



# Town of Windham

Town Offices  
8 School Road  
Windham, Maine

## Meeting Minutes - Draft

### Planning Board

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Monday, February 12, 2018

7:00 PM

Council Chambers

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1 Call To Order

2 Roll Call and Declaration of Quorum

*The meeting was called to order by Chair, David Douglass. Other members present were: Keith Elder, Bill Walker, and Nick Kalogerakis.*

*Planner, Amanda Lessard, and Planning Director, Ben Smith, were also present.*

3 [PB 18-009](#) Approval of Minutes: January 22, 2018

**Attachments:** [Minutes 1-22-18 - draft](#)

*Bill Walker made a motion to accept the minutes of the January 22, 2018 meeting.*

*Seconded by Keith Elder.*

*Vote: All in favor.*

### **Public Hearings**

4 Amendment to Town of Windham Land Use Ordinance, Chapter 140. Proposed Amendments to Sections 300, 400, and 800 to implement the 21st Century Downtown Plan for North Windham. Proposed changes include the adoption of a Character Based Code for North Windham and changes to the standards of the Commercial 1 and Commercial 2 Zoning Districts.

*There was no public comment. The public hearing was closed.*

5 Amendment to Town of Windham Land Use Ordinance, Chapter 140. Proposed Amendment to Section 550 Street Standards to exempt new private roads of a certain length from street network upgrades.

*Ben Smith explained:*

- *One requirement of the private road standards was the upgrade of a private road network back to the nearest public road.*
- *The proposed exemption was intended to help property owners who wanted to divide off some property but were unable to do the required upgrade.*
- *The exemption read, "New private roads or extensions of existing private roads or private ways will be exempt from this requirement if the cumulative length of the new road or road extensions is no greater than the length of the*

*required frontage in the applicable zoning district within a five year period. Note that the new road or road extension will still need to meet the requirements of this section."*

*Griffin Bourassa joined the Board.*

*Public Comment*

*Julie Lunt-Farley, Land of Nod Road – Her grandfather had bought 50 acres of land and raised his family there. When he moved he gave land to his children and retained some. She had grown up there and lived there still. The remaining land represented savings for college and retirement. They had worked with an attorney to do estate planning in accordance with the law and with town ordinances.*

*They built a private road which didn't meet the recent standards. There was quite a bit of acreage that was off of that road. Under the exemption it would take them 20 years to reach that land. It would significantly impact their ability to build or to hold onto the land.*

*The exemption did not help a lot of people and had not been fully vetted as to how it would impact people who were long-standing citizens with land that was passed down to them and they wanted to protect it and had spent several thousands of dollars to do that through estate planning.*

*Did the exemption fall within the State rules? Did the rule fall within the State rules?*

*Ben Smith explained:*

- The road standards enacted by the Town Council had to do with how property got frontage and the requirements to which roads had to be built in order to get building permits and certificates of occupancy.*
- The State had a subdivision statute which laid out how land could be divided. It was up to towns, and within the towns' authority, to enact ordinances regarding how those lots were accessed and how roads were built.*
- The discussion was a way to provide an exemption to what could be a costly road upgrade project for people who were building one or two lots at a time.*
- He heard from Ms. Lunt-Farley that the exemption wasn't enough to allow them to do the things they had planned on doing. That should be part of the record and taken into account.*
- There was not a State law about how to access property or how roads got built in a town. There was a subdivision statute that spoke about the division of land and towns are not allowed to have their own definition of subdivision that went beyond what the State required.*
- People were allowed to make divisions without going through the Planning Board. If they wanted to make larger divisions or more divisions within a certain amount of time that would require Planning Board approval.*
- Access to those lots, whether they went through subdivision or were just created over time, was a separate issue from how the lots got created.*
- The exemption modified the rules so that if someone was going to be creating lots over time there would be a way to not have to upgrade the entire road network.*
- Not everyone would be able to take advantage of the exemption as it was written. The Board may want to consider that.*

*Ms. Lunt-Farley said they were forcing her to sell her land to be able to do anything with it. What she had created through estate planning 15 years ago allowed her to keep her land; keep the green space; keep it so that she was protected; and keep it in the family. She couldn't afford to extend the road. If you talked to most townspeople it impacted them in a similar way. She thought due diligence had not been done to say if they were helping people or just putting the exemption in so people would feel better about it. Their road was built so it was safe; they wanted to extend it so they could get to the back lots. The exemption and the laws prohibited them from that.*

*Scott McDonald said he would take the exemption but he thought it was an insult to the citizens of Windham to be put in that position. This made it so his kids couldn't develop property that they had been paying taxes on. There was no feasible way to get to it. Why not go with what the State had, rather than reinventing the wheel? He would be required to do two roads and he couldn't because he didn't have the required right-of-way. That was how it was with most of the roads. With the exemption for two houses the road wouldn't be dangerous, but for three houses it would be? That didn't make sense. This was not for his protection, that was absurd. Taxes kept going up but the land wasn't worth something. If you weren't going through subdivision you shouldn't have to do a subdivision road design. Let people do what the State said they could do. Land used to have value, not so much now.*

*George Varney – They were in the same boat; the ordinance would not do anything for them. It was not enough to get to a backlot; the resale value was not there anymore.*

*Karen Varney – They had almost 50 acres which they had saved for their sons and retirement. It was for sale and the realtor had said that no one was interested; they didn't want to put in a road. They were paying a ton of taxes to find out that they couldn't use it. The exemption would not serve any purpose.*

*Cory McDonald, Inland Farm Road – He would support an amendment but he didn't think it went far enough. Inland Farm Road had been built by people who had common sense. It was easy to put a road in and see if a fire truck or a public works truck could go down and turn around. You didn't need an engineer. If you had a set width, measure it. Was there a town plan to take the roads over? He had three boys and enough land. His parents had back land for retirement. It was hard to get to. They should be able to break off two lots but 200 feet wouldn't let him. He couldn't afford to put the road in. The line needed to be public safety, not what someone wanted. It didn't need to be paved.*

*Scott McDonald - The State allowed lot splits every five years. You should be allowed to put in your own road. The Public Works Director and Fire chief could go out and check them. It should be more lax than subdivision standards.*

*Julie Lunt-Farley – Her recommendation would be to go back and rescind what was passed then thoughtfully look at how it would impact people; who it would impact; and what would the risk be? It was a safety issue on one or two roads. They should step back and understand where it was a safety issue then go forward with an informed body of knowledge. Had there been a safety study? Had there been in depth studies with facts, figures, and logic? She had never heard of all the private roads being assessed. Regulations should be made on*

safety, not based on one or two incidents.

*Dustin Roma, a civil engineer – He was in favor of it when it was first proposed. With more thought there were a couple of things. People should be allowed to do extensions of existing roads. It would provide a benefit for roads that didn't have turn-arounds, etc. and people did not have the ability to do that.*

*His concern with building new roads was that people would look at what the ordinance would let them do. It had created a sense of urgency and uncertainty. You may see people looking to build a lot of short, little roads to access property. It would be an unintended effect of the ordinance. Many times 200 feet off the road was not the right spot to develop.*

*He would like to see something in the ordinance changed and scaled back so people could reasonably develop their land.*

*There was no more public comment. The public hearing was closed.*

6 17-24 519 Roosevelt Trail Condos. Major subdivision preliminary plan review. JTSH, LLC to request review of a five (5) unit residential subdivision. The subject property is located at 519 Roosevelt Trail and identified on Tax Map: 48 Lot: 30A, Zone: Medium Density Residential (RM) and Stream Protection (SP).

