



# Town of Windham

Town Offices  
8 School Road  
Windham, Maine

## Meeting Minutes - Draft

### Planning Board

---

Monday, January 27, 2020

7:00 PM

Council Chambers

---

#### Call To Order

#### Roll Call and Declaration of Quorum

*The meeting was called to order by Vice Chair, Keith Elder. Other members present were: Drew Mayo, Michael Devold, Colin Swan, and welcome to new member, Tyler Dunlea.*

*Planner, Jenn Curtis, and Planning Director, Amanda Lessard, were also present.*

#### [PB 20-002](#)

Approval of Minutes: November 25, 2019 & December 9, 2019

**Attachments:** [Minutes 11-25-19 - draft](#)

[Minutes 12-9-19-Draft](#)

*Drew Mayo made a motion to accept the minutes of the November 25, 2019 meeting.*

*Seconded by Colin Swan.*

*Vote: All in favor.*

*Drew Mayo made a motion to accept the minutes of the December 9, 2019 meeting.*

*Seconded by Colin Swan.*

*Vote: All in favor.*

#### **Postponed Items from January 13, 2020 Meeting**

#### [PB 20-004](#)

18-31 Cook Road Retirement Community. Jim Cummings to request an extension of the six (6) month Final Plan filing deadline, as required by Town of Windham Land Use Ordinance, Chapter 140 Section 907 C. 2. for subdivision. The property in question is located at Cook Road and 306 Gray Road and identified on Tax Map: 9, Lot: 5, Zone: Farm (F) and Retirement Community and Care Facility Overlay District (RCCFO).

**Attachments:** [18-31 Cook Road Retirement Community\\_Final 01-07-2020](#)  
[Cook Rd Extension Request 12-31-2019](#)  
[Cook Road Condo- Full Plan Set Submitted 122319](#)  
[Final Application Materials - Submitted 122319](#)  
[Peer Review 12-30-19](#)  
[432458-306 Gray Road, WI - Ability to Serve Determination](#)  
[Building elevation and layout as of Jan 7](#)

*Jeff Amos, of Terradyne Consultants, was present representing the applicant. They requested an extension of their preliminary approval. He explained:*

- *They were waiting for their stormwater permit approval from DEP.*
- *Army Corp of Engineers had approved the wetland fill permit.*
- *Portland Water District had issued an Ability to Serve letter.*
- *The updated landscape plan reflected 30 hemlock trees which would provide buffering to Route 202.*
- *Building elevations had been submitted.*
- *They anticipated some blasting during construction.*

*The Board requested a copy of the blasting plan, and that notice of the blasting schedule should be provided so abutters would know.*

*Drew Mayo made a motion that the project, 18-31 Cook Road Retirement Community Final Subdivision & Site Plan, receive a 6-month extension to the final application filing deadline, per 907.C.2., having determined that the applicant had made due progress in preparation of the Final Plan and in pursuing approval of the plans before other agencies, and that municipal ordinances or regulations which may impact the proposed development had not been amended.*

*Seconded by Michael Devoid.*

*Vote: All in favor.*

**PB 20-005**

19-24 VIP Windham. Minor site plan review. Yarmouth Route One LLC to request a waiver of the 813.A.S.e. façade standard for a proposed 7,300 square foot addition to the existing building for an automobile maintenance and retail tire sales facility which was approved by the Staff Review Committee on November 19, 2019. The properties in question are located at 826 Roosevelt Trail and 2 Amato Drive and identified on Tax Map: 71, Lots: 2, 3-1, Zone: Commercial 1 (C-1).

**Attachments:** [19-24 VIP Minor Site Plan Amendment 1-3-20](#)  
[2019-10-25 Site Plan](#)  
[Waiver Request - Combined](#)  
[2019.12.11 Response to comments Optional Commercial Design Standards](#)

*Henry Hess, a landscape architect, was present representing the applicant. He explained:*

- *The project had been previously approved by the Staff Review Committee.*

- The application was before the Planning Board for a waiver request of the required four foot wall plane projections. They proposed a two foot wall plane projection because larger vehicle movement on site, as well as safety and site lines when leaving the building would be improved with smaller wall plane projections.
- The approved site plan met 11 of the optional design standards, in excess of what was required.

