

# Town of Windham

Planning Department  
8 School Road  
Windham, ME 04062

voice 207.894.5960

fax 207.892.1916

## MEMO

DATE: March 17, 2017

TO: Windham Town Council

THROUGH: Tony Plante, Town Manager

FROM: Amanda Lessard, Planner *ALL*

Cc: Ben Smith, Director of Planning

RE: Planning Board Recommendation - Ordinance Amendment – Section 900, regarding the requirements for private roads providing access to proposed subdivisions.

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At the Planning Board's meeting on March 13, 2017, a public hearing was held on the proposed ordinance changes to Section 900 of the Land Use Ordinance. These changes include:

- Change Section 911.M.2.c, to clarify the existing wording that states that existing and proposed roads that are expected to carry traffic generated by the subdivision need to be "suitably improved." The proposed clarification is to make it clear that all of the existing and proposed private roads providing access to the subdivision lots need to be improved to the applicable Private Road standards.
- Change Section 911.M.5.a.5, to clarify the existing wording that states all properties served by a private road shall have "adequate access." Again, the proposed clarification is to make it clear that adequate access can only be met when all of the existing and proposed private roads that provide access to the subdivision meet the applicable Private Road standards.

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

During Planning Board discussion some members of the Board expressed concern that this change would halt development as no one would be able to afford to make improvements to many miles of existing private roads, decrease property value of land, and would result in development that was delayed in order to avoid subdivision review. The Board commented that this standard may not be the fairest way to address the issue as the burden of improving the entire existing private road network was all on the first developer and subsequent subdivisions would not have the same development costs. Other members of the Board recognized that other towns don't grandfather private roads and require improvements as part of new development. This change would give the Planning Board a standard to review for adequate access to a subdivision,

but would still allow a developer to request a waiver from portions of the road standards that could not be met.

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

To recommend approval of the proposed amendment to Section 900 regarding the requirements for private roads providing access to proposed subdivisions.

Motion: Margaret Pinchbeck

2<sup>nd</sup>: Nick Kalogerakis

Vote: 3-1 (Keith Elder opposed)

# Town of Windham

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## MEMO

DATE: March 8, 2017

TO: Windham Planning Board

FROM: Amanda Lessard, Planner *ALZ*

Cc: Ben Smith, Director of Planning  
Jon Earle, P.E., Town Engineer

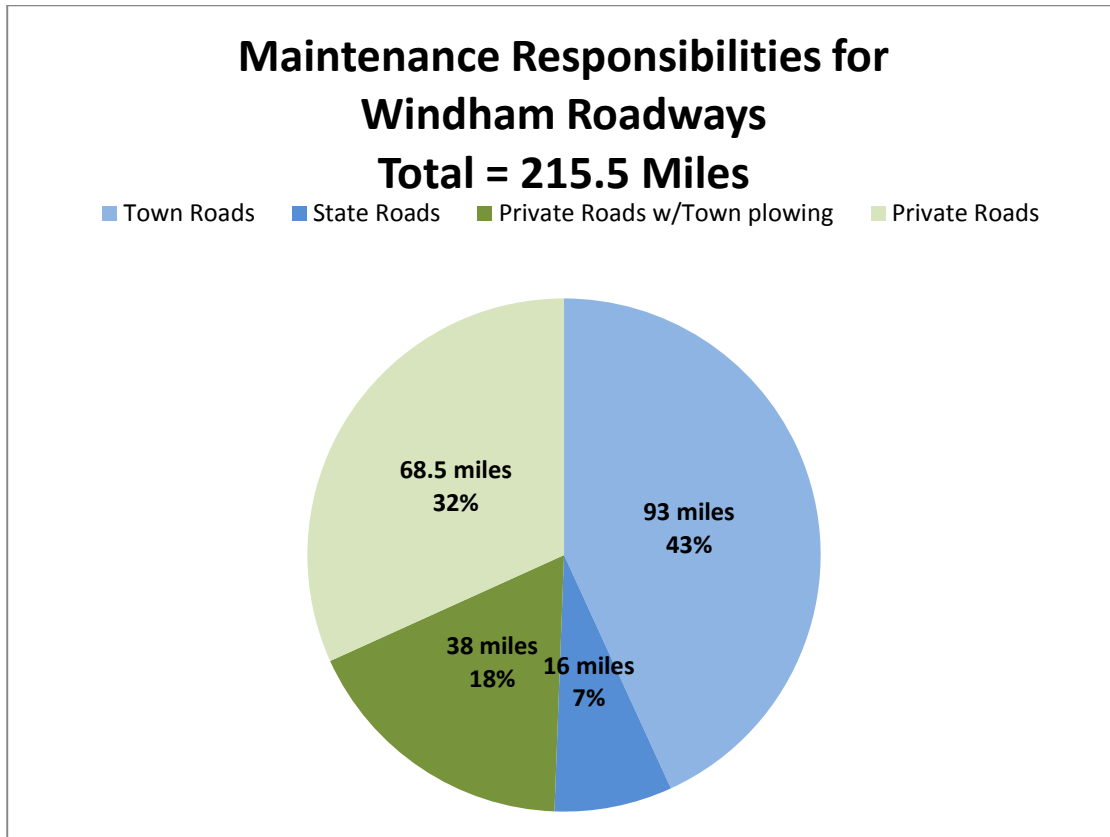
RE: Ordinance Amendment – Section 900, regarding the requirements for private roads providing access to proposed subdivisions.  
Planning Board Meeting & Public Hearing: March 13, 2017