*Dustin Roma, from DM Roma Consulting Engineers, was present representing the applicant. He explained:*

- *They proposed a five unit condo project.*
- *A private watermain would extend into the property.*
- *The site would be served by gas.*
- *Power would be underground.*
- *There would be one common septic disposal field.*
- *The condos would be single story with a daylight basement.*
- *The road pavement would be 22 feet wide and have a hammerhead turn around.*
- *There was a stream protection zone for Ditch Brook.*
- *The site would be built up to accommodate the road and fill around the leach field.*
- *A forested buffer would remain between the site and Route 302.*
- *They would use the existing driveway location and replace the culvert.*
- *They had requested a waiver of the High Intensity Soil Survey submission requirement. There was one proposed leach field and similar soils throughout the site. Public water was available around the site. Stormwater management was through buffers and rain gardens.*
- *They had requested a waiver of the Hydrogeological Assessment submission requirement. There was a single field designed for project which didn't require any variances from the State standard. Properties were served by public water.*
- *They had requested a waiver of the Stormwater Flooding standard. 75 percent of the site was being treated through buffers.*

*There was no public comment. The public hearing was closed.*

7 18-03 Sabatus Lane Subdivision. Major subdivision preliminary plan review. Grondin Corporation to request review of 17 lot residential cluster subdivision. The property in question is located at Sabatus Lane and River Road and identified on Tax Map: 11, Lot: 12, Zone: Farm (F).

*There was no public comment. The public hearing was closed.*

## **Continuing Business**

- 8      [PB 18-013](#)      17-14 Kettle Estates. Major Subdivision final plan review. Robie Holdings, LLC to request review of a 21 duplex/42 unit residential subdivision. The subject property is located on Dusty Rhoades Lane and Acorn Lane and identified on Tax Map: 19, Lot: 8-2-1, Zone: Medium Density Residential (RM).

**Attachments:**    [17-15 Kettle Estates\\_Final\\_02-08-18](#)  
[Peer Review Kettle Estates 01-26-18](#)  
[Kettle Estates\\_supplemental](#)  
[Brent Libby\\_Dusty Rhoades Ln\\_01-30-18](#)  
[DustyRhoadesLane\\_width\\_01-26-18](#)  
[Kettle Estates - Final Application & Materials](#)  
[Kettle Estates - Final Plans](#)  
[Haskins, Kevin J\\_opinion RE Dusty Rhoades Lane improvements](#)  
[Martin v RobieHoldings](#)

*Jeff Amos, of Terradyn Consultants, was present representing the applicant. He explained:*

- *DEP had approved the stormwater permit.*
- *Portland Water District had provided a final sign-off on the plans.*
- *A 50 foot wide access easement had been provided along the road and through the neighboring property which would allow others to extend off of the road.*
- *A septic system had been moved to increase the wooded area between it and the property line.*
- *There had been much discussion regarding the applicant's right to use Dusty Rhoades Lane. The applicant's attorney had provided an opinion that he had full rights to upgrade and use that road. The town's attorney had agreed. An abutter strongly disagreed. The issue was currently being litigated. As a result, they no longer proposed to upgrade the first 300 feet of Dusty Rhoades Lane. Currently the road was gravel, 20 feet wide. It appeared to be in great condition. It was on highly infiltrative soils so groundwater was not an issue.*
- *The Fire Chief had provided a letter stating the road appeared to be safe for all intents and purposes.*

*Consensus of the Board was to allow public comment.*

*Mary and Mike Schwartz, Forbes Lane – Would Dusty Rhoades Lane or Acorn Lane be the primary means of entrance and egress? What access would construction vehicles use?*

*Amanda Lessard replied:*

- *The traffic analysis had used data for Dusty Rhoades Lane. It was the shortest trip to Varney Mill Road.*
- *Acorn Lane Extension would be improved to a minor local road standard.*

*Mr. Amos said the construction entrance was off of Dusty Rhoades Lane.*

Mike Martin, Varney Mill Road – He owned the 300 foot easement on Dusty Rhoades Lane and had gone to court trying to stop them from coming out of his road. The applicant hadn't even bothered to knock on his door to see what he wanted. He had only gotten an email from the applicant asking why his family would be negatively impacted and he was sorry for Mr. Martin's change of heart. The financial half of it put a lock on the deed and the bank had been notified of this. The Board should recheck that before giving final approval. The plans showed the primary access was Acorn Lane and there also was a sign saying to use Acorn Lane as the primary.

Mr. Amos replied:

- They had removed all the proposed improvements for the first 300 feet.
- The sign indicating Acorn Lane as a primary access had been removed.
- The applicant's financial capacity was available from an account, not the bank.

Amanda Lessard clarified:

- The letter of financial capacity said the applicant had funds available to complete the project as it was designed.
- The applicant's attorney had said his deed provided adequate rights to use the road for access. The town's attorney agreed.
- The Planning Board review was separate from the civil suit.
- If for some reason the applicant was unable to complete the project as it was approved he would have to come back to the Board.
- She didn't think the town's attorney had been aware of the civil suit.

The Board Commented:

- Did they still have two points of access?
- Did they have right to start the project before the dispute was settled?
- The attorney had said enough evidence was presented. They couldn't speculate beyond that.
- Portland Water District had said the installation of a new hydrant was recommended.
- What was the timetable?
- Would there be a light at the end of Dusty Rhoades Lane? All other intersections with Varney Mill Road were lit. It made sense to have a light there.
- The applicant should work on upgrading Dusty Rhoades Lane so it was reflective of the ordinance.
- If the deed was contested and there was an affidavit against the deed did it cloud the ability for development to move forward so the project had two access points?
- Who would be responsible for maintaining Dusty Rhoades Lane?
- When the town's attorney wrote his opinion he did not have knowledge of the civil suit.
- Could paving Dusty Rhoades Lane be a condition of approval?

Ben Smith explained:

- The applicant had stated there were two points of access and provided evidence. Whether it was disputed by another party or not, the threshold for presenting that information to the Board had been met. Regardless of the civil dispute they were showing two points of access on the plan. The Board had to make a determination whether the applicant had provided adequate right, title, or interest.
- If improvements were shown that they couldn't do it would be a bigger issue.

Mr. Amos said:

- Hopefully this spring all the infrastructure would be put in.

- *Internally, the association would maintain the road.*

*Amanda Lessard clarified that the hydrant would be private because it was on a private right-of-way.*

*Keith Elder made a motion that the final subdivision application for project 17-15 Kettle Estates Subdivision was found complete in regard to the submission requirements based on the application checklist, but the Planning Board retained the right to request more information where review criteria were not fully addressed.*

*Seconded by Nick Kalogerakis.*

*Vote: All in favor.*

*Keith Elder made a motion that the Final Subdivision application for 17-15 Kettle Estates on Tax Map: 19, Lot: 8-2-1 was to be approved with conditions with the following findings of fact and conclusions.*

*Consensus of the Board was to require a street light at the intersection of Dusty Rhoades Lane and Varney Mill Road.*