The Board commented:

- The two foot projection would break up the wall.
- The applicant had made a good effort to accommodate the requirement.

Andrew Mayo made a motion that the application for project 19-24 VIP Expansion 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 Michael Devoid.

Vote: All in favor.

Drew Mayo made a motion to grant a waiver of from the horizontal façade greater than 50 feet in length.

Seconded by Michael Devoid.

Vote: All in favor.

Drew Mayo made a motion that the Site Plan application for 19-24 VIP Expansion Amendment on Tax Map: 71 Lots: 3-1 and 2 was to be approved with conditions with the following findings of fact and conclusions.

#### FINDINGS OF FACT

##### Utilization of the Site

- Lot 2 is currently utilized as a joint VIP automotive repair and O'Reilly retail store. Lot 3-1 is currently unused with a vacant former Tim Hortons restaurant. Primary access to Lot 2 is from Roosevelt Trail, and primary access to Lot 3-1 is from Amato Drive. The lots have an existing approved driveway connection between them. Lot 3-1 has an existing non-conforming parking area within the front setback of the existing structure that will be retained.

##### Vehicular and Pedestrian Traffic

- Lot 2 will maintain its existing entrances on Roosevelt Trail.
- Lot 3-1 has approximately 300' of frontage on Amato Drive, and the pro
- A trip generation analysis for the project was submitted, estimating the weekday AM and PM and Saturday peak hour and daily traffic to be generated, averaged between estimates based on square footage and number of bays for a Tire Superstore. The analysis estimates an average of 30 trips during the AM peak hour, 33 trips during the PM peak hour, and 40 trips during the Saturday peak hour. Based on these estimates, the project does not require a Traffic Movement Permit from MaineDOT.
- Access to the proposed development would be via two two-way access points on Amato Drive, and two connections with the adjacent O'Reilly's. The rear driveway

connection would be primarily for large truck traffic including deliveries and waste removal. It would allow for large trucks to turn around. The front driveway connection would accommodate vehicle and pedestrian traffic moving between the two stores.

- Lot 3-1 has no direct access to Roosevelt Trail. Lot 2 has one existing 26' wide entrance/exit to Roosevelt Trail.
- The site is approximately 200' from the nearest signalized intersection.
- There are 40 parking spots proposed on Lot 3-1. The parking spaces meet the dimensional requirements of the performance standards, including that 30% of the spaces are 10'x 20'. The proposal includes two handicap spaces near the front service entrance sidewalk.
- There appears to be adequate provision for safe movement of traffic through the site, including adequate space for movements and stop bars painted on the pavement.

#### *Sewage Disposal and Groundwater Impacts*

- The site will be served by a subsurface wastewater disposal system. The existing system will be removed and replaced by a new system.
- The applicant submitted an HHE-200 subsurface wastewater disposal application submitted to the Maine Department of Health and Human Services. The submittal included a subsurface wastewater disposal system design signed by Site Evaluator Gary M. Fullerton. It indicates that the system would serve 15 employees and 70 customers. The design incorporates a 1,000-gallon septic tank, a distribution box and 2 rows of 8 side-feed concrete chambers in cluster array to be located underneath the parking lot on the Amato Drive side of the proposed expansion.
- The application includes a plan for a 1,500 gallon precast concrete oil/water separator with clean-out to be installed on the Amato Drive side of the new garage, near the midpoint. Notes on the plan indicate that it will connect to a slot drain system in floor of the new building.
- The application did not include information on how waste oil will be stored and disposed of.

