

Town of Windham

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MEMO

DATE: January 23, 2020

TO: Planning Board
FROM: Jennifer Curtis, Planner
Cc: Jayson Haskell, P.E., DM Roma Consulting Engineers
Amanda Lessard, Planning Director
Development Review Team
RE: 19-17 – Rio Drive Subdivision Amendment – Minor Final Plan
Planning Board Meeting & Public Hearing: January 27, 2020

Overview –

The applicant, KNMC, LLC, is proposing an amendment to the Rio Drive Subdivision. The applicant owns four of the five lots in the original subdivision and the Rio Drive right-of-way. The original subdivision was approved by the Town of Windham Planning Board on September 27, 2004, but only one lot was built on and it expired in accordance with then Town of Windham Subdivision Ordinance 213-11 E, that if a substantial start is not made within two years the Planning Board Approval is null and void. No extension was granted. No performance guarantee was collected. Rio Drive was not constructed as proposed and is currently a gravel driveway outside of the proposed right of way.

This amendment pertains to 5.86 acres and includes revisions to roadway and lot layouts to meet the current requirements of the Land Use Ordinance related to roadways, and to allow for larger building windows.

The sketch application was reviewed by the Planning Board on August 26, 2019, and since then a site walk was held on September 23, 2019.

Staff recommend a condition of approval that requires maintenance responsibility for Rio Drive prior to it being accepted by the Town be noted on the Subdivision Plan.

New comments from the staff memo dated August 21, 2019 appear as underlined text below.

Tax Map: 14; Lots 2-2, 2-3, 2-4, and 2-5. Zoning District: Farm Residential (FR)

SUBDIVISION REVIEW

Staff Comments:

1. Waivers Requested:

- a) Performance Standard 911.M.(5)(b)(6)(ii): "...If a sidewalk is not required in accordance with subsection (a), above, the applicant shall construct either a sidewalk or a street with a widened shoulder. At a minimum, an additional one (1) foot of paved shoulder, on each side of the street, shall be added to the required minimum shoulder width."

The applicant's reason for the request is that "The proposed 26 foot wide paved surface with 1 foot gravel shoulders ...will be suitable for vehicle and pedestrian traffic on the proposed low use roadway.

Staff find that the Minor Local Street standard, with 911.M.(5)(b)(6)(ii) applied, would result in a 26' wide paved roadway with 2' gravel shoulders on either side. The applicant is proposing a 26' wide paved roadway with 1' of gravel shoulder on either side, which should be sufficient for vehicle and pedestrian traffic on this roadway. The Minor Local Street standard is designed to accommodate up to 400 average annual trips per day. This street is likely to carry far fewer than that.

- b) Performance Standard 911.M.(5)(b)(5)(ii): "(ii)...dead-end streets shall be constructed to provide a cul-de-sac turn-around..."

The applicant's reason for the request is that "The previously approved cul-de-sac design impacted a significant amount of wetlands along with not providing adequate building windows."

Staff find that the proposed street location and building windows minimize wetland impacts to the greatest extent practicable. A hammerhead turnaround should be adequate to handle the very small amount of traffic anticipated at the subdivision and would allow for necessary maneuverability of service and safety vehicles.

2. Complete Application: *Staff has found the application complete*

MOTION: The application for project 19-17 Rio Drive Subdivision Amendment is found complete in regard to the submission requirements based on the application checklist, but the Planning Board retains the right to request more information where review criteria are not fully addressed.

3. Public Hearing: To be held at the Planning Board meeting on January 27, 2020.

4. Site Walk: A site walk was held on September 23, 2019.

Findings of Fact and conclusions for the

Windham Planning Board,

MOTION: The Subdivision application for 19-17 Rio Drive Subdivision Amendment on Tax Map: 14; Lots 2-2, 2-3, 2-4, and 2-5. **is to be (approved with conditions/denied)** with the following findings of fact and conclusions.