#### **FINDINGS OF FACT**

##### **A. POLLUTION**

- *No portion of this subdivision is within the mapped 100 year floodplain.*
- *Wetlands should be shown on the plan.*
- *A portion of this subdivision is located over a significant sand and gravel aquifer.*
- *A hydrogeologic assessment must be submitted as part of the Preliminary Plan as the subdivision is not served by public sewer and the subdivision has an average density of more than one dwelling unit per 100,000 square feet.*
- *A hydrogeologic assessment dated October 2, 2017, prepared by Mark Cenci Geologic, Inc. was provided in the December 19, 2016, preliminary plan submission. The assessment states that the 10 mg/L nitrate plumes will be approximately 150 feet in length and all wastewater disposal areas will be set back at least 150 feet from the downgradient property lines, thus meeting the ordinance standards regarding groundwater quality. NO3- 10 Mg/L plumes are shown on the Utility Plan Sheets C-3.0 and C-3.1.*

##### **B. WATER**

- *All dwelling units will be served by public water in a new water main located in the subdivision street.*
- *There is an existing fire hydrant is located at the intersection of Acorn and Forbes Lanes.*
- *A fire hydrant will be located near the mid-point of the new subdivision street and is shown on Preliminary Plan.*
- *The applicant proposes to install a new water main to serve the entire development, extended from the 8" water main in Acorn Lane. Hydrants and water main locations and details are shown as part of the Preliminary Plan on Sheets C-3.0 and C-3.1.*
- *In an Ability to Serve letter dated January 18, 2018 from Robert Bartels, P.E. of the Portland Water District, a main extension within Acorn Lane is permitted to serve the domestic and fire flow demands of the subdivision. A meter pit will be located within Dusty Rhoades Lane within 10-15 feet of the property line at Acorn Lane Extension.*

### C. SOIL EROSION

- An Erosion and Sedimentation Control Plan prepared by Terradyn Consultants dated August 7, 2017 on Sheets C-2.0 and C-2.1 has been submitted as part of the preliminary plan submission. Notes and details are on Sheet C-5.0.
- In an email dated August 16, 2017, Town Engineer Jon Earle, P.E, noted that there are gaps in the installation location of silt fence that should be connected in order to ensure sediment does not migrate onto the abutting properties during construction.
- The applicant must submit a stormwater management plan that meets the water quality and quantity standards as well as the flooding standard of Section 3 DEP Chapter 500 Stormwater Management.
- A DEP Stormwater permit is required for this project. The permit must be submitted as part of the Final Plan.
- This project is in the NPDES (National Pollutant Discharge Elimination System) area as designated by the Environmental Protection Agency for the Town of Windham. As a result, there will be additional construction inspection requirements and ongoing requirements for reporting of stormwater infrastructure maintenance as there is more than one (1) acre of development. See recommended Condition of Approval #2.
- A stormwater management plan, has been submitted as part of the August 7, 2017 Preliminary Plan submission. The proposed development is estimated to generate a total of 2.88 acres of new impervious area, with a total developed area of 10.98 acres. Stormwater is proposed to be treated by two infiltration basins and roof drain filter strips.
- In an email dated August 16, 2017, Town Engineer Jon Earle, P.E, requested submission of stormwater calculations for water quantity and quality and a stormwater maintenance plan. He also noted that there do not appear to be catch basins proposed at the intersection of Dusty Rhoades Lane and Varney Mill Road and asked if the ditch on Varney Mill Road can accommodate any additional peak runoff flows.
- The applicant submitted a revised stormwater management plan dated October 2, 2017.
- In an email dated October 13, 2017, Town Engineer Jon Earle, P.E, noted that the post development condition results in significantly reduced flows at the Varney Mill Road Ditch. He requested that roof filter strips for units 1-7 and 31-42 be shown on the plan. A roof dripline filter bed detail is shown on Sheet C-5.2. Finally, he noted that there is a minor increase in flow from the 2-yr storm (0.04 cfs pre development, 0.13 cfs post development) and a waiver request should be submitted.
- A revised stormwater management plan dated January 5, 2018 was included with the final plan submission.
- In an email dated January 26, 2018, Town Engineer Jon Earle, P.E, stated that the basic, general and flooding standards have been met for the project. He commented that for the new roadway drainage design for the extension of Dusty Rhoades Lane, Basins 5 & 6 do not capture the last 30 feet of pavements runoff.
- The Maine Department of Environmental Protection stormwater act permit L-27647 -NJ-A-N was submitted on January 28, 2018. The permit should be noted on the plan.
- In response to peer review comments, the Grading Plan and Profile Sheets were revised on February 8, 2018 to move the first two catch basins to the very beginning of the proposed improvements.

### D. TRAFFIC

- The site is accessed off of Forbes Lane and Acorn Lane, which are both public streets, and Dusty Rhoads Lane, a private way.
- The applicant must clarify if the subdivision street is proposed to remain a private street, where the Major Private Road standards apply, or if it is to be offered for public acceptance in which case it must meet the design and construction standards in



Appendix B, Tables 3 and 4 for a Major Public Street.

- The applicant must provide a traffic study to show any potential impacts of the additional dwelling units on the local street inventory. Part of this discussion should include off-site improvements to existing street, including potential needs for additional signage or sidewalks.
- As shown on the sketch plan, one entrance to the site is proposed at the end of Acorn Lane. This single entrance does not meet the ordinance requirement. § 911 M. (7) (page 9-62) requires a minimum of two connections to an existing public street for a residential subdivision street serving 31 or more units.
- The Preliminary Plan dated August 8, 2017 shows two entrances to the site: primary access from Dusty Rhoades Lane, and a secondary access from Acorn Lane, to be limited to emergency vehicles only. Road profiles and cross sections are shown on Sheets C-4.0 and C-4.1. The application states that the existing private way, Dusty Rhoades Lane, will be paved and brought up to the Major Private Road standard. Per Section 911.M.5.a.6 (pg 9-58) access drive standards for condominium subdivisions shall meet the major private road standard (right-of-way width is not applicable). The internal access road section detail is not consistent with the Major Private Road Standard. The extension of Acorn Lane is proposed to be a 14 foot wide paved road with a base consistent with the Minor Local Road standard.
- Ornamental pole lights are shown on the preliminary plan. Except for a light at intersections with existing public streets, Section 911.M.3.d states that additional streetlights shall be discouraged.
- In an email dated August 16, 2017, Town Engineer Jon Earle, P.E, had several comments about the proposed road plans and noted that waiver requests may be required. He also noted that the major private road standard detail was incorrect and questioned if additional information on the existing condition of Dusty Rhoades Lane would be provided.
- The proposed hammerhead turn around shown near the end of the subdivision street does not meet the subdivision ordinance requirement. § 911 M. 3. (2) (page 9-51) and shown in Appendix B of the Land Use Ordinance. The hammerhead at the intersection of Dusty Rhoades Lane and Acorn Lane also does not meet the subdivision ordinance requirement.
- The Preliminary Plan dated October 2, 2017 shows two entrances to the site: primary access from Dusty Rhoades Lane, and a secondary access from Acorn Lane. The submission has revised the extension of Acorn Lane to be consistent with the Minor Local Road standard. A hammerhead at the property line provides road frontage for the lot. The application states that the existing private way appears properly constructed and they plan to place finish gravel over the existing surface prior to paving.
- In an email dated October 13, 2017, Town Engineer Jon Earle, P.E, suggested removing or relocating the Acorn Lane hammerhead to provide additional wooded screening between the existing property and the proposed development. He noted that the typical road sections on Sheet C4.1 all meet the respective Town standards but the existing Dusty Rhoades Lane provide does not. He also requested verification that the existing material meets the Town specifications.
- There is a large undeveloped property which abuts the proposed subdivision. § 911 M. 3. (a) (page 9-51) and § 911 M. 5. (b) (5) (iii) (page 9-60) allows the Board to require the dedication of a right-of-way to provide continuation of the road where future development is possible. At the meeting on June 12, 2017 the Planning Board requested a right-of-way to the abutting property. A right-of-way is not shown on the August 7, 2017 preliminary plan. At the meeting on August 28, 2017 the Planning Board requested a right-of-way to the abutting property. A right-of-way is not shown on the October 2, 2017 revised preliminary plan. An access easement from Map 8 Lot 8-2 to Acorn Lane should be shown on the plan. Draft language should be submitted with the Final Plan submission. See recommended Condition of Approval #3. The access easement is

shown on the final plan.