#### *Stormwater Management*

- The applicant submitted a Stormwater Management Report. The report summary indicates that runoff quantity requirements are met by maintaining or reducing the rate of stormwater runoff from the site, and that stormwater runoff quality will be improved by use of roof drip edge filter and filter tree box filters.
- This development is within the urbanized area. The proposed development will not result in an acre or more of disturbed area, relative to the applicability of Chapter 144 – Post- Construction Stormwater Ordinance.
- In an email dated November 13, 2019, Town Engineer Mark Arienti, P. E. commented: The VIP expansion is proposed to add 12,135 sq. ft. of impervious area and 15,744 sq. ft. of new developed area so no stormwater permit has been applied for or obtained from the Maine DEP; DEP's General Standards at Ch. 500 don't apply. Nonetheless the project is proposing to treat 96.25% of the new impervious areas and 88.71% of the new developed areas, both of which exceed the requirements in the DEP general Standards. Treatment is achieved using 2 Filterra Tree Box Filters for paved areas and Drip Edge Filters for the new VIP garage. These BMPs appear to have been sized in accordance with DEP guidance
- In an email dated September 13, 2019, Town Engineer Mark Arienti, P. E. commented: The relative elevations for catch basins CB 1102 and CB 1100 appear to indicate that flow would occur from CB 1100 to CB 1102, which seems to contradict the Routing Diagrams in the Stormwater Report and what would be expected from the site layout. Please confirm if the inlet and outlet elevations are correct and also please show

*the flow paths in each of the subcatchments on the Pre- and Post-Development Watershed Plans.*

- In an email dated November 13, 2019, the applicant responded: Confirmed inlet and outlet elevations are correct as listed on the plans based on field survey data. Original design of this system is for water to infiltrate in the dry wells and pipes were to be laid flat connecting the dry wells. In the instance that the head conditions rise to the level of the pipes, water is intended to flow from CB 1102 to CB 1100 and continue through the pipe network to discharge at the detention pond. Flow paths in each of the subcatchments have been delineated on plans per comment.*
- In an email dated November 13, 2019, Town Engineer Mark Arienti, P. E. commented: The Stormwater Management Plan provides documentation to indicate that the site development meets the Flooding Standard in the Town's Stormwater Management Ordinance.*

#### *Erosion Control*

- In an email dated September 13, 2019, Town Engineer Mark Arienti, P. E. commented: An Erosion & Sedimentation Control Plan and an Inspection, Maintenance and Housekeeping Plan have been included in the application, which appear to conform with the DEP requirements for the proposed development.*

#### *Utilities*

- Water will be supplied by public water. The application includes an Ability to Serve letter from the Portland Water District documenting the adequacy of the system to support the change of use.*
- The application indicates that the site will be served by gas, telecommunication, and electricity. Any new service lines must be underground, per requirements of 812.I.*
- There are two existing hydrants located approximately 150' north, and 450' south, respectively, on Roosevelt Trail. The applicant stated that the building will have an automatic fire suppression system to meet the fire code.*

#### *Financial and Technical Capacity*

- The applicant estimates that the project will cost approximately \$1.5 million. The applicant submitted a letter from Berkshire Bank indicating the applicant's financial capacity is adequate to complete the project.*
- The applicant stated that they are part of a corporation that operates over 5,000 auto part retail businesses, including 34 in Maine. The applicant has retained the services of a qualified engineering design and development services firm.*

#### *Impacts to Adjacent/Neighboring Properties*

- The proposed development is not expected to have any undue adverse impacts to adjacent or nearby properties due to noise, lighting, pollution, unsightly conditions, vibrations, hours of operation, or any other form of nuisance. A photometric plan was submitted, indicating that the project will comply with the lighting standard and will not exceed .5 footcandles at lot lines with abutting properties.*
- The applicant states that a private trash removal service will be used for solid waste disposal. A dumpster enclosure is shown on the plan. applicant states that the dumpster will be screened by fencing.*
- The application did not include information on how tires will be stored and disposed of.*
- At the Staff Review Committee meeting on November 19, 2019, the applicant stated*

that tires are stored in a trailer behind the existing VIP building and periodically removed to a facility certified to accept them.

