall include those projects involving:
    - (a) The cumulative construction or addition of fewer than five thousand (5,000) square feet of gross nonresidential floor area.
    - (b) Any individual or cumulative construction or addition of five thousand (5,000) square feet or more of gross nonresidential floor area within an approved subdivision.
    - (c) ~~The establishment of a new nonresidential use even if no buildings or structures are proposed, that involves the~~ Development of more than twenty-five thousand (25,000) square feet but less than one (1) acre of land.
    - (d) A new Private Road or an extension of an existing Private Road or Private Way of less than five hundred (500) feet in length within a five (5) year period.
  2. Major developments shall include projects involving:
    - (a) The individual or cumulative construction or addition of five thousand (5,000) or more square feet of gross nonresidential floor area on a lot that is not part of an approved subdivision,
    - (b) Projects involving the creation of five (5) or more dwelling units in a five (5) year period,
    - (c) The individual or cumulative Development of one (1) acre or more land, unless the Development is part of a site plan application in an approved subdivision (see Section 805 A.1.b. above.)
    - (d) Projects that also require subdivision (*see Sec. 900*) or conditional use approval (*See. Sec. 500*),

(e) A new Private Road or an extension of an existing Private Road or Private Way of five hundred (500) feet or more within a five year period, or

(fe) Other projects requiring review which are not classified as a minor development.

3. An applicant may request that the Planner classify an application prior to its submission. In this case, the applicant shall make a written request for a classification. This request shall 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.
4. When the Planner classifies a project based upon a request for classification rather than an application, the subsequent application shall be consistent with the activities described in the request for classification.
  - (a) 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.
- B. Within ten (10) working days of the receipt of a site plan application or a request for a classification, the Planner shall notify the applicant, and the Chair of the Planning Board of the classification of the project in writing.

## **806 Review Procedures for Minor Developments**

- A. Preapplication Conference. Applicants for site plan review of a minor development are encouraged to schedule a preapplication conference with the Planner. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, and approval criteria, and to familiarize the Planner 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. 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.
- B. Application Procedure

**Table 3 Design and Construction Standards for Town Streets and Private Streets**

Item	Major Local Street	Minor Local Street	Ind./Comm.	Major Private Street	Minor Private Streets
Average Daily Traffic (ADT)/Lots Served <sup>(1)</sup>	> 400 <del>A</del> ADT	≤ 400 <del>A</del> ADT	n/a	> <del>10</del> 5 lots	≤ <del>10</del> 5 lots
Surface Type	Paved	Paved	Paved	Paved	Gravel
Min. Right-of-Way Width	60'	50'	50'	50'	50'
Min. Traveled Way Width <sup>(2)</sup>	22'	20'	24'	20'	18'
Primary Shoulder Type <sup>(3)</sup>	Paved	Paved	Paved	Gravel	Gravel
Min. Primary Shoulder Type without Curb	4'	2'	4'	2'	2'
Min. Primary Shoulder Type with Curb	5'	2'	4'	2'	n/a
Min. Primary Shoulder Type with Sidewalk	5'	2'	4'	2'	n/a
Secondary Shoulder Type	Gravel	Gravel	Gravel	Gravel	n/a
Min. Secondary Shoulder Width without Curb	2'	2'	2'	2'	n/a
Min. Clear Zone Width (each side)	8'	7'	7'	n/a	n/a
Min. Esplanade Width	n/a	5'	n/a	n/a	n/a
Minimum Vertical Clearance	14'	14'	14'	14'	14'
Min. Grade	0.50%	0.50%	0.50%	0.50%	0.50%
Min. Grade with Curb	1%	1%	1%	1%	1%
Max. Grade	7%	8%	6%	11%	11%
Min. Centerline Radius	350'	180'	200'	100'	60'
Min. Tangent between curves of reverse alignment	200'	100'	200'	100'	n/a
Min. Angle of Street Intersection <sup>(4)</sup>	90	60	90	60	60
Max. Grade at Intersections <sup>(5)</sup>	2%	2%	2%	2%	2%
Min. Curb Radii	30'	25'	30'	25'	15'
Max. Dead End Street Length	See Section 543 Streets and Section 911.M.5(b)(5) Dead End Streets				
Min. Sidewalk Width	5'	5'	5'	n/a	n/a
Min. Paved Apron <sup>(6)</sup>					20'

**Additional Standards**

(1) See Section 911(M) for street connection Requirements

(2) Add 8' of width for each lane of on-street parking

(3) See Section 911(M)(5)(b)(6) for shoulder and sidewalk requirements

(4) Angle must be maintained for at least 60' from intersection.