- On the Sketch plan, a four (4) foot wide sidewalk is proposed on one side of the subdivision road. Appendix B, Table 3 requires the sidewalk to be five (5) feet wide. The sidewalk would extend from the location of the group mailbox to the last driveway on that side of the road (units 31 and 32).
- The Preliminary Plan set dated August 7, 2017 shows a five (5) foot wide sidewalk is proposed on one side of the subdivision road. The sidewalk extends from the intersection of Acorn Lane and Dusty Rhoads Lane to the end of the road (just beyond units 31 and 32).
- A traffic impact study prepared by William J. Bray, P.E. of Traffic Solutions, was included in the August 7, 2017 preliminary plan submission. The 21 duplex units will generate 28 peak hour trips in the AM and 33 vehicle trip in the PM peak hour. The traffic study assumes that all traffic will utilize the primary point of access of Dusty Rhoades Lane.
- The traffic assessment notes that a minimum unobstructed sightline of 305 feet is required and the sight distance at the intersection of Dusty Rhoades Lane at Varney Mill Road was measured at 500 feet in both directions. The site distance should be noted on the plan.
- At the Planning Board public hearing on October 23, 2017 abutter Michael Martin who owns the property encumbered by the first 300 feet of Dusty Rhoades Lane, commented that the applicant did not have the right to pave the road and was overburdening the easement.
- The applicant provided evidence of right, title, or interest to make improvements to Dusty Rhoades Lane in letters dated October 23, 2017 from Scott Herrick of Drummond & Drummond and Carly S. Joyce, Esq of Two Lights Settlement Services.
- The Final Plan submission dated January 5, 2018 removes all proposed improvements to the first 300 feet of Dusty Rhoades Lane per abutter demand. The Board should make a determination on if the existing private road is adequate in terms of traffic, capacity, pedestrian safety and actual construction to serve as an appropriate access road. The final plan also shows a sign at the intersection of Dusty Rhoades Lane and Acorn Lane that reads, "Primary site access to be through Acorn Lane."
- In an email dated January 26, 2018 Town Engineer Jon Earle, P.E, suggested the applicant provide gravel depth and gradation information for the portion of Dusty Rhoades Lane that will not be improved and asked for verification of the 20 foot width of the existing road depicted on the plan and that the traffic study be revised if traffic will be directly to use Acorn Lane for primary access.
- In response to peer review comments the applicant submitted aerial photography overlaid with the subdivision plan to demonstrate the existing edge of gravel and revised the final plan to eliminate the sign directing traffic to use Acorn Lane.
- In an email dated January 30, 2018, Fire Chief Brent Libby, indicated that the emergency vehicles could safely use the existing road.

#### E. SEWERAGE

- The development will be served by seven (7) shared subsurface wastewater disposal systems.
- A preliminary wastewater disposal investigation dated August 5, 2017, prepared by Mark Cenci Geologic, Inc was provided in the August 7, 2016, preliminary plan submission and indicates that suitable soils and site conditions were found for the proposed disposal of wastewater. Soil test pit logs were included with the October 2, 2017 submission.
- Proposed septic system and test pit locations are shown on Sheets C-3.0 and C-3.1 of the preliminary plan set.

#### F. SOLID WASTE

- *Residents of the single family dwellings will participate in the Town's pay-per-bag garbage program.*
- *Development of these lots should not produce an undue burden on the Town's ability to collect and dispose of solid waste.*

#### G. AESTHETICS

- *The site is located on one half of a reclaimed gravel pit, which appears to be growing up with brush and scrub. The old pit is completely surrounded by residential neighborhoods.*
- *Street trees are required and must conform with § 911 E. 1. (b) (page 9-41). Street trees are shown on the preliminary plan.*
- *Note 9 on the preliminary plan revised October 2, 2017 restricts clearing for five years after planning board approval beyond the tree line shown on the plan.*
- *Sample duplex building elevations were included in the August 7, 2017 preliminary plan submission.*

#### H. CONFORMITY WITH LOCAL PLANS AND ORDINANCES

- *Comprehensive Plan:*
- *The plan does meet the goals of the 2017 Comprehensive Plan.*
- *Land Use Ordinance:*
- *The proposal meets the net residential density requirements and the setback requirements of the RM district.*
- *Subdivision Ordinance*
- *A landscaping (street trees and limits of clearing) is shown on the Preliminary Plan.*
- *Standard notes and the standard condition of approval must be shown on the plans.*
- *Digital transfer of the subdivision plan data was submitted with the Final Plan submission for inclusion with the Town's GIS.*
- *Condominium Association Documents was provided with the Final Plan submission and must specifies the rights and responsibilities of each lot owner with respect to the maintenance, repair, and plowing of the subdivision streets, open space and stormwater infrastructure.*
- *Others:*
- *Chapter 144 Post-Construction Stormwater Ordinance: The site is in the NPDES MS4 area as well as the Pleasant River watershed (the Town's high priority watershed).*

#### I. FINANCIAL AND TECHNICAL CAPACITY

- *A letter dated October 20, 2017 from Kimberly A. Donnelly, Senior Vice President at Gorham Savings Bank was submitted as evidence of financial capacity.*
- *The applicant has provided information on the licensed professionals working on this project as evidence of technical capacity.*

#### J. RIVER, STREAM OR BROOK IMPACTS

- *The project will not adversely impact any river, stream, or brook.*

#### CONCLUSIONS

1. *The proposed subdivision will not result in undue water or air pollution.*
2. *The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the site plan.*
3. *The proposed subdivision will not cause an unreasonable burden on an existing water supply.*
4. *The proposed subdivision 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.*
5. *The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.*
6. *The proposed subdivision will provide for adequate sewage waste disposal.*
7. *The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste.*
8. *The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.*
9. *The proposed subdivision conforms with a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.*
10. *The developer has adequate financial and technical capacity to meet the standards of this section.*
11. *The proposed subdivision is not situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, Chapter 3, subchapter I, article 2-B M.R.S.A.*
12. *The proposed subdivision will not alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.*
13. *The proposed subdivision is not situated entirely or partially within a floodplain.*
14. *All freshwater wetlands within the proposed subdivision have been identified on 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 storm water 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 have/do not have a lot depth to shore frontage ratio greater than 5 to 1. (N/A)*
18. *The long-term cumulative effects of the proposed subdivision 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. (N/A)*
20. *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 2017, as amended February 8, 2018, and supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board, and any variation from such plans, proposals and*

supporting documents and representations are subject to review and approval by the Planning Board or the Town Planner in accordance with Section 913 of the Subdivision Ordinance.

2. Approval is subject to the requirements of the Post-Construction Stormwater Ordinance, Chapter 144. 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. An access easement for the benefit of Map 19 Lot 8-2 to travel over Dusty Rhoades Lane to the public street, Acorn Lane, must be recorded in the Cumberland County Registry of Deeds prior to the issuance of building permits.

