

Town of Windham

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EMO

DATE: July 9, 2020

TO: Windham Planning Board
FROM: Jennifer Curtis, Planner
Cc: Amanda Lessard, Planning Director,
Dustin Roma, P.E., DM Roma Consulting Engineers
Development Review Team

RE: 20-16 Ruby Meadows Subdivision– 3rd Amended Subdivision Plan
Planning Board Meeting: July 13, 2020

Overview –

Ruby Meadows, a 15-lot subdivision on a 29.58 acre property located on Albion Road and Pope Road, was approved by the Planning Board on August 27, 2018. The Planning Board approved an amendment to the plan on December 10, 2018 that revised a note on the plan that reflected a change in ownership of the property. This application amends the plan by revising the tree clearing limits and increasing the developed and impervious area on Lot 11. The applicant proposes to treat the stormwater runoff generated from the additional developed and impervious area with infrastructure already proposed, plus the addition of a berm and rain garden.

The subdivision ordinance states that revisions to approved subdivision plans that do not involve the creation of additional lots or dwelling units, the procedures for Final Plan approval shall be followed (§913.B.2, page 9-78).

As with all applications for amendments, the Planning Board should limit the scope of the review to the criteria impacted by the proposed amendment – erosion control and stormwater treatment.

New comments from the staff memo dated April 9, 2020, appear as underlined text below.

Tax Map: 10, Lot: 78B-3, Zone: Farm (F).

SUBDIVISION REVIEW

Staff Comments:

1. Waivers: No new additional waivers are requested as part of the 3rd Amended Plan application. Previously granted waivers:

- a) §910.C.1.c.1 – High Intensity Soils Survey, Submission requirement.
Approved June 25, 2018
 - b) §910.C.1.c.3 – Hydrogeologic Assessment, Submission requirement.
Approved June 25, 2018
 - c) §910.C.1.c.5 – Traffic Impact Analysis, Submission requirement.
Approved June 25, 2018 conditioned on 30 foot vegetation cut back of the Lot 13, 14 shared driveway.
 - d) §911.B.1 – Water Supply performance standard.
Approved June 25, 2018
 - e) §911.M.5.b.5.ii – Public Dead-end Street performance standard.
Approved June 25, 2018
 - f) §911.M.5.b.6.ii – Sidewalks or shoulders performance standard.
Approved June 25, 2018
2. Complete Application: *N/A for Amended Subdivision. Section 913 requires that the application shall also include enough supporting information to allow the Board to make a determination that the proposed revisions meet the standards of Section 900 and the criteria of the State statute.*

~~**MOTION:** The final plan application for project 20-07 Ruby Meadows 2nd Amended Subdivision 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: A public hearing was held at the Planning Board meeting on July 9, 2018.
4. Site Walk: A site walk was held on Monday July 9, 2018 at 5:30pm.
5. Findings of Fact and conclusions for the

Windham Planning Board,

MOTION: The Subdivision application for 20-16 Ruby Meadows 3rd Amended Subdivision on Tax Map: 10, Lot: 78 is to be **(approved with conditions/denied)** with the following findings of fact and conclusions.