#### *Conformity with Local Plans and Ordinances*

##### *1. Land Use*

- *The proposed uses of the site are Retail Sales (automotive), and Automobile Repair Services. Both uses are allowed in the C1 District.*
- *The plan will comply with Section 500 performance standards.*
- *The applicant submitted building elevations. Staff reviewed the elevations and found that the proposed roof and façade on the proposed addition will not comply with the Commercial District Design Standards at 813, with regard to Architecture/Building Standards.*
  - o *The proposed roof is flat and the building is 146' long. Flat roofs are only allowed, provided that the design creates no horizontal line greater than 50 feet, per 813.4.C. Staff communicated to the applicant that the roof was nonconforming with the roofline standards. The applicant responded that "The horizontal roof line does not face any public roads. The roof line of the existing building facing Roosevelt trail currently meets the Windham commercial District Design Standards." Staff find that the roofline standards are intended to apply to development which meets the standard of "Development" as outlined in 813: "For purposes of this section, "development" shall mean that portion of the project that: a. is subject to site plan review under Section 800; or b. will renovate twenty percent or more of the entire wall area of a structure on the site.", and staff find that the roof is subject to the roof standards at 813.C., where Roofline, reads: "Required in C-1, C-2, C-3, and VC zoning districts.", and there are no exceptions for buildings which are not facing a public road.*
  - o *The proposed new building is 146' long and includes no projections or recesses with a depth of at least 3% of the length of the façade and extending at least 20% of the length of the façade. Staff communicated to the applicant that the proposed building would not comply with the façade standards. The applicant has submitted no further evidence that the proposed new building will comply with 813.5. e. façade standards. Part e. of 813.5 reads. "Horizontal facades greater than 50 feet in length shall incorporate wall plane projections or recesses having a depth of at least 3% of the length of the facade and extending at least 20% of the length of the facade. No uninterrupted facade shall exceed 50 horizontal feet."*
- *The applicant submitted information indicating they will comply with the required Site/Parking, Landscape/ lighting, and Bike/Pedestrian standards at 813.*
- *The applicant has not indicated how they will comply with an additional 8 other design standards at 813.*
- *At the Staff Review Committee meeting on November 19, 2019, the Staff Review Committee agreed that the applicant could work with Planning Staff to update plans to meet the Commercial Design District Guidelines at 813. It was noted that if any of the requirements could not be met, the applicant would need a waiver approval for the standard(s) from the Planning Board.*
- *On December 9, 2019 the Applicant submitted a plan that incorporated a slightly pitched (12/.48) roof and 2' wall-plan projections. Staff acknowledge that the combined effect of a slightly pitched roof and wall-plane projections, breaks up the roofline so that the nearly flat roof does not create any single horizontal line greater than 50'.*
- *The drawing dated December 9, 2019 depicts projections that would extend at least 20% of the length of the façade (29.2'), with no uninterrupted façade exceeding 50 horizontal feet. It does not have recesses or projections that have a depth of 3%, though, because they are less than 4.38' (3% of 146') in depth.*
- *On December 11, 2019 the Applicant submitted a memo documenting how they*

*intend to comply with the additional optional design standards in 813, of which they are required to meet 8. They documented that they intend to meet 11 of the optional standards:*

- o B-1 Parking Location*
- o B-2 Internal Traffic Flow*
- o B-3 Interconnected Parking Lots*
- o B-5 Screening – Parking*
- o B-6 Screening – Utilities and Service*
- o B-7 Parking Lot Landscaping*
- o B-9 Shared Stormwater Treatment*
- o C6 – Planting Variety*
- o C7 – Planting Suitability*
- o C8 – Mass Plantings*
- o D6 - Bicycle Parking/ Racks*

*2. Comprehensive Plan*

- This project meets the goals and objectives of the 2017 Comprehensive Plan.*
- The proposed project is in the North Windham Growth Area.*

**CONCLUSIONS**

- 1. The plan for development reflects the natural capacities of the site to support development.*
- 2. Buildings, lots, and support facilities will be clustered in those portions of the site that have the most suitable conditions for development.*
- 3. Environmentally sensitive areas, including but not limited to, wetlands; steep slopes; flood plains; significant wildlife habitats, fisheries, and scenic areas; habitat for rare and endangered plants and animals; unique natural communities and natural areas; and, sand and gravel aquifers will be maintained and protected to the maximum extent.*
- 4. The proposed site plan has sufficient water available for the reasonably foreseeable needs of the site plan.*
- 5. The proposed site plan 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.*
- 6. The proposed use and layout will not be of such a nature that it will make vehicular or pedestrian traffic no more hazardous than is normal for the area involved.*
- 7. The proposed site plan will provide for adequate sewage waste disposal.*
- 8. The proposed site plan conforms/does not conform to a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.*
- 9. The developer has adequate financial capacity to meet the standards of this section.*
- 10. The proposed site plan will not alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.*
- 11. The proposed site plan will provide for adequate storm water management.*
- 12. The proposed location and height of buildings or structure walls and fences, parking, loading and landscaping shall be such that it will not interfere or discourage the appropriate development in the use of land adjacent to the proposed site or unreasonable affect its value.*
- 13. On-site landscaping does provide adequate protection to neighboring properties from detrimental features of the development that could be avoided by adequate landscaping.*