FINDINGS OF FACT

A. POLLUTION

- This subdivision is not located over a significant sand and gravel aquifer.
- There are no mapped floodplains in the project area
- The houses in the proposed subdivision would utilize individual septic systems for wastewater disposal. See findings in Section E.
- There are wetlands on the property. The wetland inventory has been updated from the prior application, as the previous delineation had expired. The updated wetland delineation and revised layout is anticipated to have a reduced impact on wetlands from the previous application. The applicant is required to obtain a Natural Resources Protection Act(NRPA) Tier 1 Wetland Alteration Permit from the Maine Department of Environmental Protection (MDEP). The MDEP NRPA Tier 1 Permit must be included in the final application.
- In an email dated August 16th, 2019, Mark Arienti, P.E., Town Engineer, commented “As noted in the application, with 8,094 sq. ft. of proposed wetland impact, a DEP NRPA and/or Army Corp Wetland Alteration permit will be required.”
- An Army Corps Wetland Alteration permit (NAE-2019-03010) was submitted with the final application, authorizing the placement of permanent fill in 7,888 square feet of freshwater wetland at the project site.
- The final application included MDEP NRPA Wetland Alteration permit #L-28466-TB-A-N.

B. WATER

- All lots will be served by public water.
- An Ability to Serve letter from the Portland Water District approving the public water service to the subdivision must be submitted with the final application.
- An existing fire hydrant is located approximately 350 feet from the Rio Drive right-of-way. The final plan needs to demonstrate conformance to fire code, Chapter 95 of Windham Land Use Ordinance, specifically at 95.4.1.
- The final plan submission depicts a fire hydrant on Rio Drive between stations 4+00 and 5+00.
- The final application included an Ability to Serve letter from the Portland Water District dated December 18, 2019, approving the public water service to the subdivision.

C. SOIL EROSION & SEDIMENTATION CONTROL & STORMWATER MANAGEMENT

- A soil erosion and sediment control plan must be submitted as part of the Final Plan.
- A soil erosion and sediment control plans were submitted with the final plan. It includes best management practices for pollution prevention, soil stabilization, storm drain inlet protection, stabilized construction entrance/exit, dust control, grading and slope preparation, permanent

soil stabilization, stormwater channels, winter erosion and sediment control, and housekeeping.

- In an email dated August 16th, 2019, Mark Arienti, P.E., Town Engineer, commented “The Sketch Plan application does not provide any information on erosion control or the stormwater management approach. The erosion control design must comply with Section 911.C and stormwater management must comply with Section 911.J.
- The applicant submitted a Stormwater Management Permit by Rule Notification form to the Maine DEP, accepted on January 4, as noted on the NRPA Wetland Alteration approval L-28466-TB-A-N.
- A surface drainage plan shall be submitted with the final plan.
- A watershed map depicting proposed surface drainage was submitted with the final plan.
- In an email dated January 14, 2020, Mark Arienti, P.E., Town Engineer, commented:
 - Windham’s Subdivision Ordinance requires all subdivisions, regardless of size, to have a stormwater management plan that meets Section 4E Flooding Standard of the DEP Chapter 500. The applicant has submitted a stormwater management report that shows that the post-development flows are less than or equal to the predevelopment flows for the 2-, 10-, and 25-yr storms.
 - The project has been designed to meet the MDEP Chapter 500 Basic Standards required by the Town and the MDEP; it includes permanent and temporary Erosion Control Best Management Practices incorporated into the plan set and an Inspection, Maintenance and Housekeeping Plan.
 - Section 911 J.4 of the ordinance says that subdivisions need to comply with the 4C General Standards of the DEP Chapter 500 even if they require neither a SLDA permit nor a DEP stormwater permit - as is the case with this one. The Stormwater Management Plan did not address the 4C water quality requirements, but based on the size of the development and its location, it appears that the proposed design will result in the management of stormwater in a manner that will not create erosion, drainage or runoff problems either in the subdivision or on adjacent properties.
 - The design of detention pond #1 (DB-1) appears to use the driveway as the secondary emergency overflow. Please clarify how this will function and how it complies with the Maine DEP requirements for a detention basin.
- In an email dated January 16, 2020, Jayson Haskell, P.E., of DM Roma Consulting Engineers responded that:
 - As Mark noted in his comment, the driveway will be the emergency spillway during the 25-year storm event only when the other outlets are not functioning. As indicated in the HydroCAD output within this submission, there will be less than 1/8” of flow over the driveway during this situation. This shallow, low velocity flow will only occur for a short period of time during this event and will be approximately 8” lower than the lowest shoulder elevation on Rio Drive. We don’t anticipate any significant roadway flooding due to this detention basin.
- Mark commented in an email dated January 22, 2020 that he was satisfied with the proposed solution