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Attached is draft ordinance language that makes changes to Section 900 of the Land Use Ordinance. These changes include:

- Change Section 911.M.2.c, to clarify the existing wording that states that existing and proposed roads that are expected to carry traffic generated by the subdivision need to be “suitably improved.” The proposed clarification is to make it clear that all of the existing and proposed private roads providing access to the subdivision lots need to be improved to the applicable Private Road standards.
- Change Section 911.M.5.a.5, to clarify the existing wording that states all properties served by a private road shall have “adequate access.” Again, the proposed clarification is to make it clear that adequate access can only be met when all of the existing and proposed private roads that provide access to the subdivision meet the applicable Private Road standards.

During Planning Board discussion of the proposed amendment at the meeting on February 27, 2017 the Board asked for additional information on the number miles of private roads in Windham, and the approximate costs to construct a road to the private road standards. Staff prepared an analysis of private roads for the Town Council in December 2015 and found that there is a total of 215.5 miles of roadway in Windham of which approximately 106.5 miles are private roads. See figure below and attached road map. Note that this analysis does not differentiate between private roads that have been constructed to meet the private road standards or roads constructed to the public road standard that have not yet been accepted as public roads. Also attached is a map showing development and development potential on private roads.



Town Engineer Jon Earle has provided cost estimates to construct a new private road to meet town standards: \$100 per linear foot for Minor Private Roads and \$150 per linear foot for Major Private Roads. Details of the cost estimate are attached. Note that the cost to upgrade an existing private road will vary based on the condition of the existing road. Also attached is Appendix B of the Land Use Ordinance, Street Design and Construction Standards.

A public hearing is scheduled for the Planning Board meeting on March 13, 2017. After the public hearing and discussion by the Board, the Planning Board may vote on a recommendation to the Town Council similar to the following:

**MOTION:** To (**recommend/recommend with comments/not recommend**) approval of the proposed amendment to Section 900 regarding the requirements for private roads providing access to proposed subdivisions.

# Town of Windham

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## MEMO

DATE: January 27, 2017

TO: Windham Town Council  
THROUGH: Tony Plante, Town Manager  
FROM: Ben Smith, Planning Director  
Cc: Amanda Lessard, Planner  
Jon Earle, P.E., Town Engineer  
Stephen Langsdorf, Preti Flaherty  
Kevin Haskins, Preti Flaherty

RE: Clarifications in Subdivision Ordinance related to new subdivision development on or accessed by Private Roads

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Attached is draft ordinance language that specifies that when any development on a Private Way or Road results in the creation of one or more dwelling units, all Private Roads and Ways between that development and the closest Public Street must meet a Town Private Road standard.

### Overview

Since late 2015, The Town Council and staff have been wrestling with how to approach problems related to public safety caused by new development on private roads that existed prior to the 2009 adoption of road standards, whether that development occurs along the existing road, an extension of that existing road, or on a new road that meets today's standards that connects to the existing private road that may not.