4. Dusty Rhoades Lane shall be constructed to the Major Private Road standard.

5. A streetlight shall be installed at the intersection of Dusty Rhoades Lane and Varney Mill Road.

Seconded by Nick Kalogerakis.

Vote: Three in favor. Bill Walker and Griffin Bourassa opposed.

**9**      [PB 18-014](#)

Amendment to Town of Windham Land Use Ordinance, Chapter 140. Proposed Amendments to Sections 300, 400, and 800 to implement the 21st Century Downtown Plan for North Windham. Proposed changes include the adoption of a Character Based Code for North Windham and changes to the standards of the Commercial 1 and Commercial 2 Zoning Districts.

**Attachments:**   [PB packet NW zoning 02-07-2018](#)

Meeting went into Recess

Meeting Reconvened

Ben Smith explained:

- Character Based Codes (CBC) had been developed as the type of zoning to be used in the 21st Century Downtown Plan area. A key part of the plan was how private development would happen in relation to roads and other buildings.
- A staff alternative to the CBC had been drawn up, at Town Council's request, as a way to incrementally implement the plan. As a temporary measure, people would be able to choose which zoning model they wanted.
- The Board should make a recommendation for one or the other and look at details such as setbacks, rights-of-way, parking, and block length requirements.

The Board commented:

- CBC were utilized on other communities. Having the Board and community knowing both was crazy. The Board should decide to use CBC, vet it, and then make a final recommendation on adjustments.
- Could the Planning Department jump in and handle the full blown CBC? Whatever was rolled out had to be done appropriately. There should be more discussion regarding what the staff alternative would do and what was involved.
- A more controlled approach would be easier to absorb and learn.
- Not a big fan of CBC. If pushing forward, the staff alternative was a nice way to ease into it.
- CBC was a huge change for the staff and people who did business in town. People

would not know until it affected them and might be upset about it.

- Implementation was a concern; it would require a different process. They had to serve the public appropriately.

Consensus of the Board was to schedule a workshop for further discussion of the staff alternative.

- 10      [PB 18-015](#)      Amendment to Town of Windham Land Use Ordinance, Chapter 140. Proposed Amendment to Section 550 Street Standards to exempt new private roads of a certain length from street network upgrades.

**Attachments:**   [PB Packet Private Road Exemption 02-06-18](#)

[Noble, John E Private Roads 01-22-18](#)

Amanda Lessard stated that written public comment had been received addressing the fact that a 200 foot extension may not give someone two lots. The perception of the discussion at the Council meeting was they were saying the exemption for an extension would give people two lots. If your lot wasn't perfectly square you wouldn't get that.

The Board commented:

- The ordinance was cost prohibitive. Some recommendation had to be given to Town Council so they knew the Planning Board had heard the public's voice.
- If the amendment did not pass it may put even more people in harm's way as far as lots went. This was step one. There were still issues the Council had been going to address.
- The exemption would help people but it didn't address the issue of a bad ordinance. The unintended consequence was they had taken all back land and made it prime for subdivision. It was cost prohibitive to develop backlots.
- The issue was existing camp roads that were never intended to be year-round, not new roads.
- The amendment should be passed and a task force should be created. The task force should include engineers, people who build roads, a developer, and the Public Works Director who could analyze it and figure out the best steps forward. Then they could work toward rescinding the amendment and making it right.
- A mechanism was needed for putting in a road and leaving the lot's value.
- Where was the line that allowed safe communities and roads; provided for community services; and let people do what they wanted with their property?
- Part of the goal was to prevent slow-roll subdivision. There could be a committee to evaluate lot divisions.

Bill Walker made a motion in regard to Planning Board item 18-015 amendment to the Town of Windham Land Use Ordinance, Chapter 140 with the recommendation they approve the proposed amendment to Section 500 of the Land Use Ordinance to exempt new private roads of a certain length from street network upgrades with the recommendation to the Town Council that a task force is created to go back and look at the private road ordinance that was recently passed and also to create a committee to evaluate slow-roll subdivisions.

Seconded by Nick Kalogerakis.

All in favor.

Meeting went into Recess

Meeting Reconvened

- 11      [PB 18-010](#)      17-24 519 Roosevelt Trail Condos. Major subdivision preliminary plan review. JTSH, LLC to request review of a five (5) unit residential subdivision. The subject property is located at 519 Roosevelt Trail and identified on Tax Map: 48 Lot: 30A, Zone: Medium Density Residential (RM) and Stream Protection (SP).

Attachments:    [17-24 519 Roosevelt Trail Condos Prelim 02-07-2018](#)

[Peer Review 519Roosevelt 02-02-2018](#)

[519 Roosevelt Trail Condos - Response to Comments - 2018 2 1](#)

[519 Roosevelt Condominium Preliminary Subdivision Application 2018 1 22](#)

[519 ROOSEVELT TRAIL CONDOMINIUM PLAN SET 2018 1 22](#)

*The Board commented:*

- *The Ditch Brook setback line had to be adjusted to 100 feet.*
- *Was the right-of-way included in the net residential density calculations?*
- *Why was a streetlight recommended for the intersection?*
- *How many square feet were in each unit?*
- *Could unit 4 be moved out of wetland?*

*Keith Elder made a motion to approve waivers of the high intensity soil survey, hydrogeological assessment, and stormwater flooding standard.*

*Seconded by Nick Kalogerakis.*

*Vote: All in favor.*

*Nick Kalogerakis made a motion that the Preliminary Plan application for project 17-24 519 Roosevelt Trail Condos was found complete in regard to the submission requirements based on the application checklist, but the Planning Board retained the right to request more information where review criteria were not fully addressed.*

*Seconded by Bill Walker.*

*Vote: All in favor.*

*Keith Elder made a motion that the Preliminary Subdivision application for 17-24 519 Roosevelt Trail Condos on Tax Map: 48, Lot: 30A was to be approved with conditions with the following findings of fact and conclusions.*

#### *FINDINGS OF FACT*

##### *A. POLLUTION*

- *A portion of the proposed 2.16 acre property is located within the mapped 100 year flood plain. This flood plain area is located within the common area of the condo association.*
- *This subdivision is not located over a significant sand and gravel aquifer.*
- *A hydrogeologic assessment must be submitted as part of the Preliminary Plan as the subdivision is not served by public sewer and the subdivision has an average density of more than one dwelling unit per 100,000 square feet. The applicant has requested a waiver from this submission requirement.*

**B. WATER**

- *All dwelling units will be served by public water from an existing main in Roosevelt Trail. A written statement from the Portland Water District indicating that there is adequate water supply to service the subdivision must be submitted with the Preliminary Plan. An Ability to Serve letter from the Portland Water District must be submitted with Final Plan.*
- *An email dated January 23, 2018 from Robert Bartels, PE, of the Portland Water District includes comments for a new service to the property. The existing service is to be retired.*
- *The closed existing fire hydrant is located on Roosevelt Trail to the south of the proposed subdivision at the intersection with Varney Mill Road. Existing hydrant locations are less than 1,000 feet from the development.*

