

# Town of Windham

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## MEMO

DATE: July 31, 2018

TO: Windham Town Council  
THROUGH: Tony Plante, Town Manager  
FROM: Amanda Lessard, Planner *AL*  
Cc: Long Range Planning Committee (LRPC)  
Ben Smith, North Star Planning  
Chris Hanson, Director of Code Enforcement

RE: Cluster Subdivision Amendments

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Over the last several months the LRPC has been working on proposed revisions to the Land Use Ordinance to meet the goals and priorities of the Comprehensive Plan adopted on June 13, 2017. Attached are the LRPC's recommendations for amendments to the Cluster Subdivisions Standards. These revisions are intended to advance the Big Idea in the Plan to Keep Rural Windham rural by requiring all subdivisions in the Farm and Farm Residential Zones to be designed as a cluster standard, allowing the open space to be retained by the subdivider for agricultural or forestry use, and establishing factors for the Planning Board to review the arrangements of lots on the land to achieve the best possible relationship between the proposed development and the land.

Additional highlights of the changes are as follows:

### **Section 300 - Definitions**

- Clarification that Open Space is land set aside for permanent protection from development within a Cluster Subdivision and may be used for playfield, playground, agriculture, or forestry.

### **Section 911.E.2 – Dedication and Maintenance of Open Space**

- Clarification that Open Space may be owned by the Town of Windham, subject to the approval of the Town Council

### **Section 911.K – Cluster Subdivision Standards**

### Procedure

- Submissions for subdivisions in the Farm and Farm Residential zoning districts must be designed as a cluster subdivision.

#### Basic Standards

- Subdivisions that do not maximize the development potential of a tract of land must submit a master plan showing the location of future lots.
- The subdivider may retain ownership of the subdivision Open Space, subject to a permanent conservation or agricultural easement.
- Cluster subdivision streets must meet the applicable road standard.
- Establishes factors for the Planning Board to consider the arrangement of proposed lots.

#### **Section 910 – Submission Requirements**

- Subdivisions that do not maximize a parcel's development potential shall submit a master plan for the remaining land.

Central Sewage System. A wastewater disposal system that receives wastewater from two (2) or more structures. (See Sec. 500 Performance Standards)

Child Care, Facility. A building in which a person maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for children under thirteen (13) years of age. (See Sec. 500 Performance Standards)

Child Care, Family Home. A home used to provide child care in the resident's home on a regular basis, for consideration, for three (3) to twelve (12) children under thirteen (13) years of age who are not the children of the provider. (See Sec. 500 Performance Standards)

Clear Zone. The area adjacent to a street (measured from the edge of the travel lane) in which fixed objects or obstructions are not permitted. Fixed objects include, but are not limited to, trees, signs, utility poles, walls, boulders, and mailboxes. (See Sec. 900 Subdivision Review)

Club. A group organized for a common purpose, goal, interest, or activity, usually social, religious, cultural or educational in nature, usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, a constitution, and by-laws.

Cluster Subdivision. A form of development that permits a reduction in lot area and bulk requirements, and the remaining land area is devoted to ~~Open~~ ~~s~~Space, active recreation, preservation of environmentally sensitive areas, or agriculture. (See Sec. 400 Zoning Districts) (See Sec. 900 Subdivision Review)

Collector Street. See definition of, "Street Classification: Collector Street"

Comprehensive Plan. A document or interrelated documents adopted by the Municipal Officers, containing the elements established under 30-A M.R.S.A. § 4326 sub-1 to 4, including the strategies for an implementation program which are consistent with the State goals and guidelines established under 30-A M.R.S.A. §4311 through § 4350.

Complete Substantial Construction. The completion of a portion of the improvements which represents no less than thirty (30) percent of the costs of the proposed improvements within a subdivision. If the subdivision is to consist of individual lots to be sold or leased by the subdivider, the cost of construction of buildings on those lots shall not be included. If the subdivision is a multifamily development, or if the applicant proposes to construct the buildings within the subdivision, the cost of building construction shall be included in the total costs of proposed improvements.

Conditional Use. A use which shall be authorized when all of the conditions of Section 516 and other applicable provisions of this Ordinance have been met. (See "Conditional Use" in Sec. 500 Performance Standards)

Construction Services. The performance of work or the furnishing of supplies to members of the building trades which requires the storage of materials and/or the location of commercial vehicles on the property of the construction services business. This includes, but is not

**Nursing Home.** An institution or a part of an institution that is licensed or approved to provide health care under medical supervision for 24 or more consecutive hours to two or more patients who are not related to the governing authority or its members by marriage, blood, or adoption.