(5) Maximum grade must be maintained for at least 60' from the intersection

(6) A negative 2.0% grade from the existing edge of pavement must be provided to an appropriate drainage way what is no less than 5 feet from the travel surface or private way it intersects.

# Town of Windham

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## MEMO

DATE: June 10, 2016

TO: Windham Town Council  
THROUGH: Tony Plante, Town Manager  
FROM: Ben Smith, Planning Director *BUS*  
Cc: Amanda Lessard, Planner  
Doug Fortier, Director of Public Works  
Heather McNally, Director of Code Enforcement  
Stephen Langsdorf, Preti Flaherty  
Kevin Haskins, Preti Flaherty

RE: Private Road ordinance & policy work

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Attached is draft ordinance language that requires all new private roads to be reviewed by the Planning Board and presents a single private road standard. The memo also offers feedback on a few Council ideas that are likely not feasible and presents the issue for discussion of when it may make sense to require upgrades of existing private ways.

### Overview

On February 16, 2016, the Town Council held a special meeting to discuss issues associated with private roads in Town. After discussing issues that have arisen in Windham the Town Council directed staff to present the Council with options regarding the policy areas which appear as numbered items below. Staff comments appear as bullet points under each item.

1. Require road damage bonds for any construction on property accessed by an existing private way (pre-2009).
  - This approach to ensuring that the state of a private way remains the same after construction activities is problematic. From a legal standpoint, the existence of a public easement in a private way would likely resolve the issue identified by the MMA opinion dated March 29, 2016, and attached to this memo, but the Town would still need to identify the public purpose to be served (e.g. provision of emergency services) before requiring road damage bonds on private ways where no such public easement exists. However, even if requiring road damage bonds were a legal possibility, it would likely be impractical from from an administrative standpoint given the amount of time that staff would need to



expend on what would probably be very fact-specific issues. For example, for any particular Private Way or Road, it would be problematic for staff to establish the amount of a bond, assess the its condition of the prior to any construction and assessing its condition through construction and completion of construction activities, and to attribute any road damage to bonded activities. Such activities are best left to a road association.

2. Require all new private roads and extensions of existing private ways to be engineered and approved by the Planning Board.
  - This has been done and ordinance language is attached.
3. Simplify the ordinance to one private road standard.
  - This has been done and ordinance language is attached. Please note however, that staff feels comfortable that the existing standards are adequate for safety, access, and stormwater management purposes. If the Town Council would like to see paving occur earlier in the development process than after the 10<sup>th</sup> lot, then that item alone is a relatively simple adjustment to the Minor Private Way standard.
4. Require the establishment of a homeowners association or road association on any existing private way if none exists, or if one exists on the private way providing access to a property being developed, that the new development join the association.
  - This approach to ensuring the long term maintenance of a private road is problematic from a legal and practical standpoint. The Planning Board currently requires draft homeowners or road association documents to be submitted as part of subdivision review, but cannot require a condition of approval tying permits to membership in an association. That is a private matter among the property owners on a private road. Furthermore, the Town cannot compel participation in the association activities or payment of annual dues into the association, which presumably is the ultimate goal of such a requirement. That again is a private matter between property owners.
  - The idea from the public we can build on would be to have the Town serve as a technical resource or clearinghouse of information on how to form and run associations and may be worth further investigation in the pursuit of the goal to keep private roads well maintained.
5. Develop a scoring/grading/classification system for existing private ways (in existence prior to October 2009 and not built to town standards) and require contributions proportional to the proposed development for improvements to the private way(s) affected.
6. Clarify the Planning Board's ability under the Land Use Ordinance, including Section 911.M.2.c, to determine whether an existing private way provides adequate access, with "adequate" being defined as meeting either the existing private road standard or some other minimum threshold standard to be developed.
  - Items 5 and 6 are perhaps best addressed together. Since the introduction of road standards in 2009, existing roads have been "grandfathered," which has meant that any road existing in a 50-foot right-of-way prior to the establishment of standards has been considered free from any expectations for upgrades. The standards apply to new roads and the extension of existing roads, but not the existing roads themselves, regardless of the amount of new development along their length or as part of a larger road network. This is not the typical