Many approaches have been suggested and rejected by the Town Council, out of concerns relating to legality, practicality, or concerns related to fairness. At the last Council meeting where private road issues were discussed, some of the conversation was directed at defining the problem that the Council would like to address. This is important because the nature of this issue seems to involve multiple, interconnected problems. There seemed to be general agreement among Councilors that the most obvious issues seemed to be with large amounts of new residential development occurring on existing private roads.

At a staff meeting on January 20, 2017, the issue was broken down along the lines of issues related to development on private roads that is subject to subdivision review and development on

private roads that occurs outside subdivision review, on a lot-by-lot basis. The concept that seemed to clarify thinking on this was related to breaking the single issue of private road development into two questions. First, how do you keep private road issues related to public safety access related to road conditions from getting worse as new development occurs, and second, how do you start making progress on addressing issues related to public safety access related to road conditions better for private roads that are less likely to see new development. The table below shows how the discussion shaped up. Staff members present agreed that the most immediate situations to address related to keeping issues from getting worse, before spending too much time thinking about how to make existing issues better.

	<b>Subdivisions</b>	<b>Lot-by-lot development</b>
<b>Keep Private Road issues from getting worse.</b>	The attached clarifications are meant to address these types of issues. The Planning Board would consider the condition of the private road network when reviewing new subdivision applications, with clear standards to apply.	In general, but with many notable exceptions, these situations have not been identified as a problem by the Town Council.
<b>Start making Private Road issues better</b>	These are likely to be long term, road by road approaches to improvement. There are a number of options to discuss for these existing private roads with no further or limited development potential.	

## **Proposed Ordinance Change Summary**

### Section 900

- ) Change Section 911.M.2.c, to clarify the existing wording that states that existing and proposed roads that are expected to carry traffic generated by the subdivision need to be “suitably improved.” The proposed clarification is to make it clear that all of the existing and proposed private roads providing access to the subdivision lots need to be improved to the applicable Private Road standards.
- ) Change Section 911.M.5.a.5., to clarify the existing wording that states all properties served by the a private road shall have “adequate access.” Again, the proposed clarification is to make it clear that adequate access can only be met when all of the existing and proposed private roads that provide access to the subdivision meet the applicable Private Road standards.

## 911 Performance and Design Standards

M. Traffic Conditions and Streets

2. **General Access Standards.** All subdivision accesses connecting with external streets shall meet the following standards (*See” Curb Cuts, Driveway Openings” in Sec. 500 Performance Standards.*)
  - (a) Accesses connecting to any state or state-aid highway shall meet the minimum access permitting requirements of the Maine Department of Transportation “Highway Driveway and Entrance Rules”.
  - (b) Accesses that are expected to carry more than 100 passenger vehicle equivalent trips in the peak hour shall meet the minimum access permitting requirements of the Maine Department of Transportation “Rules and Regulations Pertaining to Traffic Movement Permits”.
  - (c) Existing and proposed streets and intersections that can be expected to carry traffic generated by the subdivision shall have the capacity or be suitably improved to accommodate that traffic and avoid unreasonable congestion. For the purposes of this section, suitably improved shall mean that all of the existing and proposed private roads in the road network back to the closest public street shall meet the applicable Private Road Standard.
    - (1) **Signalized Intersection.** The level of service (LOS) at a proposed signalized intersection shall be “D” or better. At an existing signalized intersection, the LOS shall not be reduced below “D” by the development. If an existing signalized intersection is operating below a LOS “D” pre-development, then the development shall not increase the delay at the intersection.
    - (2) **Unsignalized Intersection.** At an unsignalized intersection, if the LOS is forecasted to be less than a “D” post-development, then the installation of a traffic signal and/or additional turning lanes shall be investigated. If these improvements are found not to be warranted, then a LOS less than “D” may be acceptable.
  - (d) Accesses to non-residential subdivisions or to multifamily developments shall be designed to avoid queuing of entering vehicles on any street. Left lane storage capacity on the existing external street shall be provided to meet anticipated demand. A study or analysis to determine the need for a left-turn storage lane shall be done.