**C. SOIL EROSION**

- *An erosion and sedimentation plan, prepared by DM Roma Consulting Engineers, dated January 25, 2018, has been submitted as part of the Preliminary Plan. Notes and details are shown on Drawing D-1.*
- *This project may require a Maine Department of Environmental Protection (DEP) Chapter 500 Stormwater Permit. The applicant must submit a stormwater management plan that meets the water quality and quantity standards as well as the flooding standard of Section 3 DEP Chapter 500 Stormwater Management.*
- *This project is in the NPDES (National Pollutant Discharge Elimination System) area as designated by the Environmental Protection Agency for the Town of Windham. As a result, there will be additional construction inspection requirements and ongoing requirements for reporting of stormwater infrastructure maintenance if the area of development is greater than one (1) acre.*
- *A stormwater management plan has been submitted as part of the January 25, 2018 Preliminary Plan submission. The project proposes to treat the new 40,415 square feet (0.93 acres) of new developed area with a stone berm level spreaders discharging to a forested buffer, a rain garden, and roof drip edges on each condo building.*
- *A note should be added to the plan that the stormwater buffer will be permanently marked prior to the start of construction.*
- *A note should be added to the plan that all buildings will require the installation of a roofline drip edge.*
- *The raingarden location should be shown on the subdivision plan and a design for the rain garden should be submitted with the Final Plan.*
- *In an email dated February 2, 2018, Town Engineer Jon Earle P.E., confirmed that the project meets the Chapter 500 standards for water quality and noted that the applicant is requesting a waiver from the stormwater flooding standard, as more than 75% of the impervious and developed areas are treated through the use of wooded buffers, but a calculation showing the percentage of treatment by buffers was not provided.*

**D. TRAFFIC**

- *Per Section 911.M.5.a.6 (pg 9-58) access drive standards for condominium subdivisions shall meet the major private road standard (right-of-way width is not applicable).*
- *The site is accessed off of Roosevelt Trail, a paved public street. Sight distance for the new subdivision street should be shown for both directions along Roosevelt Trail on the Preliminary Plan.*
- *At the Development Team meeting on December 1, 2017, Public Works Director*



Doug Fortier stated that the proposed entrance is located outside of the urban compact line and the Town will issue an entrance permit. He asked that the culvert be sized and shown on the plan.

- At the Development Team meeting on December 1, 2017, Police Captain William Andrew recommended a streetlight at the proposed intersection where there would be increased traffic. Section 911.M.3.d states that streetlights may be required at intersections with existing public streets. There are existing streetlights to the north on Roosevelt Trail at the intersection with Provost Drive and to the south at the intersection with Danielle Drive.
- The February 1, 2018 preliminary plan submission states that the based on the ITE Trip Generation Manual the proposed 5 residential condos are expected to generate 3 peak hour trip-ends and 30 daily vehicle trips.
- The road plan and profile (Sheet CU-1) and details (Sheet D-1) dated January 25, 2018 propose constructing the condo access road with a 22 foot wide paved travel way with 1 foot gravel shoulders.
- In an email dated February 2, 2018, Town Engineer Jon Earle P.E., commented that the culvert sizing calculations for the new culvert at the driveway entrance should be provided, the site distances should be shown on the plan, and the depth of gravel shown in the cross section needs to be increased to meet the major private road standard.

#### E. SEWERAGE

- The development will be served by one common private subsurface wastewater disposal systems.
- Soil test pit analysis prepared by James Logan, LSE dated February 1, 2018 show that the lot has adequate soils to support a private septic system. Test pit locations must be shown on the Preliminary Plan.

#### F. SOLID WASTE

- Residents of the single family dwellings will participate in the Town's pay-per-bag garbage program.
- Development of these lots should not produce an undue burden on the Town's ability to collect and dispose of solid waste.

#### G. AESTHETICS

- A single family dwelling on the site was recently demolished. The site is lightly wooded and the majority is relatively flat. The rear of the property slopes towards Ditch Brook.
- There are no documented rare botanical features or significant wildlife habitat documented on the site.
- Street trees are required at least every fifty (50) feet (§ 911.E.1.b) and are shown on the preliminary plan.
- Limits of tree clearing are shown on the preliminary plan. A note should be added to the plan stating that clearing of tress is not allowed in areas where tree cover is depicted on the plan for a period of at least five (5) years from the date of Planning Board approval.

#### H. CONFORMITY WITH LOCAL PLANS AND ORDINANCES

- Comprehensive Plan:
- The plan does meet the goals of the 2017 Comprehensive Plan.

- *Land Use Ordinance:*
- *The lot meeting the dimensional standards of the Medium Density Residential (RM) District (minimum 20,000 square feet on public water and 100 feet of road frontage).*
- *Net residential density calculations are shown on the plan.*
  
- *Subdivision Ordinance*
- *Proposed landscaping is shown on the Preliminary Plan.*
- *Standard notes and the standard condition of approval must be shown on the plans.*
- *Subdivision plan data compatible with the Town GIS must be submitted as part of the Final Plan submission.*
- *Condominium association documents should be provided with the Final Plan submission and must specify the rights and responsibilities of each owner with respect to the maintenance, repair, and plowing of the subdivision streets, open space and stormwater infrastructure.*
  
- *Others:*
- *Street Naming and Addressing: Following consultation with the Assessing Department, a proposed road name for the subdivision road must be shown on the Final Plan.*
- *Chapter 144 Post-Construction Stormwater Ordinance: The site is in the NPDES MS4 area. The subdivision's new development is less than one (1) acre.*

#### *I. FINANCIAL AND TECHNICAL CAPACITY*

- *A letter dated January 25, 2018 from Jane Watson, Assistant Manager at Norway Savings Bank was submitted as evidence of financial capacity.*
- *The applicant has provided information on the licensed professionals working on this project as evidence of technical capacity*

#### *J. RIVER, STREAM OR BROOK IMPACTS*

- *The applicant should demonstrate that the project will not adversely impact any river, stream, or brook.*
- *The property abuts Ditch Brook. There is a 100-foot Stream Protection Zone on either side of this brook. The SP District boundary is shown on the plan. No development is proposed within the shoreland zone.*

#### *CONCLUSIONS*

- 1. The proposed subdivision will not result in undue water or air pollution.*
- 2. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the site plan.*
- 3. The proposed subdivision will not cause an unreasonable burden on an existing water supply.*
- 4. The proposed subdivision 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.*
- 5. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.*
- 6. The proposed subdivision will provide for adequate sewage waste disposal.*
- 7. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste.*
- 8. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified*

by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

9. The proposed subdivision conforms with a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.

10. The developer has adequate financial and technical capacity to meet the standards of this section.

11. The proposed subdivision is situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, Chapter 3, subchapter I, article 2-B M.R.S.A.

12. The proposed subdivision will not alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.

13. The proposed subdivision is not situated entirely or partially within a floodplain.

14. All freshwater wetlands within the proposed subdivision have been identified on 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 storm water 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 have a lot depth to shore frontage ratio greater than 5 to 1.  
N/A

18. The long-term cumulative effects of the proposed subdivision 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. (N/A)

20. 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 November 20, 2017, as amended January 25, 2018, and supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board, and any variation from such plans, proposals and supporting documents and representations are subject to review and approval by the Planning Board or the Town Planner in accordance with Section 913 of the Subdivision Ordinance.

Seconded by Bill Walker.

Vote: All in favor.

## 12 [PB 18-011](#)

18-03 Sabatus Lane Subdivision. Major subdivision preliminary plan review. Grondin Corporation to request review of 17 lot residential cluster subdivision. The property in question is located at Sabatus Lane and River Road and identified on Tax Map: 11, Lot: 12, Zone: Farm (F).