understanding of what it means to be “grandfathered.” Much more typically, grandfathering is an understanding that anything existing prior to new rules, codes, ordinances or statutes being established are fine as they exist at that time. This is what is meant when referring to “legally non-conforming” lots, buildings, and land uses. They pre-existed updated standards, and it isn’t fair to go back on building and property owners when they played by the rules at the time. However, when conditions change or when buildings are upgraded or new development is proposed, grandfathered status goes away and the current standards apply.

As there were no road standards prior to 2009, the Planning Board was in a position of negotiating with developers of subdivisions on a project by project basis for any improvements deemed necessary by the Board to existing private ways. Since standards were established, the Board was advised that when the ownership of the private way is different from the land being subdivided, the Board’s authority was limited. This is because the road owners, whether an individual or an association, are hardly ever party to the subdivision application and the Town could not compel another individual or group of owners to make improvements to benefit the party that is subject to the application. Further, it may be that the developer may not have rights to make improvements to the property of others. Both of these scenarios have put the Board in difficult positions in the past.

The Town Council should have a conversation about what it means to have a “grandfathered” private way in Windham and under what conditions upgrades to those roads are appropriate. This conversation is also relevant to the Major and Minor Private Ways constructed since 2009 if and when the private road standards change in the future, since these roads would be required to make upgrades when new development occurs.

- i. Should the Town require upgrades of pre-2009 private ways to today’s standards when new development is proposed along their length or on an extension of that private way?
- ii. Should the Town require upgrades for just the subject private way or for the subject private way and any other private ways back to the nearest public street?
- iii. Are there certain private roads, based on their length, condition, amount of development, or other criteria that would be exempt from upgrade requirements?

The answers to these questions may have a profound impact on how and where future development occurs in Windham. Issues of development and access to that development are closely intertwined.

## **Proposed Ordinance Change Summary**

### **Section 300**

- Defining “Driveway” as serving no more than 2 lots and clarifying that Driveways do not provide Frontage.
- Deletion of “Lot, Frontage” as this duplicated the definition of “Frontage” which remains.
- Deletion of “Lot Width” as this is no longer a dimensional standard that appears in the ordinances.
- Update of Street Classification definitions. Note that the updates are for definitions of the current street classes. Collector Street has been deleted, Major and Minor Local Streets have been added and Major and Minor Private Roads have been added.

### **Section 500**

- Developable Land standards have been changed to delete reference to Backlots.
- Driveway performance standards have been deleted. The performance standards describe how Driveways existing prior to October 2009, could provide Frontage for up to four (4) lots. It also says that for a pre-2009 driveway to provide frontage to five (5) or more lots, it must meet a road standard, which is already stated in the Streets performance standards. If this section is deleted, Driveways that provide frontage to 3 or 4 lots would become legally non-conforming.
- Lot, Backlot performance standards have been deleted. These standards require backlots created after March 2012, to be accessed by streets built to a standard within a 50-foot right-of-way, which may be an easement over property so that the easement area can count toward minimum lot size requirements of the zoning district it is in. Such arrangements would not be allowed without this standard, and all existing situations would become legally non-conforming.
- Streets performance standards have been amended so that all private streets not part of a subdivision application would require site plan approval by the Staff Review Committee or Planning Board as applicable.

### **Section 800**

- Change 802.A.4., so that any Development over 25,000 square feet is subject to site plan review, whether or not a new nonresidential use is established.
- Add 802.A.10, making it explicitly clear that all new Private Roads and extensions of existing Private Roads and Ways are subject to site plan review.
- Change 805.A. 1 and 2 so that new Private Roads or extensions less than 500 feet in length in a 5 year period are classified as Minor Site Plans, which are reviewed by the Staff Review Committee and that new streets or extensions of 500 feet or more in a 5 year period are classified as Major Site Plans, which are reviewed by the Planning Board.