## 5. *Specific Street Design and Construction Standards*

### (a) General Requirements.

- (1) The Board shall not approve any subdivision plan unless the proposed streets are designed in accordance with the specifications contained in these regulations, including Table 3 and Table 4 in Appendix B. Approval of the final plan by the Board shall not be deemed to constitute or be evidence of acceptance by the municipality of any street, right-of-way or easement (*See Subsec. 911.M.6. for street acceptance procedures*).
- (2) Applicants shall submit to the Board, as part of the Preliminary Plan, detailed construction drawings showing a plan view, profile, and typical cross-section of the proposed streets. The plan view shall be at a scale of one inch equals no more than fifty feet. The vertical scale of the profile shall be one inch equals no more than five feet. The plans shall include the following information:
  - (i) Date, scale, and north point (as required in Section 910 Submission Requirements).
  - (ii) Intersections of the proposed street with existing streets.
  - (iii) Roadway and right-of-way limits including edge of pavement or aggregate base, edge of shoulder, clear zone, sidewalks, and curbs.
  - (iv) Kind, size, location, material, profile and cross-section of all existing and proposed drainage structures and their location with respect to the existing natural waterways and proposed drainage ways.
  - (v) Complete curve data shall be indicated for all horizontal and vertical curves.
  - (vi) Turning radii at all intersections.
  - (vii) Centerline gradients.
  - (viii) Size, type, vertical clearance and locations of all existing and proposed overhead and underground utilities, to include but not be limited to water, sewer, electricity, telephone, lighting, and cable television.
  - (ix) Locations and results of any test borings performed as part of the design process.
- (3) Upon receipt of plans for a proposed public street as part of a Final Plan application the Board shall forward one copy to the Town Council for informational purposes.
  - (i) Plans for streets which are not proposed to be accepted by the Town shall be sent to the Director of Public Works and the Town's consulting engineer for review and comment.
- (4) Where the applicant proposes improvements within existing public streets, the proposed design and construction details shall be approved in writing by the Director of Public Works or the Maine Department of Transportation, as appropriate.



(5) Private Roads.

The following standards, in addition to those in Table 3 and 4, apply to private roads used for the purpose of providing frontage for, and access to, individual lots of land (*See Tables 3 & 4 in Appendix B*). **Note:** *For additional standards for private roads that are not part of a subdivision application, see "Streets" in Section 500 Performance Standards*).

- (i) All private roads shall be designated as such and will be required to have adequate signage indicating the road is a private road and not publicly maintained.
- (ii) Each lot having access from an approved private road may be improved with no more than two (2) dwelling units.
- (iii) Except for sidewalk, bicycle provisions and minimum grade requirements stipulated in this Section, all private roads shall adhere to the road design standards of this Section.
- (iv) All properties served by the private road shall provide adequate access for emergency vehicles and shall conform to the approved local street numbering system. For the purposes of this section, adequate access shall mean that all existing and proposed private roads in the road network back to the closest public street shall meet the applicable Private Road Standard.
- (v) Where the subdivision streets are to remain private roads, the following words shall appear on the recorded plan: "All roads in this subdivision shall remain private roads to be maintained by the developer, lot owners or road association, and shall not be offered for acceptance, or maintained, by the Town of Windham until they meet all municipal street design and construction standards."
- (vi) The applicant shall provide evidence that the private road shall be maintained either by the applicant or by the lot owners or a homeowners association. Proof may consist of a declaration of covenants that will be recorded and become part of each deed and specify how the costs of maintenance will be apportioned among the lot owners, or appropriate homeowners association documents. In the event that a homeowners association is formed, each lot deed shall refer to the association and shall require the lot owner to be a member of the association. No private road will be maintained by the Town unless the Town has accepted the road. No private road shall be offered to the Town for acceptance until it meets the design requirements of this Ordinance.

- (vii) A paved apron shall be constructed when a gravel private road connects to a paved public street or paved private road in accordance with the standards in Table 3 and Table 4 (*See Appendix B Street Design and Construction Standards*).
- (viii) Private roads shall be designed to conform with the appropriate standards presented in Tables 1, 2, 3, 4, and the applicable cross sections in Appendix B.
- (ix) 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. A private road providing access to, or serving in any way to provide compliance with the requirements of the Ordinance for more than ten (10) lots or ten (10) dwelling units shall meet all design and construction standards for a “Major Private Road,” as defined. Nothing in this paragraph shall serve to limit the use of a private road for occasional use by and for agricultural purposes.