D. TRAFFIC

- A Maine Department of Transportation road entrance permit must be submitted with the final application.
- A Maine DOT road entrance permit dated November 15, 2019 was submitted with the final plan.
- Sight distances for Rio Drive should be shown for both directions on the Final Plan.
- The Subdivision Plan dated January 16, 2020 includes a note that the sight distance at the proposed intersection is in excess of 600 feet to the south and 510 feet to the north, meeting the minimum sight distance requirement of 500 feet at 50mph.
- Section 911.M.3.d states that streetlights may be required at intersections with existing public streets. The streetlight policy would not recommend a light for this intersection because it will serve less than 10 dwellings.
- Section 522.C. requires that “No new Private Roads will be permitted to directly access a Public Street. New Streets with direct access to a Public Street must be built to the applicable Local Street standard and offered to the Town for Acceptance as a Public Street.” Rio Drive must be constructed to the applicable Local Street standard and offered to the Town for acceptance as a public street.
- In the final plan submission, Rio Drive is proposed to be built to the Minor Local Street standard.
- Based on the requirement that Rio Drive be a public street, 911.M.b.(5)(ii) requires that dead-end streets shall be constructed to provide a cul-de-sac turn around, except for standards in Subsection 911.M.5.(b)(iv) which states that a hammerhead turnaround is permissible on private roads or on public streets at which the Planning Board has required an extension of a right-of-way to provide access to undeveloped land, the applicant shall demonstrate how they intend to meet the requirements of 911.M.
- In the final plan submission, the applicant has requested a waiver from 911.M.5.(b)(iv) and is proposing a hammerhead instead, with the explanation that the cul-de-sac previously approved had greater impacts to wetlands and did not allow for adequate building windows.
- There are three dead-end roads within 600 feet of where Rio Drive is proposed to dead-end. The board may require the reservation of a right-of-way easement equal to the right of way width of the internal subdivision street in line with the street to provide continuation of the road where future development is possible. 911.M.5(b)(5)(iii)
- Section 911.M.(5)(b)(6)(ii) requires that the applicant shall construct either a sidewalk or a street with a widened shoulder. At a minimum, an additional one (1) foot of paved shoulder, on each side of the street, shall be added to the required minimum shoulder width. In the final plan submission, the applicant has requested a waiver from 911.M.(5)(b)(6)(ii). The applicant is proposing an additional one (1) foot of paved shoulder on each side of the street, and one (1) foot of gravel shoulder on each side of the street, which is 1’ less of gravel on each side of the street than would be required to comply with 911.M.(5)(b)(6)(ii).

E. SEWERAGE

- The proposed lots will be served private septic systems.
- The Final Plan submission shall include the location and results of test pits performed by a Maine Licensed Site Evaluator or Certified Soil Scientist. At least one test pit per lot, and the test pits should be shown on the plan.

- The Final Plan submission includes soil test pit logs, with the locations of test pits shown on the plan, with at least one per lot, and a hydrogeologic analysis which states that it produced the assessment based on test pit logs produced by Sebago Technics, but it is not clear if they are the same test pit logs submitted to the Town. The submission includes a site evaluators certification that the test pits will meet the requirements for the Disposal Rules. The hydrogeologic assessment concludes that the proposed locations of the septic systems will meet the requirements of the Town of Windham regarding ground water quality and quantity.