FINDINGS OF FACT

A. POLLUTION

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

B. WATER

- The three (3) lots on Albion Road and the ten (10) lots on the proposed road will be served by public water for domestic use.
- An email dated June 12, 2018 from Robert Bartels, PE, of the Portland Water District includes a map noting the location, type, and size of the public water mains near the sites and states that it is possible to make a connection into a public main only after proper review and approval by PWD.
- An Ability to Serve letter dated July 6, 2018 from Robert Bartels, PE, of the Portland Water District approves the water system as designed.
- Two (2) lots on Pope Road will be served by private wells. The ordinance requires that the subdivision must be served by public water if the closest water main is within a distance equal to 100 feet multiplied by the number of lots in the subdivision. The existing public water main terminates at the intersection of Albion Road and Pope Road. The Planning Board granted a waiver from this standard.
- Existing fire hydrants are located on Albion Road near the Lot 13 and Lot 14 lot line, and at Pope Road at the intersection of Albion Road.
- At the Development Team Meeting on May 1, 2018 Fire Chief Brent Libby requested a new hydrant on the proposed street approximately 1,000 feet from the existing hydrants. Proposed hydrants should be shown on the plan.
- In an email dated June 29, 2018, Town Engineer Jon Earle P.E., requested a moratorium restoration detail for the water main and water service connection that conform with Chapter 210 Streets and Sidewalks.
- An Albion Road trench repair detail is shown on Sheet D-2 of the revised preliminary plan dated July 6, 2018.
- A letter dated August 11, 2018 from Kenneth P. Brown of the Portland Pipeline Corporation was submitted with the final plan submission, anticipates that the project will be able to meet PPCL's construction guidelines of a 50 foot setback from the nearest pipeline.
- In an email dated August 17, 2018, Town Engineer Jon Earle P.E., encouraged incorporating the location of the PPCL pipelines onto the subdivision plan and road plan/profile sheets.

C. SOIL EROSION AND STORMWATER MANAGEMENT

- An erosion and sedimentation plan, prepared by DM Roma Consulting Engineers, dated June 18, 2018, has been submitted as part of the Preliminary Plan. Notes and details are shown on Drawing D-1.
- A stormwater management plan that meets the water quality and quantity standards as well as the flooding standard of Section 3 DEP Chapter 500 Stormwater Management must be submitted as part of the Preliminary Plan. If this project requires a Maine Department of Environmental Protection (DEP) Chapter 500 Stormwater Permit, it must be submitted with the Final Plan.
- Freshwater wetlands have been identified on the plan. This project requires a Maine Department of Environmental Protection (DEP) Natural Resources Protection Act (NRPA)

Tier-1 permit for wetland alterations. The permit must be submitted with the Final Plan. Five areas of wetland impacts are shown on Sheets PP-1 and LD-1.

- Note 16 on the July 6, 2018 revised subdivision plan states the total amount of wetland impact associated with the proposed development.
- The DEP NRPA Permit #L-23150-TC-C-N approved on August 22, 2018 was included with the final plan submission.
- The DEP Stormwater Permit by Rule approved on July 3, 2018 was included with the final plan submission.
- This project is in the NPDES (National Pollutant Discharge Elimination System) area as designated by the Environmental Protection Agency for the Town of Windham. As a result, there will be additional construction inspection requirements and ongoing requirements for reporting of stormwater infrastructure maintenance if the area of development is greater than one (1) acre. See Condition of Approval #2.
- A stormwater management plan has been submitted as part of the June 18, 2018 Preliminary Plan submission. The project proposes to treat the 9.33 acres of total developed area with one (1) underdrained filter basin, four (4) bioretention cells, forested buffers and roofline drip edges around each house.
- The forested buffer should be shown on the subdivision plan.
- Notes should be added to the subdivision plan that all buildings will require the installation of a roof drip edge filter for stormwater treatment and that the forested buffer should be permanently marked prior to the start of construction.
- The stormwater management plan also includes an inspection, maintenance and housekeeping plan. The owner is responsible for the maintenance of all stormwater management structures and related site components until such time that a homeowner's association is created.
- In an email dated June 29, 2018, Town Engineer Jon Earle P.E., notes that there appears to be a typo in Table 1 peak runoff SP-1 25-yr storm. Chapter 500 water quality standard have been met but he requested that the lot by lot summary of impervious and developed areas be shown on the subdivision plan. He also requested additional ground topography for the footprints for each of the filter basin and bioretention cells rather than relying on the LIDAR aerial survey, and proposed grading for bioretention cells 3 and 4.
- The applicant responded to review comments on July 6, 2018 and submitted a revised stormwater management plan and a revised plan set. The revised subdivision plan shows a lot development table, the forested buffer is shown on Lot 14. Note 12 requires permanent marking of the buffer prior to the start of construction. Note 8 specifies that houses require a roofline drip edge.
- In an email dated July 9, 2018, Town Engineer Jon Earle P.E., had no further comment and acknowledged that ground topography of the stormwater filter basins and rain gardens would be provided with a final plan submission.
- In an email dated August 17, 2018, Town Engineer Jon Earle P.E., asked if ground survey had been completed in the footprints of the constructed stormwater BMPs and requested updated stormwater treatment calculations that account for the additional disturbed areas created by a 30' cleared area along Lots 12, 13, and 14 at Albion Road.