Attachments: [18-03 Sabatus Lane Prelim 02-07-18](#)

[Peer Review Sabatus 02-02-2018](#)

[Sabbatus Lane Subdivision - Response to Comments 2018\\_2\\_1](#)

[Sabbatus Lane Subdivision - Plan Set \(2018-01-25\)](#)

[Sabbatus Lane Subdivision - Preliminary Subdivision Application \(2018-01-25\)](#)

[Parks&Rec PB Memo Sabatus22018](#)

Dustin Roma, from DM Roma Consulting Engineers, was present representing the applicant. He explained the project:

- They proposed 17 lots on 28 acres. Access would be from Sabatus Lane and River Road. 15 lots would be located on an 800 foot road extension. Two lots would get access from River Road.
- An existing watermain would be extended into the project and a hydrant installed.
- The Parks and Recreation Director thought it would be worthwhile to have the open space as an extension to Dundee Park. Walking trails seemed to be the predominate use pattern.
- He had looked at the roadway configuration for access to adjacent properties. There were two dead end roads with houses at the end which didn't seem to present a logical opportunity to extend the roads.
- They requested a waiver to reduce the amount of required net buildable area in the open space. Adding more upland area wouldn't be a benefit. They met the aggregate overall open space but not the composition of that area.
- They requested a waiver of the High Intensity Soil Survey submission requirement. At a meeting with the town's engineer they had looked at the developed part of the property. Stormwater buffers would treat 75 percent of the stormwater. Soils were consistent there and were relatively high stormwater run-off soils. A high intensity soil survey would either maintain the soils or suggest they were a better drainage class. Doing the survey would not provide information that would change the design.
- They requested a waiver of the Hydrogeological Assessment submission requirement. There were underlying water movement conditions. Indications were that groundwater would go to the wetland or the Presumpscot River.
- The ordinance required subdivisions that generated more than 140 trips to provide a traffic impact analysis. They had a total of 170 trips. 150 from the road extension and 20 from the two lots on River Road. It was an unsignalized intersection coming onto River Road. Adding those additional peak hour trips to the neighborhood showed an increase in queueing but no safety impact or perceived improvements. Given that there were no likely mitigations and traffic was on the cusp of needing a study they didn't think it would provide valuable information.
- They had provided demonstration that 75 percent of stormwater would go to the buffer.

The Board commented:

- Was there anything to be learned from a traffic study?
- Was there a way to get to the open space from the 20 foot easement?
- Was the road harmonious with the existing development?
- Were there wells in the vicinity of the project?
- During peak summer when Dundee Park was being used would traffic push them over the tipping point?
- There was a distinct benefit to the community to allow the waiver for the open space.

Amanda Lessard said it was not a high crash location. There may be some turning delays but likely no recommendation for turning lanes.

*Dustin Roma replied:*

- *Those were forested wetlands; they were walkable.*
- *The roads were fairly well maintained. This road was likely to have more gravel than the existing, different specs and likely more pavement.*
- *Public water did not extend down Dundee Road. They had looked at the potential for groundwater to go in that direction.*

*The Board was unanimous in agreement with the waiver requests.*

*Bill Walker made a motion to accept the waiver requests for the high intensity soil survey, hydrogeological assessment, traffic impact study, cluster subdivision open space requirement, and stormwater flooding standard.*

*Seconded by Nick Kalogerakis.*

*Vote: All in favor.*

*Bill Walker made a motion that the Preliminary Plan application for project 18-03 Sabatus Lane Subdivision was found complete in regard to the submission requirements based on the application checklist, but the Planning Board retained the right to request more information where review criteria were not fully addressed.*

*Seconded by Griffin Bourassa.*

*Vote: All in favor.*

*Bill Walker made a motion that the Preliminary Subdivision application for 18-03 Sabatus Lane Subdivision on Tax Map: 11, Lot: 12 was to be approved with conditions with the following findings of fact and conclusions.*

#### **FINDINGS OF FACT**

##### **A. POLLUTION**

- *No portion of this subdivision is within the mapped 100 year floodplain.*
- *This subdivision is not located over a significant sand and gravel aquifer.*
- *A hydrogeologic assessment must be submitted as part of the Preliminary Plan as the subdivision is not served by public sewer and the subdivision has an average density of more than one dwelling unit per 100,000 square feet. The applicant has requested a waiver from this submission requirement.*

##### **B. WATER**

- *The fifteen (15) lots on Sabatus Lane will be served by public water for domestic use.*
- *A written statement from the Portland Water District indicating that there is adequate water supply to service the subdivision must be submitted with the Preliminary Plan. An Ability to Serve letter from the Portland Water District must be submitted with Final Plan.*
- *An email dated February 2, 2018 from Robert Bartels, PE, of the Portland Water District states that it is possible to connect to the existing 8 inch water main in Sabatus Lane to serve the proposed subdivision.*
- *Two (2) lots on River Road will be served by private wells. In accordance with cluster subdivision standards in Section 911.K3.b the applicant must demonstrate on the plan*

*that it is possible to locate a subsurface wastewater disposal field and a well on each lot. When determined that it is necessary for specific lots, by the Planning Board, as a Condition of Approval, the location of these elements shall be elements of the subdivision plan, and any future changes to the location of these elements will require an amended subdivision review.*

- Well exclusion areas for Lots 16 and 17 are shown on the subdivision plan revised February 1, 2017. Note 16 states that the private wells shall be located no more than 90 feet from the River Road right-of-way boundary.*
- Existing fire hydrants are located on Cedar Lane east of Reba Lane and on River Road at the intersection of Presumpscot Road. Proposed hydrants should be shown on the plan. A new hydrant is proposed on the extension of Sabatus Lane at the lot line between Lot 3 and Lot 4 and is shown on Sheet PP-1 of the preliminary plan set.*

#### **C. SOIL EROSION**

- An erosion and sedimentation plan, prepared by DM Roma Consulting Engineers, dated January 25, 2018, has been submitted as part of the Preliminary Plan. Notes and details are shown on Drawing D-1.*
- This project may require a Maine Department of Environmental Protection (DEP) Chapter 500 Stormwater Permit. The applicant must submit a stormwater management plan that meets the water quality and quantity standards as well as the flooding standard of Section 3 DEP Chapter 500 Stormwater Management.*
- This project is in the NPDES (National Pollutant Discharge Elimination System) area as designated by the Environmental Protection Agency for the Town of Windham. As a result, there will be additional construction inspection requirements and ongoing requirements for reporting of stormwater infrastructure maintenance if the area of development is greater than one (1) acre. See Condition of Approval #2.*
- A stormwater management plan has been submitted as part of the January 25, 2018 Preliminary Plan submission. The project proposes to treat the 220,550 square feet (6.09 acres) of new developed area with two stone berm level spreaders discharging to a forested buffer, a buffer on Lot 6 and roof drip edges on each building.*
- The stormwater management plan states that a DEP permit is not required as the applicant will construct the roadway without developing the lots and the roadway will generate less than 1 acre of new impervious surface and less than 5 acres of total development.*
- Note 12 on the plan states that all buildings will require the installation of a roofline drip edge and Note 13 states that stormwater buffers must be temporary marked prior to site disturbance and permanently marked after the lot is developed.*
- In an email dated February 2, 2018, Town Engineer Jon Earle P.E., confirmed that the project meets the Chapter 500 standards for water quality and noted that the applicant is requesting a waiver from the stormwater flooding standard, as more than 75% of the impervious and developed areas are treated through the use of wooded buffers, but a calculation showing the percentage of treatment by buffers was not provided.*

#### **D. TRAFFIC**

- Most of the subdivision lots will have access from the new 800 foot subdivision street, an extension of Sabatus Lane, a paved public street. Section 911.K.3.f requires cluster subdivision roads to be built to the Minor Local Street standard.*
- Two of the lots will have access on River Road, a paved public street. A shared driveway is proposed. Sight distance for the shared driveway should be shown for both directions along River Road on the Preliminary Plan.*
- At the Development Team meeting on December 28, 2017, Public Works Director Doug Fortier stated that the proposed entrance on River Road is located within the urban*

compact area and will require an entrance permit from MaineDOT. The MDOT Entrance Permit must be submitted with the Final Plan.