**Official Map.** The zoning map adopted by the Town of Windham, Maine on May 25, 1976, as amended from time to time.

**Official Shoreland Zoning Map.** The most current map delineating the shoreland zones adopted by the Town of Windham, Maine, as amended from time to time, in accordance with the provisions of 38 M.R.S.A. § 435 through § 439

**Off-Street Parking Space.** A temporary storage area for a motor vehicle that is not located on a dedicated street right-of-way.

**Open Space.** Land set aside for permanent protection from development within a Cluster Subdivision. Open Space uses may include for passive and/or active use, including recreation purposes playfields and playgrounds, for preservation of environmentally sensitive areas, common open space in cluster subdivisions, undevelopable land and agriculture, forestry, or buffers.

**Outside Sales or Outdoor Sales.** See definition of, “Retail Sales, Outdoor.”

**Parcel.** (1) a piece or area of land formally described and recorded with map, block and lot numbers, by metes and bounds, by ownership, or in such a manner as to specifically identify the dimensions and/or boundaries; (2) informally, as land in general. (*See definition of, “Plot”*)

**Park, Public.** A tract of land available to the general public for recreational purposes. Public parks do not include recreation facilities that are fully enclosed.

**Permitted Use.** The use of any building or land in a manner subject to the express conditions and limitations stated in this Ordinance.

**Person.** Includes an individual, firm, association, organization, partnership, trust, company or corporation.

**Place of Worship.** A church, synagogue, temple, mosque, or other facility that is used for prayer by persons of similar beliefs. This definition shall also include a special-purpose building that is architecturally designed and particularly adapted for the primary use of conducting formal religious services on a regular basis. Educational and child care activities that are conducted outside of the facility’s religious services or gatherings shall be defined separately in this Chapter.

**Principal Use.** See definition of, “Use, Principal.”

## K. Cluster Developments

### 1. ***Purpose***

Development under this provision is intended to promote imaginative, well-designed subdivisions which preserve open space and agricultural uses, provide public access to land for passive and active recreation, protect natural features, environmentally sensitive areas and wildlife cover, respect the physical qualities of the land, and, in some instances, reduce the overall development costs of a subdivision. The standards for cluster development allow for the creation of lots that are smaller than those that would otherwise be required by the applicable zoning district regulations and in some cases can be combined with density bonuses to allow additional lots, in return for setting aside the balance of the property as permanent ~~common~~ Open sSpace. In addition to all applicable standards of this Ordinance, the Planning Board may approve a single-family cluster subdivision provided the following conditions are met:

### 2. ***Procedure***

~~(a)~~ ~~(a)~~ Application Requirements.

a. All submissions for single-family subdivisions in the Farm and Farm Residential zoning districts that meet the space and bulk requirements listed in the appropriate zoning district ~~may~~must be designed as a cluster subdivision.

~~a.b.~~ Submissions for subdivisions in all other zoning districts that meet the space and bulk requirements listed in the appropriate zoning district may be designed as a cluster subdivision.

(b) Property located within more than one residential zoning district. The overall density of the subdivision shall not exceed the combination of the density requirements of the districts in which the subdivision is located, before density bonuses are applied.

### 3. ***Basic Standards for Cluster Subdivisions***

(a) Cluster developments shall meet all applicable requirements of the Land Use Ordinance.

(b) ~~(d)~~ In order to determine the maximum number of dwelling units permitted on a tract of land, the net residential acreage of the parcel shall be divided by the net residential density standard of the applicable zoning district. Density bonuses are applicable, per the appropriate zoning district standards (see Section 400.)

© A landowner may choose not to maximize the development potential of a tract of land in the first subdivision application and reserve remaining development rights for a future subdivision application. In this instance, a master plan showing the location of future lots must be submitted and the project will be considered a phased subdivision approval. The standards in Section 912.G, Final Approval and Filing

and Section 914.6, Post Approval Activities, Performance Guarantees, Phasing of Development shall apply.

- (1) The subdivider may retain ownership of the remaining land from which the subdivision lots are to be created provided the portion of the remaining land counted toward the subdivision Open Space is subject to a permanent conservation or agricultural easement, or the subdivider may transfer ownership of the Open Space to a 3<sup>rd</sup> party per Section 911.E.2.
- (2) The land remaining will be a numbered lot within the subdivision.