- In an email dated November 30, 2018 Jennifer Harris of the Maine DEP stated that if the Secretary of State confirms that Ruby Meadows LLC has been revived and reformed to its original state, then the DEP does not require any permit transfers for this project.
- The amended subdivision plans prepared by DM Roma Consulting Engineers dated March 23, 2020 shows a revised tree line on Lot 3 and a table summarizing that the lot development and treatment area going to the filter basin. Stormwater runoff generated from the additional impervious area will be treated through a proposed stone berm level spreader that discharges to a wooded buffer. Engineering design calculations were included with the submission.
- The application narrative states that maintenance of the stormwater buffer will be the responsibility of the owner of Lot 3. Note 11 on the proposed amended plan states that the forested stormwater treatment buffer is deed restricted and referenced the stormwater management declaration of restrictions in Appendix A of the Inspection, Maintenance, and Housing Keeping Plan for the site and demonstrate there is no conflict with the HOA maintenance responsibilities.
- On April 8, 2020 the applicant submitted a draft forested buffer declaration of restrictions, a revised amended subdivision plan with updated maximum developed area and impervious area on Lot 3, and a report that the DEP does not require an amendment to the PBR for the increased lot development.
- Town Engineer Mark Arienti, P.E. reviewed the amended submission and commented on April 9, 2020: Calculations and buffer design are in accordance with DEP guidance. Notes should be added to the plan that the stormwater buffer will be permanently marked before construction and buildings will have a roofline drip edge filter.
- For the proposed amendment to Lot 11, a portion of the stormwater from the proposed developed lot will sheet flow in a southerly direction towards the stormwater drainage swale adjacent to Viola Lane. This runoff will then be conveyed into an existing underdrained soil filter basin (FB-1) near the entrance of the subdivision. A rain garden (bioretention basin) is proposed at the north edge of lot 11 to treat stormwater runoff from a portion of the house and the driveway area prior to discharging to the wetland on this side of the lot. A berm is proposed along the wetland area and along the western property line to ensure that runoff from the developed area will be conveyed to the rain garden. Calculations provided by the applicant show that with the proposed lot grading and incorporation of the bio-retention basin into the design, the sizing of the existing filter basin (FB-1) is sufficient to treat the portion of stormwater that flows into the swale along Viola Lane.
- Staff recommend a condition of approval for maintenance of the proposed stormwater management infrastructure. See draft COA #3.
- In an email dated June 30, 2020, Town Engineer Mark Arienti, P.E., commented on the plan that the proposed use of bioretention basins and roof drip edge filters appears appropriate to provide treatment for the additional impervious and landscaped areas. He also requested clarification of some of the calculations.
- On July 7, 2020 DM Roma Consulting Engineers submitted a response to comments and revised plans, including clarification of stormwater calculations as requested by Mark.

- In an email dated June 30, 2020, Town Engineer Mark Arienti, P.E., commented that he had reviewed the response to comments submitted by DM Roma Consulting Engineers on July 7, 2020 and had no further comment.