F. SOLID WASTE

- Private residences in this subdivision will participate in the Town trash bag program.
- Development of these lots should not produce an undue burden on the Town's ability to collect and dispose of solid waste.
- The final plan submission states that until Rio Drive is accepted by the Town, the developer will enter into an agreement with Pine Tree Waste to allow access onto the private road for trash pickup at the end of the driveways.

G. AESTHETICS

- Street trees must be planted at least every 50-feet along the length of the new subdivision street.
- Street trees are shown on the Final Plan in accordance with 911.E.(1)(B).
- Limits of tree clearing should be shown on the plan. A note should be added to the plan stating that clearing of trees 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.
- Limits of tree clearing are shown on the plan with a note added to the plan stating that the clearing of trees is not allowed for a period of at least five years.

H. CONFORMITY WITH LOCAL PLANS AND ORDINANCES

- Comprehensive Plan:
 - The plan meets the goals of the 2017 Comprehensive Plan.
- Land Use Ordinances:
 - All lots meet the minimum lot size of 50,000 square feet for lots in the FR zoning district.
 - The lots need to meet the minimum frontage requirement of 150 feet.
 - Lots shown on the Final Plan dated January 16, 2020 each meet the minimum frontage requirement of 150'
 - Net residential density calculations are shown on the Plan.
- Subdivision Ordinance
 - Standard notes and the standard condition of approval must be shown on the plans.
 - All permits included in the final plan submission should be referenced on the Final Plan.
 - The Tax Map and Lot numbers provided by the Tax Assessor must be shown on the Final Plan.

- Tax Map and Lot numbers are shown on the Final Plan.
- Subdivision plan data compatible with the Town GIS must be submitted as part of the Final Plan submission.
- Town GIS compatible subdivision plan data was submitted with the Final Plan.
- 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, and stormwater infrastructure.
- A Road and Detention Pond Maintenance Agreement was submitted with the final plan, specifying the lot owners share responsibility to repair and maintain Coffee Way, including snow removal, at joint expense, and will maintain the detention pond and associated stormwater drains in accordance with the Inspection Maintenance & Housekeeping Plan for Rio Drive Subdivision.
- Maintenance responsibility for Rio Drive prior to it being accepted by the Town should be noted.
- Utilities shall be installed underground.
- The final plan submission indicates utilities are to be installed underground.
- Others:
 - Coffee Way, shared driveway name was approved by the Town per Chapter 221 - Street Naming and Addressing

I. FINANCIAL AND TECHNICAL CAPACITY

- Evidence of financial capacity must be provided as part of the Final Plan submission.
- The final plan submission includes expected construction costs, to complete the construction of the road, and install utility and stormwater infrastructure, at \$142,000; and a letter from Casco Bay Capital, LLC dated November 5, 2019 stating that a loan increase in the amount of \$140,500 to KNMC, LLC for the purpose of completing the infrastructure within the Rio Drive Subdivision, is approved.
- Evidence of technical capacity must be provided as part of the Final Plan submission.
- The final plan submission states that the plans and applications were prepared by Maine License Professional Engineers at DM Roma Consulting Engineers; the Survey work was prepared by William Shippen, PLS of Survey, Inc., and the wetland delineation was performed by Alex Finamore, LSE, from Mainely Soils, LLC.

J. RIVER, STREAM OR BROOK IMPACTS

- The project is located in the Presumpscot River watershed.
- The applicant should demonstrate that the project will not adversely impact any river, stream, or brook.
- See findings under A., C., and E., above.

CONCLUSIONS (N/A)

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/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 August 26, 2019 as amended January 6, 2020, 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 Land Use Ordinance.
2. The party or parties responsible for maintenance of Rio Drive, including snow removal, prior to it being accepted by the Town, shall be noted on the Subdivision Plan.