(1) The Open Space standards in Section 911.K.5 shall apply.

(f) Each building envelope shall be an element of an overall subdivision plan for site development. Only developments having a total site plan for structures will be considered. The application shall illustrate the placement of building envelopes and the treatment of spaces, paths, roads, service and parking and in so doing shall take into consideration all requirements of this section and of other relevant sections of these regulations.

- (1) For cluster subdivisions that are not served by a public water supply, 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 plan review.

(ge) The Planning Board shall allow lots within cluster developments to be reduced from standard subdivision standards as specified in the applicable zoning district. In return for the reduction in the requirements for lot area, frontage, and structure setbacks, the applicant shall provide common ~~e~~Open ~~s~~Space.

(he) Up to 30% of individual lots or dwelling units may have direct vehicular access onto a public road existing at the time of development.

~~(f) Streets constructed within a cluster subdivision must meet a public street standard.~~

~~(g) Diversity and originality in lot layout and individual building site design shall be encouraged to achieve the best possible relationship between the proposed development and the land under consideration.~~

#### 4. Arrangement of Lots

(ga) Diversity and originality in lot layout and individual building site design shall be encouraged to achieve the best possible relationship between the proposed development and the land under consideration.

- (b) Factors considered by the Planning Board when evaluating the proposed arrangement of lots shall include, but not be limited to:
- (1) Arrangement of roads, stormwater facilities, wastewater and other utilities in conformance with the natural features of the parcel, minimizing changes to the topography.
  - (2) Minimization of impervious cover.
  - (3) Protection of stream corridors and other important habitat areas.
  - (4) Protection of wetlands
  - (5) Feasibility of continued or future agricultural use.
  - (6) Feasibility of continued or future forest management.
  - (7) Relationship to neighboring property, including conservation easements or natural, cultural, recreational or scenic features.

**54. Recreation and Open Space Requirements**

- (a) The ~~o~~Open ~~s~~Space provided by the cluster subdivision shall be identified on the recorded subdivision plan as “~~Common~~ Open Space - Reserved for Recreation, Agricultural and/or Conservation Purposes.”:
- (b) The total area of ~~reserved-o~~Open ~~s~~Space within the development shall equal or exceed 50% of the gross land area of the property to be subdivided.
- (1) ~~Common-O~~pen ~~s~~Space shall not include road rights of way, streets, drives, or parking.
  - (2) At least fifty percent (50%) of the land suitable for development (see Section 534 – Net Residential Area or Acreage) shall be included in the ~~common-o~~Open ~~s~~Space.
- ~~(c) The common open space shall owned and managed according to the standards of 911.E.2.~~
- ~~(d) Depending on the size and location of the subdivision, the Planning Board may require the developer to designate a portion of the total common open space area for recreation. The reserved open space shall be suitable for both passive and active recreation, including, but not limited to, bicycle and pedestrian trails, picnic areas, soft ball fields, tennis and basketball courts, tot lots and play grounds, and hard surface court games~~
- ~~(1) It is desirable that areas reserved for recreation be at least one (1) acre in size and easily accessible from all lots within the subdivision.~~
- (e) For Open Space not retained by the subdivider, One principal access point having a minimum width of twenty (20) feet shall be provided ~~for access to the required~~

~~common-open space~~ from the road network within the cluster subdivision.

Additional, secondary points of access having a minimum width of ten (10) feet may be provided from individual lots when these lots abut or are located within a portion of the common ~~e~~Open ~~s~~Space area.