D. TRAFFIC

- Most of the subdivision lots will have access from the new 975 foot subdivision street, a paved public street. Section 550.C states that no new private road shall be permitted to directly access a public street.
- The proposed street right-of-way abuts the property line to provide access to future development on the abutting parcel. The purchase and sale agreement states that an easement will be provided to the seller's remaining land. This easement should be noted on the plan.
- Three of the lots will have access on Albion Road, and two lots will have access on Pope Road. Lots 13 and 14 will share driveway entrance on Albion Road. Sight distance in each direction for the proposed street and the driveways on the existing public streets should be shown on the Preliminary Plan.
- The preliminary plan submission dated June 18, 2018 states that the site distance at the proposed roadway is 535 feet looking right and 465 feet looking left which meets the Town standards for the posted speed limit of 35 mph on Albion Road.
- Lots 3 and 12 must have driveway access from the proposed subdivision street. This requirement should be noted on the plan.
- At the Development Team meeting on May 1, 2018, it was stated that Albion Road was recently paved and would need to comply with the moratorium road restoration standards for the proposed street openings.
- Section 911.M.3.d states that streetlights may be required at intersections with existing public streets. The Town of Windham Streetlight Policy, adopted June 25, 2013, states that streetlights should be at intersection with private roads that serve more than 10 lots.
- Based on the distance to uses that would generate pedestrian trips, sidewalks are not required. When sidewalks are not required for local streets, Section 911.M.5.b.6.ii requires that the applicant construct a sidewalk or a street with a widened shoulder. One (1) additional foot of paved shoulder, on each side of the street, shall be added to the required minimum shoulder width. The Planning Board granted a waiver from this standard.
- A traffic impact analysis is required for subdivisions projected to generate more than 140 vehicle trips per day and should be submitted with the Preliminary Plan. The Planning Board granted a waiver from this submission requirement.
- The preliminary plan submission dated June 18, 2018 states that the proposed 15 residential lots are expected to generate 15 peak hour trip ends.
- A road plan and profile, prepared by DM Roma Consulting Engineers, dated June 18, 2018, shown on Sheet PP-1. The roadway cross section for a minor local street is shown on Sheet D-2.
- In an email dated June 29, 2018, Town Engineer Jon Earle P.E., noted that the sight distance is noted in the narrative but should also be shown on the plan.

- The applicant responded to review comments on July 6, 2018 and submitted a revised plan set that show sight distances and estimated traffic to be generated by the subdivision as 150 daily trips. The revised subdivision plan notes a proposed access, utility and stormwater easement over lot 13 for the benefit of Lot 14. Note 15 on the plan provide an access, utility and maintenance easement to the remaining land of the seller.
- The final plan submission shows a 30' cleared area along Albion Road on Lots 12, 13, and 14. Note 17 states that all trees shall be removed and no trees planted in the 30' cleared area.
- In an email dated July 9, 2018, Town Engineer Jon Earle P.E., stated that language should be included in the draft declaration for the maintenance responsibility for the additional vegetation proposed to be cleared.

E. SEWERAGE

- The development will be served by individual private subsurface wastewater disposal systems.
- Soil test pit analysis prepared by Mark Cenci, LSE of Mark Cenci Geologic, Inc dated May 8, 2018 and June 15, 2018 show that each lot has adequate soils to support a private septic system. Test pit locations are shown on the plan. There is no test pit shown on the Lot 11. TP 19 thru 22 included with Mark Cenci's June 15, 2018 additional wastewater disposal investigation aren't shown on the plan. Plan Sheet PP-1 shows TP 23 on Lot 11 and TP 24 on Lot 12, but those soil profiles were not included in the preliminary plan submission.
- The applicant responded to review comments on July 6, 2018 and submitted a revised plan set that shows a test pit on each lot.

F. SOLID WASTE

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

G. AESTHETICS

- The site is currently undeveloped. It is wooded and includes wetland area dispersed across the parcel.
- The property abuts a Portland Pipeline Company Easement. Windham Drifters maintains a snowmobile trail in the easement.
- There are no documented rare botanical features or significant wildlife habitat documented on the site.
- Street trees are required at least every fifty (50) feet (§ 911.E.1.b) and are shown on Sheet PP-1.
- Limits of tree clearing are shown on the preliminary plan. Note 14 on the final plan states 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.

