

Ben Smith

From: Tony Plante
Sent: Monday, March 26, 2018 12:03 PM
To: Ben Smith
Subject: FW: Retroactive HLA Proposed Subdivision Ordinance Changes

At the Council chair's request, please include a copy of this email thread, along with the copy of John MacKinnon's remarks from the meeting of March 20, for the Planning Board's review.

Thanks.

Tony Plante, Town Manager
Town of Windham
8 School Road
Windham, ME 04062

207-892-1907 x1121
207-892-1910 fax
207-233-0806 cell

NOTICE: Under Maine's Freedom of Access Act ("Right to Know" law) documents – including emails – in the possession of public officials about town business are considered public records. This means if anyone asks to see it, we are required to provide it. There are very few exceptions. We welcome citizen comments and want to hear from our constituents, but please keep in mind that what you write in an email is not private and will be made available to any interested party.

From: Tony Plante
Sent: Monday, March 26, 2018 12:02 PM
To: Donna Chapman
Cc: 'dennisbrown@highlandlakemaine.org'
Subject: RE: Retroactive HLA Proposed Subdivision Ordinance Changes

Okay.

Tony Plante, Town Manager
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From: Donna Chapman
Sent: Monday, March 26, 2018 10:17 AM
To: Tony Plante
Cc: dennisbrown@highlandlakemaine.org
Subject: Re: Retroactive HLA Proposed Subdivision Ordinance Changes

Tony,

The Planning Board needs to be given all materials in regards to the request. Especially those requested by the public taxpayers. I feel they should have these emails as well. Please send it with whatever else is being provided to the board.

Thank you

Donna

Donna Chapman
Council Chair
Windham Town Council South District
207-893-8584
Donnachapman@windhammaine.us

On Mar 26, 2018, at 8:45 AM, Tony Plante <atplante@windhammaine.us> wrote:

Dennis,

Thanks. We are checking with legal on whether retroactivity needs to be written into the ordinance language itself or is a function of how it is adopted. Either way, the HLA's position on retroactive application of the amendments and the importance of doing so will be part of what is communicated to the Planning Board.

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From: Dennis Brown [mailto:lakesideme@yahoo.com]
Sent: Friday, March 23, 2018 5:45 PM
To: Tony Plante; Donna Chapman
Cc: Rosie Hartzler; Kim White; John MacKinnon; Chantal Scott
Subject: Retroactive HLA Proposed Subdivision Ordinance Changes

Donna and Tony,

As a follow up to this week's TC meeting, the HLA would like to be sure that the actual language that is going to the Planning Board for its discussion relative to our recommended ordinance changes to subdivision phosphorus control include a retroactivity clause effective to all projects not fully permitted as of the date of the Moratorium, approved on September 12, 2017. (The enactment date was September 12, but it was retroactive to Sept 5 2017). The draft ordinance presented to the council on March 20th by Ben Smith did not include any ordinance relative to retroactivity. It may be prudent to consult the Town Attorney for appropriate wording.

We want to remind the Planning Board and the Town Council that the new "Point System" ordinance that was adopted by the Town of Windham places new restrictions for any individual residential development in the (Windham) watershed. Therefore, it is only prudent that any new subdivision or commercial development in the watershed be subject to stricter phosphorus controls in order to fully protect the lake from any future development; whether it be single family, new additions/garages or a residential subdivision.

In addition, we have included as an attachment to this email, John MacKinnon's discussion that he presented March 20, 2018, as to why this retroactivity feature is important. We respectfully request that appropriate retroactive language be presented to the Planning Board in their consideration of the recommendations. We would be happy to discuss this with you soon to resolve any questions you may have.

Regards,

HLA

Rosie Hartzler, John MacKinnon, Kim White, Dennis Brown, Chantal Scott

Highland Lake Association

Land Use Ordinance Change Requests at the March 20, 2018 Town Council Meeting

Anyone who knows about Highland Lake and its water quality challenges probably understands that even a small increase of 1 ppb of phosphorus in lake water could be consequential to the health of the lake and could worsen the picocyanobacteria bloom that has occurred over the past four summers. That is why the Highland Lake Association is adopting such a strict stance on ordinances which govern land development in the Highland Lake watershed.

All three of the ordinance changes requested by the Highland Lake Association are intended to be made retroactive to the date of the moratorium approved on September 12, 2017. Retroactivity is important to us because of the uncertainty associated with the timing of the end of the moratorium.

Although a 6-month extension was approved as an emergency measure by the town council on February 27, we understand that it could be shortened. Consequently, retroactivity will ensure that the proposed ordinance changes, if enacted, would apply to projects currently stalled by the moratorium as well as those projects that may submit within a potential gap between the end of the moratorium and full enactment of ordinance changes.

In an attempt to mitigate phosphorus in runoff from new development, the Highland Lake Association is advocating changes to ordinance language that will effectively plug holes in ordinances that currently allow phosphorus export beyond acceptable levels.

The first of the proposed changes is to have all subdivisions and site plans in the watershed meet the current DEP phosphorus of 0.020 lbs/acre/year. This would put all projects, major and minor, on the same playing field and would be designed to meet the Phosphorus Standard, as was explained by Ben Smith in his memo.

The second of the proposed changes addresses the current ordinance that allows a subdivision to pay a fee in lieu of meeting the 0.020lbs/acre/year phosphorus budget for the Highland Lake watershed. The fee can be used elsewhere in the watershed to construct Best Management Practices to mitigate phosphorus in runoff. However, it is a one-time fee that, for practical purposes, does not account for the inspection, maintenance, or reconstruction of Best Management Practices. The life of the subdivision will likely far exceed

the life of Best Management Practices built with the fee, and will continue to export phosphorus above the originally budgeted amounts into the future. This effect is multiplied if several projects in the watershed were to take advantage of paying a fee in lieu of meeting the phosphorus standard.

We're completely sympathetic to scenarios where a small lot size may preclude establishment of buffers or construction of rain gardens because of their space requirements, particularly in the C-3 zone along Route 302. However, regulations often drive innovation and manufactured stormwater treatment systems already exist that can be placed under parking lots that provide stormwater pollutant removal capabilities similar to traditional stormwater best management practices. These systems are designed specifically for small lots and are in common use in states other than Maine.

The Highland Lake Association believes that another "hole" in the ordinances can be plugged by the third of the proposed ordinance changes, removal of the density bonus for cluster subdivisions in the watershed. We certainly believe in the advantage of Cluster Subdivisions to lessen environmental impact relative to conventional subdivisions, but we question why we should allow that advantage to be diluted by providing a density bonus that will result in more impervious surface and thus greater phosphorus export. While it may be appropriate to create recreational open space elsewhere in Windham by using the density bonus, the benefits of using it in a watershed of a lake listed by the DEP as most at risk of new development are outweighed by the impact to the lake, also an important recreational resource. Furthermore, a Cluster Subdivision could, in theory, take advantage of the density bonus and pay a fee in lieu of meeting the phosphorus standard, thus compounding the amount of phosphorus exported from a development.

We ask that the Council carefully consider all three proposed ordinance changes, keeping in mind that a little bit more phosphorus control can make a huge difference in lake water quality.