**CONDITIONS OF APPROVAL**

- 1. Approval is dependent upon, and limited to, the proposals and plans contained in the application dated October 25, 2019, as amended November 13, 2019, 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 814.G. of the Land Use Ordinance.*

*Seconded by Michael Devoid.*

*Vote: All in favor.*

## **Public Hearings & Continuing Business**

### **PB 19-074**

19-17 Rio Drive Subdivision Amendment. Minor subdivision final plan review. KNMC, LLC to request review of an amendment to the lots and roadway layout in a residential subdivision. The properties in question are located on Rio Drive and identified on Tax Map: 14, Lots: 2-2, 2-3, 2-4, 2-5, Zone: Farm Residential (FR).

**Attachments:** [19-15 Rio Drive Amendment Final 1-23-20](#)

[19035-Compiled-Rio Drive Subdivision-Final Minor Subdivision Plan](#)

[Submission \(1-6-19\)](#)

[Compiled-Rio Drive Subdivision-Design Plans \(1-21-20\)](#)

[Peer Review Comments 1-14-20](#)

[Compiled-Rio Drive Subdivision-Response to Review Comments \(1-16-20\)](#)

[Peer Review Comments 1-17-20](#)

[Site Evaluators Certification - Addendum](#)

*Jason Haskell, of DM Roma Consulting Engineers, was present representing the applicant. He explained:*

- *Rio Drive Subdivision had previously been approved but the approval had lapsed.*
- *This application included:*
  - o *Reconfiguration of four lots.*
  - o *Construction of Rio Drive as a 795 foot road, built to the minor local street standard and intended to be offered for public acceptance. MDOT had approved the entrance permit.*
  - o *Alteration of an existing driveway onto Rio Drive*
  - o *CMP and Portland Natural Gas easements.*
- *Portland Water District had issued an Ability to Serve letter.*
- *Septic systems would be private.*
- *Utilities would be underground.*
- *Stormwater would be detained in two basins to decrease the peak rates of run-off.*
- *DEP had issued the Tier 1 Wetland Alteration and Permit by Rule permits.*
- *Army Corp of Engineers had approved the Wetland Alteration permit.*
- *A waiver was requested for the road requirement of a widened, paved shoulder in lieu of a sidewalk. They proposed 26 foot wide pavement with one foot wide gravel shoulders.*
- *A waiver was requested of the cul-de-sac requirement. They proposed a hammer head to provide for a 4,300 square feet less wetland impact and bigger building envelopes. Staff agreed with the waiver request because of the low amount of expected traffic and the ability for emergency vehicles to maneuver.*
- *Nitrate plumes would drain internally into wetlands and be treated to the 10 mg per*



*liter requirement.*

- *Lots three and four would have a shared driveway*

*Jenn Curtis explained that staff recommended a note on the plan regarding all the maintenance responsibility for Rio Drive.*

*Public Comment*

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

*The Board commented:*

- *The maintenance was important.*
- *Why not do the two foot shoulders?*
- *A sign that said, "No Parking" was requested at the hammerhead.*
- *Could the gravel shoulders be minimized only at the areas of impact to the wetlands?*
- *What was the geometry of the hammerhead?*
- *Were the erosion control blankets a permanent fixture on top of the soil?*
- *Narrowing of the road was ok.*

*Drew Mayo made a motion to approve the waiver request from the performance standard requiring two foot side sidewalks.*

*Seconded by Colin Swan.*

*Vote: Four in favor. No one opposed. Michael Devoid abstained.*

*Drew Mayo made a motion to approve the waiver request from the performance standard for a cul-de-sac and to approve a hammerhead.*