- (1) The size and location of the principal and secondary access points shall be reviewed and approved by the Planning Board as part of the Board's review of the cluster subdivision.
- (2) In order to be eligible for any density bonus described in the applicable zoning district standards, the following conditions must be met:
  - a. The ~~e~~Open ~~s~~Space must be open for general public use, not just homeowners within the subdivision or the subdivider, and
    - i. The ~~e~~Open ~~s~~Space must either be accessed from an existing public street or
    - ii. Access is from an abutting property that is public, permanent ~~e~~Open ~~s~~Space or recreation land, or
    - iii. Access must be formalized in easement language if access is to be provided over the new subdivision street or streets until such time as the subdivision street or streets are adopted by the Town.
      1. Access easements for the ~~e~~Open ~~s~~Space must be recorded at the registry prior to the issuance of building permits.
- (f) The required ~~common-e~~Open ~~s~~Space shall not be used for commercial recreation or for private clubs whose membership is different from the homeowners association.
- (g) ~~Common-Open~~ ~~e~~Open ~~s~~Space areas shall be contiguous. The proposed location of ~~common-e~~Open ~~s~~Space areas should also be considered in relation to other ~~e~~Open ~~s~~Space areas on abutting properties, and logical connections to and from ~~e~~Open ~~s~~Space areas on abutting properties should be given consideration by the Planning Board.
- (h) When reviewing the location and type of ~~common-e~~Open ~~s~~Space designated in the subdivision, the Planning Board shall consider the following criteria:
  - (1) Individual lots, building envelopes, streets and parking areas shall be designed and situated to minimize alteration of any natural features to be preserved.
  - (2) The usability of the cluster's ~~common-e~~Open ~~s~~Space intended for recreation or public use shall be determined by the size, shape, topographic and location requirements of the particular purpose proposed for the site.
  - (3) Irreplaceable natural features located on the property proposed for subdivision shall be included in the ~~common-e~~Open ~~s~~Space. This includes, but is not limited to: stream beds and other water courses, significant stands of trees, (including the size of the trees), and rock outcroppings.

(4) The suitability of all land areas designated as ~~common~~Open sSpace intended for scenic value and purposes shall be determined by its visibility from a significant number of units or buildings within the subdivision, or length of streets.

(i) The land areas designated as ~~common~~Open sSpace on the subdivision plan shall meet the following criteria:

(1) ~~Common~~Open sSpace areas that can be combined with existing Town owned property dedicated for recreational use, dedicated ~~Open s~~Space on abutting property, land trust properties and public or private conservation easements, or with future land dedication potential shall be given priority.

(18) For Cluster Subdivisions that are proposed that do not maximize the development potential of the property being subdivided, a conceptual master plan for the remaining land shall be submitted.

i. The conceptual master plan will show future road, Open Space and lot layout consistent with the requirements of 911.K., Cluster Developments.

(c) Submission Information for which a Waiver may be Granted. The following items shall be submitted as part of the Final Plan application, unless the applicant submits, and is granted by the Planning Board, a written waiver request as part of the Sketch Plan application review (*See Sec. 908 Waivers*)

- (1) Contour lines at intervals of 5 feet, or at lesser intervals as the Planning Board may require.
- (2) Description of how stumps and demolition debris will be disposed of.
- (3) A surface drainage plan or stormwater management plan with profiles and cross-sections showing the design of all facilities and conveyances necessary to meet the stormwater management standards set forth in Section 900 (Subdivision Review). The plan shall be drawn by a Maine Licensed Professional Civil Engineer, and shall include a written statement indicating that the proposed subdivision will not create erosion, drainage or runoff problems either in the subdivision or on adjacent properties. Changes in runoff shall be calculated by using the TR-55 or TR-20 method or subsequent revisions.
- (4) A soil erosion and sediment control plan prepared by a Maine Licensed Professional Engineer or a Certified Professional in Erosion and Sediment Control (CPESC).
- (5) If subsurface wastewater disposal systems (septic) are proposed, a hydrogeologic assessment prepared by a Maine Licensed Site Evaluator or Certified Geologist regarding the ability of the site to meet the performance standards and approval criteria for subsurface wastewater disposal.
- (6) The location of driveways, if requested by the Planning Board.

C. Major Subdivision

1. ***Preliminary Plan***

The Preliminary Plan submission shall include five (5) copies of the following information, including full size plan sets, along with one (1) electronic version of the entire submission. The Board may waive the submission information that is listed in Subsection 910.C.1.(c) all dimensions shown in feet or decimals of a foot, drawn to a

- (16) The location, names, and present widths of existing streets, highways, easements, building lines, parks and other open spaces on or adjacent to the subdivision.
- (17) The width and location of any streets, public improvements or open space shown upon the official map and the comprehensive plan, if any, within the subdivision.
- (18) All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
- (19) The location of any open space to be preserved or common areas to be created, and a general description of proposed ownership, improvement and management.
- (20) The approximate location of the tree line after development has been completed.
- (21) If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation, as depicted on the Town's Flood Insurance Rate Map, shall be delineated on the plan.
- (22) Areas within or adjacent to the proposed subdivision which have been identified by the Maine Department of Inland Fisheries and Wildlife "Beginning with Habitat Project" or within the Comprehensive Plan. (*Copies of the Beginning with Habitat Project maps and the Comprehensive Plan are available in Town Hall*)
- (23) All areas within or adjacent to the proposed subdivision which are either listed on or eligible to be listed on the National Register of Historic Places, or have been identified in the comprehensive plan or by the Maine Historic Preservation Commission as sensitive or likely to contain such sites.
- (24) An erosion and sedimentation control plan prepared in accordance with MDEP Stormwater Law Chapter 500 Basic Standards, and the MDEP Maine Erosion and Sediment Control Best Management Practices, published March 2003.
- (25) A stormwater management plan, prepared by a Maine Licensed Professional Engineer in accordance with the most recent edition of *Stormwater Management for Maine: BMPS Technical Design Manual*, published by the MDEP 2006.
- (26) For Cluster Subdivisions that are proposed that do not maximize the development potential of the property being subdivided, a master plan for the remaining land shall be submitted.