H. CONFORMITY WITH LOCAL PLANS AND ORDINANCES

- Comprehensive Plan:
 - The plan does meet the goals of the 2017 Comprehensive Plan.
- Land Use Ordinance:
 - All lots meet the minimum lot size (80,000 square feet) and frontage (200 feet) for lots in the F zoning district.
 - 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.
 - The Tax Map and Lot numbers provided by the Tax Assessor must be shown on the Final Plan.
 - Subdivision plan data compatible with the Town GIS was submitted as part of the Final Plan submission.
 - A Draft Declaration was included with the Final Plan submission and specifies the rights and responsibilities of each lot owner with respect to the maintenance, repair, and plowing of the subdivision streets, open space and stormwater infrastructure.
 - Note 1 on the amended plan reference the current landowner.
 - The amended plan submission includes documentation from the Secretary of State's Office confirming that the applicant's LLC is not cancelled and remains in good standing.
- Others:
 - Chapter 221 Street Naming and Addressing: Viola Lane, the name approved by the Town Addressing Officer, is shown the Final Plan.
 - Chapter 144 Post-Construction Stormwater Ordinance: The site is in the NPDES MS4 urbanized area. The application narrative states that maintenance of the stormwater infrastructure on Lot 11 will be the responsibility of the lot owner. See Condition of Approval #3.

I. FINANCIAL AND TECHNICAL CAPACITY

- A letter dated April 19, 2018 from Michael Lyden, Loan Officer at Maine Capital Group was submitted as evidence of financial capacity.
- The applicant has provided information on the licensed professionals working on this project as evidence of technical capacity

J. RIVER, STREAM OR BROOK IMPACTS

- This project is located within the Colley Wright Brook watershed.
- The project will not adversely impact any river, stream, or brook.

CONCLUSIONS

1. The proposed subdivision **will not** result in undue water or air pollution.
2. The proposed subdivision **has** sufficient water available for the reasonably foreseeable needs of the site plan.
3. The proposed subdivision **will not** cause an unreasonable burden on an existing water supply.
4. The proposed subdivision **will not** cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
5. The proposed subdivision **will not** cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.
6. The proposed subdivision **will** provide for adequate sewage waste disposal.
7. The proposed subdivision **will not** cause an unreasonable burden on the municipality's ability to dispose of solid waste.
8. The proposed subdivision **will not** have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
9. The proposed subdivision **conforms** with a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.
10. The developer **has** adequate financial and technical capacity to meet the standards of this section.
11. The proposed subdivision **is not** situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, Chapter 3, subchapter I, article 2-B M.R.S.A.
12. The proposed subdivision **will not** alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
13. The proposed subdivision **is not** situated entirely or partially within a floodplain.
14. All freshwater wetlands within the proposed subdivision **have** been identified on the plan.
15. Any river, stream, or brook within or abutting the subdivision **has** been identified on any maps submitted as part of the application.
16. The proposed subdivision **will** provide for adequate storm water management.
17. ~~If any lots in the proposed subdivision have shore frontage on a river, stream, brook, or great pond as these features are defined in Title 38, section 480-B, none of the lots created within the subdivision have 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 dependant upon, and limited to, the proposals and plans contained in the application dated June 22, 2020 and revised July 7, 2020, supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board, and any variation from such plans, proposals and supporting documents and representations are subject to review and approval by the Planning Board or the Town Planner in accordance with Section 913 of the Subdivision Ordinance.
2. Approval is subject to the requirements of the Post-Construction Stormwater Ordinance, Chapter 144. Any person owning, operating, leasing or having control over stormwater management facilities required by the post-construction stormwater management plan must annually engage the services of a qualified third-party inspector who must certify compliance with the post-construction stormwater management plan on or by May 1st of each year.
3. A note shall be added to the 3rd Amended Subdivision Plan that the owner of Lot 11 is responsible for the maintenance of the stormwater infrastructure on their lot associated with this amendment, including the bioretention basin (rain garden) and berm to convey water to the bioretention basin.