*Seconded by Colin Swan.*

*Vote: Four in favor. No one opposed. Michael Devoid abstained.*

*Drew Mayo made a motion that the application for project 19-17 Rio Drive Subdivision Amendment 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 Colin Swan*

*Vote: All in favor.*

*Drew Mayo made a 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 was to be approved with conditions with the following findings of fact and conclusions and adding a No Parking sign at the hammerhead:*

*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.*
- 4. The proposed subdivision will not cause an unreasonable burden on an existing water supply.*
- 5. 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.*
- 6. 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.*
- 7. The proposed subdivision will provide for adequate sewage waste disposal.*
- 8. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste.*
- 9. 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.*
- 10. The proposed subdivision conforms with a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.*
- 11. The developer has adequate financial and technical capacity to meet the standards of this section.*
- 12. 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.*
- 13. The proposed subdivision will not alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.*
- 14. The proposed subdivision is not situated entirely or partially within a floodplain.*
- 15. All freshwater wetlands within the proposed subdivision have been identified on the plan.*
- 16. Any river, stream, or brook within or abutting the subdivision has been identified on any maps submitted as part of the application.*
- 17. The proposed subdivision will provide for adequate storm water management.*
- 18. 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*
- 19. 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.*
- 20. 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*

*21. 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.*

*Seconded by Colin Swan.*

*Vote: All in favor.*

#### [PB 20-003](#)

Amendment to Town of Windham Land Use Ordinance Chapter 140, Sections 300, 400, and 500, and Shoreland Zoning Chapter 199, related to marijuana businesses.

#### **Attachments:** [PB packet marijuana 1-22-20](#)

*Amanda Lessard provided an overview of the amendments which had been drafted at the direction of Town Council. They included:*

- New definitions, revisions and deletions of existing definitions.*
- There would be four tiers of size for cultivation facilities.*
- Manufacturing and testing facilities for medical and adult use would be a permitted use in Commercial 1 (C-1), Industrial (I), and Economic Development (ED) zones.*
- Registered care givers were proposed to be permitted in all districts except ED.*
- Language had been added to Performance Standards to clarify that lawfully existing uses as of the date of the performance standard amendment, could continue and would be exempt from the new performance standard.*
- Cultivation was proposed to be allowed indoors only; some that currently existed could be legally non-conforming.*
- Growing marijuana for personal use had to be done indoors on property with an occupied building.*
- Performance standards for a marijuana business would replace current standards for marijuana dispensaries.*
- There would be required setbacks for a marijuana business.*
- There would be a performance standard regarding odor control.*
- Caregiver cultivation would be limited to 1,000 square feet. No sales on premises unless permitted as a Cultivation. There could be no cultivation sales unless permitted as a marijuana retail store.*
- Shoreland zoning took the same definitions as land use. The changes would not be in effect until approved by the Commissioner of DEP.*

#### *Public Comment*

*Maggie Terry, Freeman Court – She had asked for recreational marijuana to come to Windham, had asked Council to set up the committee.*

Joel Peppin, Business Owner on Storm Drive and Retail Adult Use and Medical Marijuana Task Force member – He thought the amendments were pretty consistent with what their committee and Town Council had discussed and pretty clear from an operator's standpoint. Some other concerns regarding the application process for license types would be taken up at the Town Council level.

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

The Board commented:

- What standards were lawfully existing uses approved under?
- If there was an existing home occupation and a daycare came, who would have to close, because the use would not be allowed within 500 feet of a daycare?
- If there was a home occupation in an apartment, in what part of the area would odor need to be controlled?
- It seemed to be an exception in the ordinance, where medical uses were allowed in non-commercial zones, but other uses that seemed the same and had the same type of traffic were conditional uses in those zones. That should be noted to Town Council

Drew Mayo made a motion to recommend approval of the proposed ordinance amendments, sections 300, 400, and 500 and the shoreland zoning ordinance related to marijuana business with the Council looking more closely at the requirement for other similar business to be permitted as a conditional uses and the medical marijuana caregiver use was permitted and was not being consider as a conditional use.

Seconded by Michael Devoid.

Vote: All in favor.

## **Other Business**

### **Adjournment**

Drew Mayo made a motion to adjourn.

Seconded by Michael Devoid.

Vote: All in favor.

**TMP-3059** Continuing Business