- Based on the distance to uses that would generate pedestrian trips, sidewalks are not required. When sidewalks are not required for local streets, Section 911.M.5.b.6.ii requires that the applicant construct a sidewalk or a street with a widened shoulder. One (1) additional foot of paved shoulder, on each side of the street, shall be added to the required minimum shoulder width.
- The January 25, 2018 preliminary plan submission states that the based on the ITE Trip Generation Manual the proposed 17 residential lots are expected to generate 17 peak hour trip-ends. The February 1, 2018 submission states that the project will generate 170 daily vehicle trips (150 daily trips on Sabatus Lane and 20 daily trips on River Road).
- A traffic impact analysis is required for subdivisions projected to generate more than 140 vehicle trips per day. The applicant has requested a waiver from the submission requirement based on the opinion that there would be no off-site improvements required as a result of a study.
- A road plan and profile, prepared by DM Roma Consulting Engineers, dated January 25, 2018, shown on Sheet PP-1, was submitted as part of the Preliminary Plan.
- The road plan and profile (Sheet PP-1) and details (Sheet D-1) dated January 25, 2018 propose constructing the road with an 18 foot wide paved (2" surface pavement) travel way with 2 foot gravel shoulders. One additional foot of paved should is required. The applicant should revise the cross section detail or submit a waiver request.
- In an email dated February 2, 2018, Town Engineer Jon Earle P.E., commented that the waiver request from the submission of a traffic impact analysis is reasonable.

#### E. SEWERAGE

- The development will be served by individual private subsurface wastewater disposal systems.
- Soil test pit analysis prepared by Mark J. Hampton, LSE CSS of Mark Hampton Associates, Inc dated January 3, 2018 show that each lot has adequate soils to support a private septic system. Test pit locations are shown on the plan.

#### F. SOLID WASTE

- Residents of the single family dwellings will participate in the Town's pay-per-bag garbage program.
- Development of these lots should not produce an undue burden on the Town's ability to collect and dispose of solid waste.

#### G. AESTHETICS

- The portion of the lot with frontage on River Road is a field while the remainder of the side is wooded.
- The property abuts the Town's Dundee Park.
- There are no documented rare botanical features or significant wildlife habitat documented on the site.
- Street trees are shown on the Plan and Profile Sheets PP-1 and PP-2 of the preliminary plan set and Note 14 on the plan states that street trees shall be planted or preserved at an interval no less than one tree every 50 feet of roadway, and in accordance with Section 911.E.1.b of the Land Use Ordinance. Limits of tree clearing are shown on the preliminary plan. Note 15 on the plan states that clearing of tress is not allowed in areas where tree cover is depicted on the plan for a period of at least five (5) years from the date of Planning Board approval.

#### H. CONFORMITY WITH LOCAL PLANS AND ORDINANCES

- *Comprehensive Plan:*
- *The plan does meet the goals of the 2017 Comprehensive Plan.*
  
- *Land Use Ordinance:*
- *All lots fall within the minimum and maximum lot sizes of 30,000-50,000 square feet (one lot 60,000 sf max) for cluster lots in the F zoning district.*
- *Net residential density calculations are shown on the Plan.*
- *No more than 30% of the lots have direct vehicular access onto an existing public road.*
- *The total area of reserved open space equals or exceeds 50% of the gross land area of the property to be subdivided.*
- *At least 50% of the land suitable for development shall be included in the common open space. The sketch plan shows ~39.75% of the net area provided in the common open space. The applicant is requesting a waiver from this standard. In a memo dated February 6, 2018, Parks & Recreation Director Linda Brooks commented that the amount of non-wetland areas in the open space would still allow for passive recreational activities as well as possible trail development.*
  
- *Subdivision Ordinance*
- *A landscaping plan must be submitted with the Preliminary Plan.*
- *Standard notes and the standard condition of approval must be shown on the plans.*
- *The subdivision is utilizing the 20% density bonus to gain an additional lot. In order to be eligible, the open space must be open for general public use, not just homeowners within the subdivision. Access easement for the open space must be recorded in the registry prior to the issuance of building permits. The final plan should note which portion of the open space may be dedicated for acceptance by the Town and a written offer of cessation must be submitted with the Final Plan. See Condition of Approval #3.*
- *The Tax Map and Lot numbers provided by the Tax Assessor must be shown on the Final Plan.*
- *Subdivision plan data compatible with the Town GIS must be submitted as part of the Final Plan submission.*
- *Homeowner association documents should be provided with the Final Plan submission and must specify the rights and responsibilities of each lot owner with respect to the maintenance, repair, and plowing of the subdivision streets, open space and stormwater infrastructure.*
  
- *Others:*
- *Street Naming and Addressing: The applicant should consult with the Assessing Department, to determine if a road name will be required for the shared driveway off of River Road. Road names should be shown on the Final Plan. A street name is not required.*
- *Chapter 144 Post-Construction Stormwater Ordinance: The site is in the NPDES MS4 urbanized area.*

#### I. FINANCIAL AND TECHNICAL CAPACITY

- *A letter dated January 22, 2018 from Roger C. Levesque, Executive Vice President at Gorham Savings Bank was submitted as evidence of financial capacity.*
- *The applicant has provided information on the licensed professionals working on this project as evidence of technical capacity*



*J. RIVER, STREAM OR BROOK IMPACTS*

- *The applicant should demonstrate that the project will not adversely impact any river, stream, or brook.*

*CONCLUSIONS*

- 1. The proposed subdivision will not result in undue water or air pollution.*
- 2. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the site plan.*
- 3. The proposed subdivision will not cause an unreasonable burden on an existing water supply.*
- 4. The proposed subdivision 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.*
- 5. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.*
- 6. The proposed subdivision will provide for adequate sewage waste disposal.*
- 7. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste.*
- 8. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.*
- 9. The proposed subdivision conforms/does not conform with a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.*
- 10. The developer has adequate financial and technical capacity to meet the standards of this section.*
- 11. The proposed subdivision is situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, Chapter 3, subchapter I, article 2-B M.R.S.A.*
- 12. The proposed subdivision will not alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.*
- 13. The proposed subdivision is not situated entirely or partially within a floodplain.*
- 14. All freshwater wetlands within the proposed subdivision have been identified on 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 storm water 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 have a lot depth to shore frontage ratio greater than 5 to 1.*  
*N/A*
- 18. The long-term cumulative effects of the proposed subdivision 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. (N/A)*
- 20. 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 December 18, 2017, as amended February 1, 2018, and supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board, and any variation from such plans, proposals and supporting documents and representations are subject to review and approval by the Planning Board or the Town Planner in accordance with Section 913 of the Subdivision Ordinance.*
- 2. Approval is subject to the requirements of the Post-Construction Stormwater Ordinance, Chapter 144. 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. A deed transferring ownership of the open space to the Town of Windham or an access easement for public use of the open space must be recorded in the Cumberland County Registry of Deeds prior to the issuance of building permits.*

*Seconded by Keith Elder.*

*Vote: All in favor.*

**Other Business****13 Adjournment**

*Bill Walker made a motion to adjourn.*

*Seconded by Nick Kalogerakis.*

*Vote: All in favor.*