i. The master plan will show future roads, Open Space and lot layouts consistent with the requirements of 911.K., Cluster Developments.

- (c) Submission Information for which a Waiver May be Granted. The following items shall be submitted as part of the Preliminary Plan application, unless the applicant submits, and is granted by the Planning Board, a written waiver request as part of the Sketch Plan application review (*See Sec. 908 Waivers*). The Board may require additional information to be submitted, as necessary, in order to determine whether the criteria of 30-A M.R.S.A. §4404 are met.
- (1) A high-intensity soil survey by a Certified Soil Scientist.
  - (2) A landscape plan including a list of proposed plant species and their size at the time of installation and maturity.
  - (3) Hydrogeologic assessment:
    - (i) A hydrogeologic assessment prepared by a Certified Geologist or Maine Licensed Professional Engineer, experienced in hydrogeology, when the subdivision is not served by public sewer and:
      - a) Any part of the subdivision is located over a sand and gravel aquifer, as shown on a map entitled "Hydrogeologic Data for Significant Sand and Gravel Aquifers," by the Maine Geological Survey, 1998, File No. 98-138, 144 and 147; or
      - b) The subdivision has an average density of more than one dwelling unit per 100,000 square feet.
    - (ii) The Board may also require a hydrogeologic assessment in cases where site considerations or development design indicate greater potential of adverse impacts on groundwater quality. The hydrogeologic assessment shall be conducted in accordance with the provisions of Subsection 911.H. Impact on Ground Water Quality or Quantity, below.
    - (iii) If a hydrogeologic assessment is submitted, the assessment shall contain at least the following information:
      - a) A map showing the basic soils types.
      - b) The depth to the water table at representative points throughout the subdivision.
      - c) Drainage conditions throughout the subdivision.
      - d) Data on the existing ground water quality, either from test wells in the subdivision or from existing wells on neighboring properties.
      - e) An analysis and evaluation of the effect of the subdivision on ground water resources. In the case of residential developments, the evaluation shall, at a minimum, include a projection of post development nitrate-nitrogen concentrations at any wells within the subdivision, or at the subdivision boundaries; or at a distance of 1,000 feet from potential contamination sources, whichever is a shortest distance.

for stormwater or other reasons depicted on the plan shall not be cleared of vegetation unless the Planning Board grants an amendment to the subdivision or for maintenance that does not alter the purpose for which the buffer was required.

- (b) The plan shall include the planting of street trees. Street trees shall be of a variety capable of withstanding winter street maintenance and planted no more than fifty feet apart.

2. ***Reservation or Dedication and Maintenance of Open Space and Common Land, Facilities and Services***

- (a) All open space common land, facilities and property shall be owned by:
  - (1) The owners of the lots or dwelling units by means of a lot owners' association;
  - (2) An association which has as its principal purpose the conservation or preservation of land in essentially its natural condition; or
  - (3) The Town of Windham, subject to the approval of the Windham Town Council.
- (b) Further subdivision of the common land or open space and its use for other than non-commercial recreation, agriculture, or conservation purposes, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to non-commercial recreational or conservation uses may be erected on the common land.
- (c) The common land or open space shall be shown on the Final Plan with appropriate notations on the plan to indicate:
  - (1) It shall not be used for future building lots; and
  - (2) Which portions of the open space, if any, may be dedicated for acceptance by the municipality.
- (d) The Final Plan application shall include the following:
  - (1) Covenants for mandatory membership in the lot owners' association setting forth the owners' rights, interests, and privileges in the association and the common property and facilities, to be included in the deed for each lot or dwelling.
  - (2) Draft articles of incorporation of the proposed lot owners' association as a not-for-profit corporation; and
  - (3) Draft by-laws of the proposed lot owners' association specifying the responsibilities and authority of the association, the operating procedures of the